(2), or (3) represents that industry,

(in this section referred to as "cooperators") to engage in activities in order to carry out the purpose of the Market Development Cooperator Program set forth in subsection (a). The costs of activities under such a contract shall be shared equitably among the Department of Commerce, the cooperator involved, and, whenever appropriate, foreign businesses. The Department of Commerce shall undertake to support direct costs of activities under such a contract, and the cooperator shall undertake to support indirect costs of such activities. Activities under such a contract shall be carried out by the cooperator with the approval and assistance of the Secretary.

(c) Cooperator partnership program

(1) In general

(A) As part of the Market Development Cooperator Program established under subsection (a), the Secretary of Commerce shall establish a partnership program with cooperators under which a cooperator may detail individuals, subject to the approval of the Secretary, to the United States and Foreign Commercial Service for a period of not less than 1 year or more than 2 years to supplement the Commercial Service.

(B) Any individual detailed to the United States and Foreign Commercial Service under this subsection shall be responsible for such duties as the Secretary may prescribe in order to carry out the purpose of the Market Development Cooperator Program set forth in subsection (a).

(C) Individuals detailed to the United States and Foreign Commercial Service under this subsection shall not be considered to be employees of the United States for the purposes of any law administered by the Office of Personnel Management, except that the Secretary of State may determine the applicability to such individuals of section 2669(f) of title 22 and of any other law administered by the Secretary of State concerning the detail of such individuals abroad.

(2) Qualifications of participants

In order to qualify for the program established under this subsection, individuals shall have demonstrated expertise in the international business arena in at least 2 of the following areas: marketing, market research, and computer data bases.

(3) Expenses of the program

(A) The cooperator who details an individual to the United States and Foreign Commercial Service under this subsection shall be responsible for that individual's salary and related expenses, including health care, life insurance, and other noncash benefits, if any, normally paid by such cooperator.

(B) The Secretary of Commerce shall pay transportation and housing costs for each individual participating in the program established under this subsection.

(d) Budget Act

Contracts may be entered into under this section in a fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

(Pub. L. 100–418, title II, §2303, Aug. 23, 1988, 102 Stat. 1342.)

§4723a. United States Commercial Centers

(a) Establishment

The Secretary of Commerce, in his or her role as chairperson of the Trade Promotion Coordinating Committee, is authorized and encouraged to establish United States Commercial Centers (hereinafter in this section referred to as "Centers") in Asia, in Latin America, and in Africa.

(b) Purpose of Centers

The purpose of the Centers shall be to provide additional resources for the promotion of exports of United States goods and services to the host countries, by familiarizing United States exporters with

the industries, markets, and customs of the host countries, thus facilitating commercial ties and trade.

(c) Functions of Centers

Each Center shall—

(1) collect and publish economic and market data with respect to the host country;

(2) provide, on a user-fee basis, preliminary technical and clerical assistance, language translation, and administrative assistance, and information regarding the legal systems, laws, regulations, and procedures of the host country, to United States exporters seeking to do business in the host country; and

(3) in other ways promote exports of United States goods and services to the host country.

(d) Specific services to be provided

To carry out its objectives, each Center shall make available the following (on a user-fee basis):

(1) Business facilities

Business facilities, including exhibition space, conference rooms, office space (including telephones and other basic office equipment), and, where warranted by impeding deficiencies in the public system, high quality international telecommunications facilities.

(2) Business services

Business support services, including language translation services, clerical services, and a commercial library containing a comprehensive collection of reference materials covering United States and host country industries and markets.

(3) Commercial law information services

Commercial law information services, including—

(A) a clearinghouse for information regarding the relevant commercial laws, practices, and regulations of the host country;

(B) publications to assist United States businesses;

(C) legal referral services; and

(D) lists of local agents and distributors.

(e) Other trade promotion activities

Each Center shall also promote United States export trade by—

(1) facilitating contacts between buyers, sellers, bankers, traders, distributors, agents, and necessary government officials from the United States and the host country;

(2) coordinating trade missions; and

(3) assisting with applications, contracts, and clearances for imports into the host country and exports from the United States.

(f) Staffing of Centers

Each Center shall be staffed by members of the United States and Foreign Commercial Service, participants in the Market Development Cooperator Program established under section 4723 of this title, other employees of the Department of Commerce, and employees of appropriate executive branch departments and agencies which are members of the Trade Promotion Coordinating Committee.

(g) Center facilities and their relationship to United States Department of Commerce operations in host countries

(1) Physical accommodations for the Centers

The Secretary of Commerce shall locate each Center in the primary commercial city of the host country. The Secretary shall acquire office space, exhibition space, and other facilities and equipment that are necessary for each Center to perform its functions. To the extent feasible, each Center shall be located in the central commercial district of the host city.

(2) Consolidation of Department of Commerce operations in host countries

For the purpose of obtaining maximum effectiveness and efficiency and to the extent consistent with the purposes of the Centers, the Secretary of Commerce is encouraged to place all personnel of the Department of Commerce who are assigned to the city in which a Center is located in the same facilities as those in which the Center conducts its activities.

(h) Use of Market Development Cooperator Program

The Secretary of Commerce shall, to the greatest extent feasible, use the Market Development Cooperator Program established under section 4723 of this title to assist in carrying out the purposes of the Centers established under this section.

(i) Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce to carry out this section $8,000,000 for fiscal year 1993, and $5,500,000 for fiscal year 1994. Funds made available under this subsection may be used for the acquisition of real property.

(j) Repealed. Pub. L. 104–66, title I, §1021(b), Dec. 21, 1995, 109 Stat. 712

(k) Definitions

For purposes of this section—

(1) the term "United States exporter" means—

(A) a United States citizen,

(B) a corporation, partnership, or other association created under the laws of the United States or of any State, or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B),

that exports, or seeks to export, goods or services produced in the United States;

(2) the term "State" means any of the several States, the District of Columbia, or any commonwealth, territory, or possession of the United States; and

(3) the term "United States" means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Pub. L. 102–549, title IV, §401, Oct. 28, 1992, 106 Stat. 3661; Pub. L. 104–66, title I, §1021(b), Dec. 21, 1995, 109 Stat. 712.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Jobs Through Exports Act of 1992, and not as part of the Export Enhancement Act of 1988 which enacted this chapter.

AMENDMENTS

1995—Subsec. (j). Pub. L. 104–66 struck out heading and text of subsec. (j). Text read as follows: "The Secretary of Commerce shall submit to the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 1 year after October 28, 1992, and not later than the end of each 1-year period occurring thereafter, a report on the status, activities, and effectiveness of the Centers. Each such report shall include any recommendations with respect to the program established under this section."

§4724. Trade shows

(a) Authority of Secretary of Commerce

In order to facilitate exporting by United States businesses, the Secretary of Commerce shall provide assistance for trade shows in the United States which bring together representatives of

United States businesses seeking to export goods or services produced in the United States and representatives of foreign companies or governments seeking to buy such goods or services from these United States businesses.

(b) Recipients of assistance

Assistance under subsection (a) may be provided to—

(1) nonprofit industry organizations,

(2) trade associations,

(3) foreign trade zones, and

(4) private industry firms or groups of firms in cases where no entity described in paragraph (1), (2), or (3) represents that industry,

to provide the services necessary to operate trade shows described in subsection (a).

(c) Assistance to small businesses

In providing assistance under this section, the Secretary of Commerce shall, in consultation with the Administrator of the Small Business Administration, make special efforts to facilitate participation by small businesses and companies new to export.

(d) Uses of assistance

Funds appropriated to carry out this section shall be used to—

(1) identify potential participants for trade show organizers,

(2) provide information on trade shows to potential participants,

(3) supply language services for participants, and

(4) provide information on trade shows to small businesses and companies new to export.

(e) Definitions

As used in this section—

(1) the term "United States business" means—

(A) a United States citizen;

(B) a corporation, partnership, or other association created under the laws of the United States or of any State (including the District of Columbia or any commonwealth, territory, or possession of the United States); or

(C) a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B); and

(2) the term "small business" means any small business concern as defined under section 632 of this title.

(Pub. L. 100–418, title II, §2304, Aug. 23, 1988, 102 Stat. 1343.)

§4725. United States and Foreign Commercial Service Pacific Rim initiative

(a) In general

In order to encourage the export of United States goods and services to Japan, South Korea, and Taiwan, the United States and Foreign Commercial Service shall make a special effort to—

(1) identify United States goods and services which are not being exported to the markets of Japan, South Korea, and Taiwan but which could be exported to these markets under competitive market conditions;

(2) identify and notify United States persons who sell or provide such goods or services of potential opportunities identified under paragraph (1);

(3) present, periodically, a list of the goods and services identified under paragraph (1), together with a list of any impediments to the export of such goods and services, to appropriate authorities in Japan, South Korea, and Taiwan, with a view toward liberalizing markets to such goods and services;

(4) facilitate the entrance into such markets by United States persons identified and notified under paragraph (2); and

(5) monitor and evaluate the results of efforts to increase the sale of goods and services in such markets.

(b) Reports to Congress

The Secretary of Commerce shall report periodically to the Congress on activities carried out under subsection (a).

(c) "United States person" defined

As used in this section, the term "United States person" means—

(1) a United States citizen; or

(2) a corporation, partnership, or other association created under the laws of the United States or any State (including the District of Columbia or any commonwealth, territory, or possession of the United States).

(Pub. L. 100–418, title II, §2306, Aug. 23, 1988, 102 Stat. 1344.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under subsec. (b) of this section is listed on page 51), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§4726. Indian tribes export promotion

(a) Assistance authorized

The Secretary of Commerce is authorized to provide assistance to eligible entities for the development of foreign markets for authentic American Indian arts and crafts. Eligible entities under this section include Indian tribes, tribal organizations, tribal enterprises, craft guilds, marketing cooperatives, and individual Indian-owned businesses.

(b) Activities eligible for assistance

Activities eligible for assistance under this section include, but are not limited to, conduct of market surveys, development of promotional materials, financing of trade missions, participation in international trade fairs, direct marketing, and other market development activities.

(c) Administration of assistance

Assistance under this section shall be administered by the Secretary of Commerce under guidelines developed by the Secretary. Priority shall be given to projects which support the establishment of long term, stable international markets for American Indian arts and crafts and which are designed to provide the greatest economic benefit to American Indian artisans.

(d) Technical and other assistance

The Secretary of Commerce shall provide technical assistance and support services to applicants eligible for and entities receiving assistance under this section for the purpose of helping them in identifying and entering appropriate foreign markets, complying with foreign and domestic legal and banking requirements regarding the export and import of arts and crafts, and utilizing import and export financial arrangements, and shall provide such other assistance as may be necessary to support the development of export markets for American Indian arts and crafts.

(e) Limitation on assistance

No assistance shall be provided under this section in support of any activity which includes the sale or marketing of any craft items other than authentic arts and crafts hand made or hand crafted by

American Indian artisans.

(Pub. L. 100–418, title II, §2307, Aug. 23, 1988, 102 Stat. 1345.)

§4727. Trade Promotion Coordinating Committee

(a) Establishment and purpose

The President shall establish the Trade Promotion Coordinating Committee (hereafter in this section referred to as the "TPCC"). The purpose of the TPCC shall be—

(1) to provide a unifying framework to coordinate the export promotion and export financing activities of the United States Government; and

(2) to develop a governmentwide strategic plan for carrying out Federal export promotion and export financing programs.

(b) Duties

The TPCC shall—

(1) coordinate the development of the trade promotion policies and programs of the United States Government;

(2) provide a central source of information for the business community on Federal export promotion and export financing programs;

(3) coordinate official trade promotion efforts to ensure better delivery of services to United States businesses, including—

(A) information and counseling on United States export promotion and export financing programs and opportunities in foreign markets;

(B) representation of United States business interests abroad; and

(C) assistance with foreign business contacts and projects;

(4) prevent unnecessary duplication in Federal export promotion and export financing activities;

(5) assess the appropriate levels and allocation of resources among agencies in support of export promotion and export financing and provide recommendations to the President based on its assessment; and

(6) carry out such other duties as are deemed to be appropriate, consistent with the purpose of the TPCC.

(c) Strategic plan

To carry out subsection (b), the TPCC shall develop and implement a governmentwide strategic plan for Federal trade promotion efforts. Such plan shall—

(1) establish a set of priorities for Federal activities in support of United States exports and explain the rationale for the priorities;

(2) review current Federal programs designed to promote the sale of United States exports in light of the priorities established under paragraph (1) and develop a plan to bring such activities into line with the priorities and to improve coordination of such activities;

(3) identify areas of overlap and duplication among Federal export promotion activities and propose means of eliminating them;

(4) propose to the President an annual unified Federal trade promotion budget that supports the plan for priority activities and improved coordination established under paragraph (2) and eliminates funding for the areas of overlap and duplication identified under paragraph (3);

(5) review efforts by the States (as defined in section 4721(i) of this title) to promote United States exports and propose means of developing cooperation between State and Federal efforts, including co-location, cost-sharing between Federal and State export promotion programs, and sharing of market research data;

(6) reflect the recommendations of the United States National Tourism Organization to the degree considered appropriate by the TPCC; and

(7) in coordination with State trade promotion agencies, include a survey and analysis regarding

the overall effectiveness of Federal-State coordination and export promotion goals on an annual basis, to further include best practices, recommendations to better assist small businesses, and other relevant matters.

(d) Membership

(1) In general

Members of the TPCC shall include representatives from—

(A) the Department of Commerce;
(B) the Department of State;
(C) the Department of the Treasury;
(D) the Department of Agriculture;
(E) the Department of Energy;
(F) the Department of Transportation;
(G) the Office of the United States Trade Representative;
(H) the Small Business Administration;
(I) the Agency for International Development;
(J) the Trade and Development Program;
(K) the United States International Development Finance Corporation;
(L) the Export-Import Bank of the United States; and
(M) at the discretion of the President, such other departments or agencies as may be necessary.

(2) Representatives from State trade promotion agencies

The TPCC shall also include 1 or more members appointed by the President who are representatives of State trade promotion agencies.

(3) Chairperson

The Secretary of Commerce shall serve as the chairperson of the TPCC.

(e) Member qualifications

Members of the TPCC (other than members described in subsection (d)(2)) shall be appointed by the heads of their respective departments or agencies. Such members, as well as alternates designated by any members unable to attend a meeting of the TPCC, shall be individuals who exercise significant decisionmaking authority in their respective departments or agencies.

(f) Report to Congress

The chairperson of the TPCC shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on International Relations of the House of Representatives, not later than March 30 of each year, a report describing—

(1) the strategic plan developed by the TPCC pursuant to subsection (c), the implementation of such plan (including implementation of the survey and analysis described in paragraph (7) of that subsection), and any revisions thereto; and

(2) the implementation of sections 5823 and 5824 of title 22 [1] concerning funding for export promotion activities and the interagency working groups on energy of the TPCC.

(Pub. L. 100–418, title II, §2312, as added Pub. L. 102–429, title II, §201, Oct. 21, 1992, 106 Stat. 2199; amended Pub. L. 104–66, title I, §1022(a), Dec. 21, 1995, 109 Stat. 713; Pub. L. 104–288, §8, Oct. 11, 1996, 110 Stat. 3407; Pub. L. 106–158, §7, Dec. 9, 1999, 113 Stat. 1747; Pub. L. 114–125, title V, §505(a), (e), Feb. 24, 2016, 130 Stat. 179, 180; Pub. L. 115–254, div. F, title VI, §1470(e), Oct. 5, 2018, 132 Stat. 3516.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 5823 and 5824 of title 22, referred to in subsec. (f)(2), was, in the original, "sections 303 and 304

of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5823 and 5824)", and was translated as meaning sections 303 and 304 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992, Pub. L. 102–511, to reflect the probable intent of Congress.

AMENDMENTS

2018—Subsec. (d)(1)(K). Pub. L. 115–254 substituted "United States International Development Finance Corporation" for "Overseas Private Investment Corporation".

2016—Subsec. (c)(7). Pub. L. 114–125, §505(e)(1), added par. (7).

Subsec. (d)(2), (3). Pub. L. 114–125, §505(a)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e). Pub. L. 114–125, §505(a)(2), inserted "(other than members described in subsection (d)(2))" after "Members of the TPCC".

Subsec. (f)(1). Pub. L. 114–125, §505(e)(2), inserted "(including implementation of the survey and analysis described in paragraph (7) of that subsection)" after "the implementation of such plan".

1999—Subsec. (f). Pub. L. 106–158 substituted "March 30 of each year," for "September 30, 1995, and annually thereafter," in introductory provisions.

1996—Subsec. (c)(6). Pub. L. 104–288 added par. (6).

1995—Subsec. (f). Pub. L. 104–66 amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: "The chairperson of the TPCC shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Foreign Affairs of the House of Representatives, not later than September 30, 1993, and annually thereafter, a report describing the strategic plan developed by the TPCC pursuant to subsection (c) of this section, the implementation of such plan, and any revisions thereto."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on International Relations of House of Representatives changed to Committee on Foreign Affairs of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–254 effective at the end of the transition period, as defined in section 9681 of Title 22, Foreign Relations and Intercourse, see section 1470(w) of Pub. L. 115–254, set out as a note under section 905 of Title 2, The Congress.

AVAILABILITY OF STATE RESOURCES GUIDES ON EXPORT.GOV

Pub. L. 114–125, title V, §504(c), Feb. 24, 2016, 130 Stat. 179, provided that: "The Secretary of Commerce shall make available on the Internet website Export.gov (or a successor website) information on the resources relating to export promotion and export financing available in each State—

"(1) organized by State; and

"(2) including information on State agencies with responsibility for export promotion or export financing and district export councils and trade associations located in the State."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 12870. TRADE PROMOTION COORDINATING COMMITTEE

Ex. Ord. No. 12870, Sept. 30, 1993, 58 F.R. 51753, as amended by Ex. Ord. No. 13286, §26, Feb. 28, 2003, 68 F.R. 10625, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Export Enhancement Act of 1992 (Public Law 102–429, 106 Stat. 2186) [see Short Title of 1992 Amendment note set out under section 635 of Title 12, Banks and Banking], and section 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Establishment*. There is established the "Trade Promotion Coordinating Committee" ("TPCC"). The Committee shall comprise representatives of each of the following:

(a) Department of Commerce;

(b) Department of State;

(c) Department of the Treasury;

(d) Department of Agriculture;
(e) Department of Energy;
(f) Department of Transportation;
(g) Department of Defense;
(h) Department of Labor;
(i) Department of the Interior;
(j) Department of Homeland Security;
(k) Agency for International Development;
(l) Trade and Development Agency;
(m) Environmental Protection Agency;
(n) United States Information Agency;
(o) Small Business Administration;
(p) Overseas Private Investment Corporation [now United States International Development Finance Corporation];
(q) Export-Import Bank of the United States;
(r) Office of the United States Trade Representative;
(s) Council of Economic Advisers;
(t) Office of Management and Budget;
(u) National Economic Council;
(v) National Security Council; and
(w) at the discretion of the President, such other departments or agencies as may be necessary.

Members of the TPCC shall be appointed by the heads of their respective departments or agencies. Such members, as well as their designated alternatives, shall be individuals who exercise significant decision-making authority in their respective departments or agencies.

SEC. 2. *Chairperson*. The Secretary of Commerce shall be the chairperson of the TPCC.

SEC. 3. *Purpose*. The purpose of the TPCC shall be to provide a unifying framework to coordinate the export promotion and export financing activities of the United States Government and to develop a governmentwide strategic plan for carrying out such programs.

SEC. 4. *Duties*. The TPCC shall:

(a) coordinate the development of the trade promotion policies and programs of the United States Government;

(b) provide a central source of information for the business community on Federal export promotion and export financing programs;

(c) coordinate official trade promotion efforts to ensure better delivery of services to U.S. businesses, including:

(1) information and counseling on U.S. export promotion and export financing programs and opportunities in foreign markets;

(2) representation of U.S. business interests abroad; and

(3) assistance with foreign business contacts and projects;

(d) prevent unnecessary duplication in Federal export promotion and export financing activities;

(e) assess the appropriate levels and allocation of resources among agencies in support of export promotion and export financing and provide recommendations, through the Director of the Office of Management and Budget to the President, based on its assessment; and

(f) carry out such other duties as are deemed to be appropriate, consistent with the purpose of the TPCC.

SEC. 5. *Strategic Plan*. To carry out section 4 of this order, the TPCC shall develop and implement a governmentwide strategic plan for Federal trade promotion efforts. Such plan shall:

(a) establish a set of priorities for Federal activities in support of U.S. exports and explain the rationale for the priorities;

(b) review current Federal programs designed to promote the sale of U.S. exports in light of the priorities established under paragraph (a) of this section and develop a plan to bring such activities into line with those priorities and to improve coordination of such activities;

(c) identify areas of overlap and duplication among Federal export promotion activities and propose means of eliminating them;

(d) propose, through the Director of the Office of Management and Budget, to the President an annual unified Federal trade promotion budget that supports the plan for priority activities and improved coordination established under paragraph (b) of this section and eliminates funding for the areas of overlap and duplication identified under paragraph (c) of this section; and

(e) review efforts by the States to promote U.S. exports and propose means of developing cooperation

between State and Federal efforts, including co-location, cost-sharing between Federal and State export promotion programs, and sharing of market research data.

SEC. 6. *Report*. The chairperson of the TPCC, with the approval of the President, shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Foreign Affairs of the House of Representatives, not later than September 30, 1993, and annually thereafter, a report describing the strategic plan developed by the TPCC pursuant to section 5 of this order, the implementation of such a plan, and any revisions to the plan.

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

EX. ORD. NO. 13534. NATIONAL EXPORT INITIATIVE

Ex. Ord. No. 13534, Mar. 11, 2010, 75 F.R. 12433, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Export Enhancement Act of 1992, Public Law 102–429, 106 Stat. 2186, and section 301 of title 3, United States Code, in order to enhance and coordinate Federal efforts to facilitate the creation of jobs in the United States through the promotion of exports, and to ensure the effective use of Federal resources in support of these goals, it is hereby ordered as follows:

SECTION 1. *Policy*. The economic and financial crisis has led to the loss of millions of U.S. jobs, and while the economy is beginning to show signs of recovery, millions of Americans remain unemployed or underemployed. Creating jobs in the United States and ensuring a return to sustainable economic growth is the top priority for my Administration. A critical component of stimulating economic growth in the United States is ensuring that U.S. businesses can actively participate in international markets by increasing their exports of goods, services, and agricultural products. Improved export performance will, in turn, create good high-paying jobs.

The National Export Initiative (NEI) shall be an Administration initiative to improve conditions that directly affect the private sector's ability to export. The NEI will help meet my Administration's goal of doubling exports over the next 5 years by working to remove trade barriers abroad, by helping firms—especially small businesses—overcome the hurdles to entering new export markets, by assisting with financing, and in general by pursuing a Government-wide approach to export advocacy abroad, among other steps.

SEC. 2. *Export Promotion Cabinet*. There is established an Export Promotion Cabinet to develop and coordinate the implementation of the NEI. The Export Promotion Cabinet shall consist of:

(a) the Secretary of State;

(b) the Secretary of the Treasury;

(c) the Secretary of Agriculture;

(d) the Secretary of Commerce;

(e) the Secretary of Labor;

(f) the Director of the Office of Management and Budget;

(g) the United States Trade Representative;

(h) the Assistant to the President for Economic Policy;

(i) the National Security Advisor;

(j) the Chair of the Council of Economic Advisers;

(k) the President of the Export-Import Bank of the United States;

(l) the Administrator of the Small Business Administration;

(m) the President of the Overseas Private Investment Corporation [now United States International Development Finance Corporation];

(n) the Director of the United States Trade and Development Agency; and

(o) the heads of other executive branch departments, agencies, and offices as the President may, from time to time, designate.

The Export Promotion Cabinet shall meet periodically and report to the President on the progress of the NEI. A member of the Export Promotion Cabinet may designate, to perform the NEI-related functions of that member, a senior official from the member's department or agency who is a full-time officer or employee. The Export Promotion Cabinet may also establish subgroups consisting of its members or their designees, and, as appropriate, representatives of other departments and agencies. The Export Promotion Cabinet shall coordinate with the Trade Promotion Coordinating Committee (TPCC), established by Executive Order 12870 of September 30, 1993.

SEC. 3. *National Export Initiative*. The NEI shall address the following:

(a) *Exports by Small and Medium-Sized Enterprises (SMEs)*. Members of the Export Promotion Cabinet shall develop programs, in consultation with the TPCC, designed to enhance export assistance to SMEs, including programs that improve information and other technical assistance to first-time exporters and assist current exporters in identifying new export opportunities in international markets.

(b) *Federal Export Assistance*. Members of the Export Promotion Cabinet, in consultation with the TPCC, shall promote Federal resources currently available to assist exports by U.S. companies.

(c) *Trade Missions*. The Secretary of Commerce, in consultation with the TPCC and, to the extent possible, with State and local government officials and the private sector, shall ensure that U.S. Government-led trade missions effectively promote exports by U.S. companies.

(d) *Commercial Advocacy*. Members of the Export Promotion Cabinet, in consultation with other departments and agencies and in coordination with the Advocacy Center at the Department of Commerce, shall take steps to ensure that the Federal Government's commercial advocacy effectively promotes exports by U.S. companies.

(e) *Increasing Export Credit*. The President of the Export-Import Bank, in consultation with other members of the Export Promotion Cabinet, shall take steps to increase the availability of credit to SMEs.

(f) *Macroeconomic Rebalancing*. The Secretary of the Treasury, in consultation with other members of the Export Promotion Cabinet, shall promote balanced and strong growth in the global economy through the G20 Financial Ministers' process or other appropriate mechanisms.

(g) *Reducing Barriers to Trade*. The United States Trade Representative, in consultation with other members of the Export Promotion Cabinet, shall take steps to improve market access overseas for our manufacturers, farmers, and service providers by actively opening new markets, reducing significant trade barriers, and robustly enforcing our trade agreements.

(h) *Export Promotion of Services*. Members of the Export Promotion Cabinet shall develop a framework for promoting services trade, including the necessary policy and export promotion tools.

SEC. 4. *Report to the President*. Not later than 180 days after the date of this order, the Export Promotion Cabinet, through the TPCC, shall provide the President a comprehensive plan to carry out the goals of the NEI. The Chairman of the TPCC shall set forth the steps taken to implement this plan in the annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives required by the Export Enhancement Act of 1992, Public Law 102–249 [102–429], 106 Stat. 2186, and Executive Order 12870, as amended.

SEC. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13630. ESTABLISHMENT OF AN INTERAGENCY TASK FORCE ON COMMERCIAL ADVOCACY

Ex. Ord. No. 13630, Dec. 6, 2012, 77 F.R. 73893, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to help level the playing field on behalf of U.S. businesses and workers competing for international contracts against foreign firms and to facilitate the growth of sales of U.S. goods and services around the world in support of the National Export Initiative, it is hereby ordered as follows:

SECTION 1. *Policy*. Executive Order 13534 of March 11, 2010, created the National Export Initiative (NEI), which provides unprecedented Federal support for exports of goods and services by American businesses. Executive Order 13534 also established the Export Promotion Cabinet to develop and coordinate the implementation of the eight priorities of the NEI, which include, but are not limited to, improving advocacy and trade promotion efforts on behalf of U.S. exporters, increasing access to export financing, and removing barriers to trade and enforcing U.S. trade laws and agreements. As part of these responsibilities, the Export Promotion Cabinet, in coordination with the Advocacy Center at the Department of Commerce, is focused on ensuring that the Federal Government's commercial advocacy effectively promotes exports by U.S.

businesses, particularly by those firms competing for international contracts against foreign firms that may benefit from strong home government support. The creation of a new whole-of-government commercial advocacy task force that will provide enhanced Federal support for U.S. businesses competing for international contracts, coordinate the efforts of executive branch leadership in engaging their foreign counterparts on commercial advocacy issues, and increase the availability of information to the U.S. business community about these kinds of export opportunities, will ensure that U.S. exporters have more support for selling their goods and services in global markets.

SEC. 2. *Establishment and Membership*. There is hereby established an Interagency Task Force on Commercial Advocacy (Task Force).

(a) The Task Force shall be chaired by the Secretary of Commerce (Chair) and consist of senior-level officials from the following executive departments and agencies (agencies) designated by the heads of those agencies:

(i) Department of State;

(ii) Department of the Treasury;

(iii) Department of Defense;

(iv) Department of Agriculture;

(v) Department of Health and Human Services;

(vi) Department of Transportation;

(vii) Department of Energy;

(viii) Department of Homeland Security;

(ix) United States Agency for International Development;

(x) Export-Import Bank of the United States;

(xi) Millennium Challenge Corporation;

(xii) Overseas Private Investment Corporation [now United States International Development Finance Corporation];

(xiii) Small Business Administration;

(xiv) United States Trade and Development Agency; and

(xv) such other agencies as the President, or the Chair, may designate.

(b) The Chair shall designate a senior-level official of the Department of Commerce as the Executive Director of the Task Force, who shall be responsible for regularly convening and presiding over the meetings of the Task Force, determining its agenda, and guiding its work in fulfilling its functions under this order in coordination with the Advocacy Center at the Department of Commerce.

SEC. 3. *Functions*. The Task Force shall perform the following functions:

(a) review and prioritize commercial advocacy cases in which the Advocacy Center at the Department of Commerce has approved the provision of commercial advocacy services, and coordinate the activities of relevant agencies to enhance Federal support for such cases, in order to increase the success of U.S. exporters competing for foreign procurements;

(b) coordinate the engagement of agency leadership with their foreign counterparts regarding commercial advocacy issues, particularly with respect to their foreign travel and other occasions for engagement with foreign officials, and evaluate reports on the outcomes of such engagement, in order to increase the number of senior-level agency officials regularly and effectively advocating on behalf of U.S. exporters;

(c) develop strategies to raise the awareness of commercial advocacy assistance within the U.S. business community in order to increase the number of U.S. businesses utilizing commercial advocacy services;

(d) institute processes to obtain and distribute information about foreign procurement opportunities that may be of interest to U.S. businesses in order to expand awareness of opportunities for U.S. businesses to sell their goods and services to foreign governments;

(e) facilitate voluntary short-term personnel exchanges, not to exceed 120 days, between the Department of Commerce and other Task Force agencies, in order to cross-train Federal personnel to better serve U.S. exporters; and

(f) submit a progress report to the Export Promotion Cabinet every 180 days, which should include, but not be limited to, the number of commercial advocacy cases opened and successfully concluded, the number of commercial advocacy engagements by senior-level agency officials, and the number of U.S. businesses utilizing commercial advocacy services. The Advocacy Center at the Department of Commerce will be responsible for managing and tracking all commercial advocacy reporting for the Task Force.

SEC. 4. *Definitions*. For the purposes of this order:

(a) the term "commercial advocacy" shall mean Federal support for U.S. firms competing for foreign project or procurement opportunities; and

(b) the term "foreign project or procurement opportunities" shall mean export opportunities, including

defense export opportunities, for U.S. businesses that involve foreign government decisionmakers, including foreign government-owned corporations.

SEC. 5. *General Provisions*. (a) The Commerce Department shall provide funding and administrative support for the Task Force to the extent permitted by law and consistent with existing appropriations.

(b) Nothing in this order shall be construed to impair or otherwise effect [sic]:

(i) the authority granted by law, regulation, Executive Order, or Presidential Directive to an executive department, agency, or the head thereof; and

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

EX. ORD. NO. 13675. ESTABLISHING THE PRESIDENT'S ADVISORY COUNCIL ON DOING BUSINESS IN AFRICA

Ex. Ord. No. 13675, Aug. 5, 2014, 79 F.R. 46661, as amended by Ex. Ord. No. 13734, §2, Aug. 3, 2016, 81 F.R. 52321, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote broad-based economic growth and job creation in the United States and Africa by encouraging U.S. companies to trade with and invest in Africa, it is hereby ordered as follows:

SECTION 1. *Policy*. The United States recognizes that Africa is a region of growing economic opportunity and innovation and aims to expand a trade and investment partnership that is grounded in shared interests and mutual responsibility. Africa offers a diverse and broad range of trade and investment opportunities in national and regional markets. The U.S. Government will encourage U.S. companies to seize the trade and investment opportunities offered by Africa's national and regional markets and help drive inclusive and sustained economic growth and the region's economic expansion, while also creating jobs here in the United States.

SEC. 2. *Establishment*. Not later than 180 days after the date of this order, the Secretary of Commerce shall establish the President's Advisory Council on Doing Business in Africa (Advisory Council).

SEC. 3. *Membership*. (a) The Advisory Council shall consist of not more than 26 private sector corporate members, including small businesses and representatives from infrastructure, agriculture, consumer goods, banking, services, and other industries. The Advisory Council shall be broadly representative of the key industries with business interests in the functions of the Advisory Council as set forth in section 4 of this order. Appointments to the Advisory Council shall be made without regard to political affiliation.

(b) Members of the Advisory Council shall be appointed by the Secretary of Commerce, in consultation with the Trade Promotion Coordinating Committee (TPCC), which was authorized by statute in 1992 (15 U.S.C. 4727) and established by Executive Order 12870 of September 30, 1993.

SEC. 4. *Functions*. (a) The Advisory Council shall advise the President, through the Secretary of Commerce, on strengthening commercial engagement between the United States and Africa, with a focus on advancing the President's Doing Business in Africa Campaign as described in the U.S. Strategy Toward Sub-Saharan Africa of June 14, 2012.

(b) In providing the advice described in subsection (a) of this section, the Advisory Council shall provide information, analysis, and recommendations to the President that address the following, in addition to other topics deemed relevant by the President, the Secretary of Commerce, or the Advisory Council:

(i) creating jobs in the United States and Africa through trade and investment;

(ii) developing strategies by which the U.S. private sector can identify and take advantage of trade and investment opportunities in Africa;

(iii) building lasting commercial partnerships between the U.S. and African private sectors;

(iv) facilitating U.S. business participation in Africa's infrastructure development;

(v) contributing to the growth and improvement of Africa's agricultural sector by encouraging partnerships between U.S. and African companies to bring innovative agricultural technologies to Africa;

(vi) making available to the U.S. private sector an accurate understanding of the opportunities presented for increasing trade with and investment in Africa;

(vii) developing and strengthening partnerships and other mechanisms to increase U.S. public and private sector financing of trade with and investment in Africa;

(viii) analyzing the effect of policies in the United States and Africa on U.S. trade and investment interests in Africa;

(ix) identifying other means to expand commercial ties between the United States and Africa; and

(x) building the capacity of Africa's young entrepreneurs to develop trade and investment ties with U.S. partners.

SEC. 5. *Administration*. (a) The Department of Commerce shall provide funding and administrative support for the Advisory Council to the extent permitted by law and within existing appropriations.

(b) Members of the Advisory Council shall serve without either compensation or reimbursement of expenses.

(c) The Secretary of Commerce shall designate a senior officer or employee of the Department of Commerce to serve as the Executive Director for the Advisory Council.

(d) The Secretary of Commerce shall consult with the TPCC on matters and activities pertaining to the Advisory Council, including on activities related to implementation of the advice of the Advisory Council. The Secretary of Commerce shall invite representatives of TPCC agencies to attend meetings of the Advisory Council when issues relevant to their responsibilities are to be considered.

SEC. 6. *Termination*. The Advisory Council shall function for such period as may be necessary but shall terminate 2 years after the date of this order, unless extended by the President.

SEC. 7. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Insofar as the Federal Advisory Committee Act ([former] 5 U.S.C. App.) [see 5 U.S.C. 1001 et seq.] (the "Act") may apply to the Advisory Council, any functions of the President under the Act, except for those in section 6 of the Act, shall be performed by the Secretary of Commerce in accordance with the guidelines that have been issued by the Administrator of General Services.

BARACK OBAMA.

EXTENSION OF TERM OF PRESIDENT'S ADVISORY COUNCIL ON DOING BUSINESS IN AFRICA

Term of President's Advisory Council on Doing Business in Africa extended until Sept. 30, 2025, by Ex. Ord. No. 14109, Sept. 29, 2023, 88 F.R. 68447, set out as a note under section 1013 of Title 5, Government Organization and Employees.

Previous extensions of term of President's Advisory Council on Doing Business in Africa were contained in the following prior Executive Orders:

Ex. Ord. No. 14048, Sept. 30, 2021, 86 F.R. 55465, extended term until Sept. 30, 2023.

Ex. Ord. No. 13889, Sept. 27, 2019, 84 F.R. 52743, extended term until Sept. 30, 2021.

Ex. Ord. No. 13811, Sept. 29, 2017, 82 F.R. 46363, extended term until Sept. 30, 2019.

Ex. Ord. No. 13708, Sept. 30, 2015, 80 F.R. 60271, extended term until Sept. 30, 2017.

EX. ORD. NO. 13797. ESTABLISHMENT OF OFFICE OF TRADE AND MANUFACTURING POLICY

Ex. Ord. No. 13797, Apr. 29, 2017, 82 F.R. 20821, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Establishment*. The Office of Trade and Manufacturing Policy (OTMP) is hereby established within the White House Office. The OTMP shall consist of a Director selected by the President and such staff as deemed necessary by the Assistant to the President and Chief of Staff.

SEC. 2. *Mission*. The mission of the OTMP is to defend and serve American workers and domestic manufacturers while advising the President on policies to increase economic growth, decrease the trade deficit, and strengthen the United States manufacturing and defense industrial bases.

SEC. 3. *Responsibilities*. The OTMP shall:

(a) advise the President on innovative strategies and promote trade policies consistent with the President's stated goals;

(b) serve as a liaison between the White House and the Department of Commerce and undertake trade-related special projects as requested by the President; and

(c) help improve the performance of the executive branch's domestic procurement and hiring policies,

including through the implementation of the policies described in Executive Order 13788 of April 18, 2017 (Buy American and Hire American).

SEC. 4. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

MAXIMIZING THE EFFECTIVENESS OF FEDERAL PROGRAMS AND FUNCTIONS SUPPORTING TRADE AND INVESTMENT

Memorandum of President of the United States, Feb. 17, 2012, 77 F.R. 10935, provided:

Memorandum for the Heads of Executive Departments and Agencies

Winning the future and creating an economy that's built to last will require the Federal Government to wisely allocate scarce resources to maximize efficiency and effectiveness so that it can best support American competitiveness, innovation, and job growth. Creating good, high-paying jobs in the United States and ensuring sustainable economic growth are the top priorities of my Administration. To accomplish these goals, we must ensure that U.S. businesses increase their exports of goods, services, and agricultural products, and that foreign companies recognize the United States as an attractive place to invest and to open businesses. While this growth will be fueled by the private sector, the Federal Government must do its part to facilitate trade and investment.

Executive Order 13534 of March 11, 2010, established the Export Promotion Cabinet to coordinate the development and implementation of the National Export Initiative (NEI) to improve conditions that directly affect the private sector's ability to export and to help meet my Administration's goal of doubling exports over 5 years. Pursuant to the terms of the Executive Order, the Export Promotion Cabinet conducts its work in coordination with the Trade Promotion Coordinating Committee (TPCC). The TPCC, chaired by the Secretary of Commerce, was authorized by statute in 1992 (15 U.S.C. 4727) and established by Executive Order 12870 of September 30, 1993. The NEI has used Government resources and policies to increase exports at a pace consistent with the goal of doubling exports by the end of 2014. The NEI has accomplished this by opening up foreign markets for U.S. exports, enhancing enforcement of our trade laws, providing needed export financing, advocating on behalf of U.S. firms, and otherwise facilitating U.S. exports. But we must do more.

On January 13, 2012, I announced that I would submit a legislative proposal seeking the authority to reorganize the Federal Government in order to reduce costs and consolidate agencies (Consolidation Authority), and outlined the first use I would make of such authority: to streamline functions currently dispersed across numerous agencies into a single new department to promote competitiveness, exports, and American business. The new department would integrate and streamline trade negotiation, financing, promotion, and enforcement functions currently housed at half a dozen executive departments and agencies, and would include an office dedicated to expanding foreign investment and assisting businesses that are considering investing in the United States. In addition to the trade and investment functions, the new department would include integrated small business, technology, innovation, and statistics programs and services from a number of departments and agencies, thereby creating a one-stop shop for businesses that want to grow and export. We cannot afford to wait until the Congress acts, however, and must do all we can administratively to make the most efficient and effective use of the Federal Government's trade, foreign investment, export, and business programs and functions.

Accordingly, to further enhance and coordinate Federal efforts to facilitate the creation of jobs in the United States and ensure sustainable economic growth through trade and foreign investment, and to ensure the effective and efficient use of Federal resources in support of these goals, I hereby direct the following:

(1) *Program Coordination*. In coordination with the TPCC, the Export Promotion Cabinet shall develop strategies and initiatives in support of my Administration's strategic trade and investment goals and priorities, including the specific measures outlined in this memorandum. The Assistant to the President and Deputy National Security Advisor for International Economics shall coordinate the activities of the Export Promotion Cabinet pursuant to this memorandum. Measures and progress shall continue to be reported in the annual National Export Strategy report of the TPCC. The TPCC will continue to function as it has, consistent with its statutorily mandated duties.

(2) *Improving Customer Service for Exporters*. Consistent with my memorandum of October 28, 2011 (Making it Easier for America's Small Businesses and America's Exporters to Access Government Services to Help Them Grow and Hire), the Export Promotion Cabinet shall support the Steering Committee established pursuant to that memorandum in its efforts to create BusinessUSA, a common, open, online platform and web service that will, among other things, enable exporters to seamlessly access information about export-related Government programs, resources, and services regardless of which agency provides them.

(3) *Trade Budget*. The Export Promotion Cabinet shall, in consultation with the TPCC:

(a) evaluate the allocation of Federal Government resources to assist with trade financing, negotiation, enforcement, and promotion, as well as the encouragement of foreign investment in the United States, and identify potential savings from streamlining overlapping or duplicative programs, as well as areas in need of additional resources;

(b) make recommendations to the Director of the Office of Management and Budget (OMB) for more effective resource allocation to these functions, consistent with my Administration's strategic trade and investment goals and priorities, including recommendations to streamline overlapping and duplicative programs and reallocate those resources; and

(c) present to the Director of OMB for consideration in the annual process for developing the President's Budget, a proposed unified Federal trade budget, consistent with my Administration's strategic trade and investment goals and priorities.

(4) *Coordination of Offices and Staff*. The Export Promotion Cabinet, in consultation with the TPCC, shall take steps to ensure the most efficient use of its members' domestic and foreign offices and distribution networks, including: co-locating offices wherever appropriate; cross-training staff to better serve business customers at home and abroad by promoting exports to foreign countries and foreign investment in the United States; and considering the effectiveness of commercial diplomacy, cross-training, and referrals, as appropriate, when evaluating employee performance.

(5) *Enhancing Business Competitiveness*. Pending passage of legislation providing Consolidation Authority, the Export Promotion Cabinet shall work with the National Economic Council to develop and coordinate administrative initiatives to align and enhance programs that enable and support efforts by American businesses, particularly small businesses, to innovate, grow, and increase exports.

(6) *General Provisions*[.] (a) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Director of OMB is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

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

§4727a. Implementation of primary objectives of TPCC

The Trade Promotion Coordinating Committee shall—

(1) report on the actions taken or efforts currently underway to eliminate the areas of overlap and duplication identified among Federal export promotion activities;

(2) coordinate efforts to sponsor or promote any trade show or trade fair;

(3) work with all relevant State and national organizations, including the National Governors' Association, that have established trade promotion offices;

(4) report on actions taken or efforts currently underway to promote better coordination between State, Federal, and private sector export promotion activities, including co-location, cost sharing between Federal, State, and private sector export promotion programs, and sharing of market research data; and

(5) by not later than March 30, 2000, and annually thereafter, include the matters addressed in paragraphs (1), (2), (3), and (4) in the annual report required to be submitted under section 4727(f)

of this title.

(Pub. L. 106–158, §6, Dec. 6, 1999, 113 Stat. 1746.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Export Enhancement Act of 1999, and not as part of the Export Enhancement Act of 1988 which enacted this chapter.

§4728. Environmental trade promotion

(a) Statement of policy

It is the policy of the United States to foster the export of United States environmental technologies, goods, and services. In exercising their powers and functions, all appropriate departments and agencies of the United States Government shall encourage and support sales of such technologies, goods, and services.

(b) Environmental Trade Working Group of Trade Promotion Coordination Committee

(1) Establishment and purpose

The President shall establish the Environmental Trade Promotion Working Group (hereafter in this section referred to as the "Working Group") as a subcommittee of the Trade Promotion Coordination Committee (hereafter in this section referred to as the "TPCC"), established under section 4727 of this title. The purpose of the Working Group shall be—

(A) to address all issues with respect to the export promotion and export financing of United States environmental technologies, goods, and services; and

(B) to develop a strategy for expanding United States exports of environmental technologies, goods, and services.

(2) Membership

The members of the Working Group shall be—

(A) representatives of the departments and agencies that are represented on the TPCC, who are designated by the head of their respective departments or agencies to advise the head of such department or agency on ways of promoting the export of United States environmental technologies, goods, and services; and

(B) a representative of the Environmental Protection Agency.

(3) Chairperson

The Secretary of Commerce (hereafter in this section referred to as the "Secretary") shall designate the chairperson of the Working Group from among senior employees of the Department of Commerce. The chairperson shall—

(A) assess the effectiveness of United States Government programs for the promotion of exports of environmental technologies, goods, and services;

(B) recommend improvements to such programs, including regulatory changes or additional authority that may be necessary to improve the promotion of exports of environmental technologies, goods, and services;

(C) ensure that the members of the Working Group coordinate their environmental trade promotion programs, including feasibility studies, technical assistance, training programs, business information services, and export financing; and

(D) assess, jointly with the Working Group representative of the Environmental Protection Agency, the extent to which the environmental trade promotion programs of the Working Group advance the environmental goals established in "Agenda 21" by the United Nations Conference on Environment and Development held at Rio de Janeiro, and in other international environmental agreements.

(4) Report to Congress

The chairperson of the TPCC shall include a report on the activities of the Working Group as a part of the annual report submitted to the Congress by the TPCC.

(c) Environmental Technologies Trade Advisory Committee

(1) Establishment and purpose

The Secretary, in carrying out the duties of the chairperson of the TPCC, shall establish the Environmental Technologies Trade Advisory Committee (hereafter in this section referred to as the "Committee"). The purpose of the Committee shall be to provide advice and guidance to the Working Group in the development and administration of programs to expand United States exports of environmental technologies, goods, and services and products that comply with United States environmental, safety, and related requirements.

(2) Membership

The members of the Committee shall be drawn from representatives of—

(A) environmental businesses, including small businesses;

(B) trade associations in the environmental sector;

(C) private sector organizations involved in the promotion of environmental exports, including products that comply with United States environmental, safety, and related requirements;

(D) States (as defined in section 4721(i)(5) [1] of this title) and associations representing the States; and

(E) other appropriate interested members of the public, including labor representatives.

The Secretary shall appoint as members of the Committee at least 1 individual under each of subparagraphs (A) through (E).

(d) Export plans for priority countries

(1) Priority country identification

The Working Group, in consultation with the Committee, shall annually assess which foreign countries have markets with the greatest potential for the export of United States environmental technologies, goods, and services. Of these countries the Working Group shall select as priority countries 5 with the greatest potential for the application of United States Government export promotion resources related to environmental exports.

(2) Export plans

The Working Group, in consultation with the Committee, shall annually create a plan for each priority country selected under paragraph (1), setting forth in detail ways to increase United States environmental exports to such country. Each such plan shall—

(A) identify the primary public and private sector opportunities for United States exporters of environmental technologies, goods, and services in the priority country;

(B) analyze the financing and other requirements for major projects in the priority country which will use environmental technologies, goods, and services, and analyze whether such projects are dependent upon financial assistance from foreign countries or multilateral institutions; and

(C) list specific actions to be taken by the member agencies of the Working Group to increase United States exports to the priority country.

(e) Trade information

In support of the work of the Working Group, the Secretary shall, as part of the regular market survey and information services activities of the Department of Commerce, make available—

(1) information on existing and emerging markets and market trends for environmental technologies, goods, and services; and

(2) a description of the export promotion programs for environmental technologies, goods, and

services of the agencies that are represented on the Working Group.

(f) Environmental technologies specialists in United States and Foreign Commercial Service

(1) Assignment of environmental technologies specialists

The Secretary shall assign a specialist in environmental technologies to the office of the United States and Foreign Commercial Service in each of the 5 priority countries selected under subsection (d)(1), and the Secretary is authorized to assign such a specialist to the office of the United States and Foreign Commercial Service in any country that is a promising market for United States exports of environmental technologies, goods, and services. Such specialist may be an employee of the Department, an employee of any relevant United States Government department or agency assigned on a temporary or limited term basis to the Commerce Department, or a representative of the private sector assigned to the Department of Commerce.

(2) Duties of environmental technologies specialists

Each specialist assigned under paragraph (1) shall provide export promotion assistance to United States environmental businesses, including, but not limited to—

(A) identifying factors in the country to which the specialist is assigned that affect the United States share of the domestic market for environmental technologies, goods, and services, including market barriers, standards-setting activities, and financing issues;

(B) providing assessments of assistance by foreign governments that is provided to producers of environmental technologies, goods, and services in such countries in order to enhance exports to the country to which the specialist is assigned, the effectiveness of such assistance on the competitiveness of United States products, and whether comparable United States assistance exists;

(C) training Foreign Commercial Service Officers in the country to which the specialist is assigned, other countries in the region, and United States and Foreign Commercial Service offices in the United States, in environmental technologies and the international environmental market;

(D) providing assistance in identifying potential customers and market opportunities in the country to which the specialist is assigned;

(E) providing assistance in obtaining necessary business services in the country to which the specialist is assigned;

(F) providing information on environmental standards and regulations in the country to which the specialist is assigned;

(G) providing information on all United States Government programs that could assist the promotion, financing, and sale of United States environmental technologies, goods, and services in the country to which the specialist is assigned; and

(H) promoting the equal treatment of United States environmental, safety, and related requirements, with those of other exporting countries, in order to promote exports of United States-made products.

(g) Environmental training in one-stop shops

In addition to the training provided under subsection (f)(2)(C), the Secretary shall establish a mechanism to train—

(1) Commercial Service Officers assigned to the one-stop shops provided for in section 4721(b)(8) of this title, and

(2) Commercial Service Officers assigned to district offices in districts having large numbers of environmental businesses,

in environmental technologies and in the international environmental marketplace, and ensure that such officers receive appropriate training under such mechanism. Such training may be provided by officers or employees of the Department of Commerce, and other United States Government departments and agencies, with appropriate expertise in environmental technologies and the international environmental workplace, and by appropriate representatives of the private sector.

(h) International regional environmental initiatives

(1) Establishment of initiatives

The TPCC may establish one or more international regional environmental initiatives the purpose of which shall be to coordinate the activities of Federal departments and agencies in order to build environmental partnerships between the United States and the geographic region outside the United States for which such initiative is established. Such partnerships shall enhance environmental protection and promote sustainable development by using in the region technical expertise and financial resources of United States departments and agencies that provide foreign assistance and by expanding United States exports of environmental technologies, goods, and services to that region.

(2) Activities

In carrying out each international regional environmental initiative, the TPCC shall—

(A) support, through the provision of foreign assistance, the development of sound environmental policies and practices in countries in the geographic region for which the initiative is established, including the development of environmentally sound regulatory regimes and enforcement mechanisms;

(B) identify and disseminate to United States environmental businesses information regarding specific environmental business opportunities in that geographic region;

(C) coordinate existing Federal efforts to promote environmental exports to that geographic region, and ensure that such efforts are fully coordinated with environmental export promotion efforts undertaken by the States and the private sector;

(D) increase assistance provided by the Federal Government to promote exports from the United States of environmental technologies, goods, and services to that geographic region, such as trade missions, reverse trade missions, trade fairs, and programs in the United States to train foreign nationals in United States environmental technologies; and

(E) increase high-level advocacy by United States Government officials (including the United States ambassadors to the countries in that geographic region) for United States environmental businesses seeking market opportunities in that geographic region.

(i) Environmental technologies project advocacy calendar and information dissemination program

The Working Group shall—

(1) maintain a calendar, updated at the end of each calendar quarter, of significant opportunities for United States environmental businesses in foreign markets and trade promotion events, which shall—

(A) be made available to the public;

(B) identify the 50 to 100 environmental infrastructure and procurement projects in foreign markets that have the greatest potential in the calendar quarter for United States exports of environmental technologies, goods, and services; and

(C) include trade promotion events, such as trade missions and trade fairs, in the environmental sector; and

(2) provide, through the National Trade Data Bank and other information dissemination channels, information on opportunities for environmental businesses in foreign markets and information on Federal export promotion programs.

(j) Environmental technology export alliances

Subject to the availability of appropriations for such purpose, the Secretary is authorized to use the Market Development Cooperator Program to support the creation on a regional basis of alliances of private sector entities, nonprofit organizations, and universities, that support the export of environmental technologies, goods, and services and promote the export of products complying with United States environmental, safety, and related requirements.

(k) "Environmental business" defined

For purposes of this section, the term "environmental business" means a business that produces environmental technologies, goods, or services.

(Pub. L. 100–418, title II, §2313, as added Pub. L. 102–429, title II, §204(a), Oct. 21, 1992, 106 Stat. 2202; amended Pub. L. 103–392, title IV, §402, Oct. 22, 1994, 108 Stat. 4099.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4721 of this title, referred to in subsec. (c)(2)(D), was amended, and section 4721(i)(5) does not define "States". However, such term is defined elsewhere in that section.

AMENDMENTS

1994—Subsecs. (c) to (e). Pub. L. 103–392, §402(a), added subsecs. (c) and (d), redesignated former subsec. (c) as (e), and struck out former subsec. (d) which related to overseas services for exporters.

Subsecs. (f) to (k). Pub. L. 103–392, §402(b), added subsecs. (f) to (k).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REPORT ON INSURANCE FEASIBILITY

Section 204(b) of Pub. L. 102–429 directed that, not later than 1 year after Oct. 21, 1992, chairperson of Trade Promotion Coordinating Committee, after consultation with appropriate departments and agencies of the United States Government, submit a report to Congress that analyzes (1) the extent to which Federal investment insurance and export financing programs sufficiently protect against business failures or default on obligations arising from changes by a foreign government in its environmental laws or regulations, and (2) the advisability and feasibility of expanding coverage of such programs, or creating new programs, to address such risks.

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

§4728a. State and Federal Export Promotion Coordination Working Group

(a) Statement of policy

It is the policy of the United States to promote exports as an opportunity for small businesses. In exercising their powers and functions in order to advance that policy, all Federal agencies shall work constructively with State and local agencies engaged in export promotion and export financing activities.

(b) Establishment

The President shall establish a State and Federal Export Promotion Coordination Working Group (in this section referred to as the "Working Group") as a subcommittee of the Trade Promotion Coordination Committee (in this section referred to as the "TPCC").

(c) Purposes

The purposes of the Working Group are—

(1) to identify issues related to the coordination of Federal resources relating to export promotion and export financing with such resources provided by State and local governments;

(2) to identify ways to improve coordination with respect to export promotion and export financing activities through the strategic plan developed under section 4727(c) of this title;

(3) to develop a strategy for improving coordination of Federal and State resources relating to export promotion and export financing, including methods to eliminate duplication of effort and overlapping functions; and

(4) to develop a strategic plan for considering and implementing the suggestions of the Working

Group as part of the strategic plan developed under section 4727(c) of this title.

(d) Membership

The Secretary of Commerce shall select the members of the Working Group, who shall include—

(1) representatives from State trade agencies representing regionally diverse areas; and

(2) representatives of the departments and agencies that are represented on the TPCC, who are designated by the heads of their respective departments or agencies to advise the head on ways of promoting the exportation of United States goods and services.

(Pub. L. 100–418, title II, §2313A, as added Pub. L. 114–125, title V, §504(a), Feb. 24, 2016, 130 Stat. 177.)

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

Functions of President under subsec. (b) of this section assigned to Secretary of Commerce, see Ex. Ord. No. 13733, §1(a), July 22, 2016, 81 F.R. 49515, set out as a note under section 4421 of Title 19, Customs Duties.

§4729. Report on export policy

(a) In general

Not later than May 31 of each year, the Secretary of Commerce shall submit to the Congress a report on the international economic position of the United States and, not later than June 30 of each year, shall appear before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives to testify on issues addressed in that report.

(b) Contents

(1) In general

Each report required under subsection (a) shall address—

(A) the state of United States international economic competitiveness, focusing, in particular, on the efforts of the Department of Commerce—

(i) to encourage research and development of technologies and products deemed critical for industrial leadership;

(ii) to promote investment in and improved manufacturing processes for such technologies and products; and

(iii) to increase United States industrial exports of products using the technologies described in clause (i) to those markets where the United States Government has sought to reduce barriers to exports;

(B) the report on the Trade Promotion Coordinating Committee strategic plan submitted to the Congress in accordance with section 4727(f) of this title;

(C) other specific recommendations of the Department of Commerce to improve the United States balance of trade;

(D) the effects on the international economic competitiveness of the United States of—

(i) formal and informal trade barriers; and

(ii) subsidies by foreign countries to their domestic industries;

(E) the efforts of the Department of Commerce to reduce trade barriers;

(F) the adequacy of export financing programs of the United States Government and recommendations for improving such programs;

(G) the status, activities, and effectiveness of the United States commercial centers established under section 4723a of this title;

(H) the implementation of sections 5821 and 5822 of title 22 [1] concerning American Business Centers and the Independent States Business and Agriculture Advisory Council;

(I) the programs of other industrialized nations to assist their companies with their efforts to transact business in the independent states of the former Soviet Union; and

(J) the trading practices of other Organization for Economic Cooperation and Development nations, as well as the pricing practices of transitional economies in the independent states, that may disadvantage United States companies.

(2) Policy basis for reports

Portions of each report under this section may incorporate or be based upon relevant reports and testimony produced by the Department of Commerce or other agencies, but the policy views shall be those of the Secretary of Commerce.

(Pub. L. 100–418, title II, §2314, as added Pub. L. 102–429, title II, §206, Oct. 21, 1992, 106 Stat. 2204; amended Pub. L. 104–66, title I, §1022(b), Dec. 21, 1995, 109 Stat. 713.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 5821 and 5822 of title 22, referred to in subsec. (b)(1)(H), was, in the original, "sections 301 and 302 of the Freedom for Russia and Emerging Democracies and Open Markets Support Act of 1992 (22 U.S.C. 5821 and 5822)", and was translated as meaning sections 301 and 302 of the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992, Pub. L. 102–511, to reflect the probable intent of Congress.

AMENDMENTS

1995—Subsec. (b)(1)(G) to (J). Pub. L. 104–66 added subpars. (G) to (J).

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

CHAPTER 74—COMPETITIVENESS POLICY COUNCIL

Sec.

§4801. Findings and purpose

(a) Findings

The Congress finds that—

(1) efforts to reverse the decline of United States industry has been hindered by—

(A) a serious erosion in the institutions and policies which foster United States competitiveness including a lack of high quality domestic and international economic and scientific data needed to—

(i) reveal sectoral strengths and weaknesses;

(ii) identify potential new markets and future technological and economic trends; and

(iii) provide necessary information regarding the competitive strategies of foreign competitors;

(B) the lack of a coherent and consistent government competitiveness policy, including policies with respect to—

(i) international trade, finance, and investment,
(ii) research, science, and technology,
(iii) education, labor retraining, and adjustment,
(iv) macroeconomic and budgetary issues,
(v) antitrust and regulation, and
(vi) government procurement;

(2) the United States economy benefits when business, labor, government, academia, and public interest groups work together cooperatively;

(3) the decline of United States economic competitiveness endangers the ability of the United States to maintain the defense industrial base which is necessary to the national security of the United States;

(4) the world is moving rapidly toward the creation of an integrated and interdependent economy, a world economy in which the policies of one nation have a major impact on other nations;

(5) integrated solutions to such issues as trade and investment research, science, and technology, education, and labor retraining and adjustments help the United States compete more effectively in the world economy; and

(6) government, business, labor, academia, and public interest groups shall cooperate to develop and coordinate long-range strategies to help assure the international competitiveness of the United States economy.

(b) Purpose

It is the purpose of this chapter—

(1) to develop recommendations for long-range strategies for promoting the international competitiveness of the United States industries; and

(2) to establish the Competitiveness Policy Council which shall—

(A) analyze information regarding the competitiveness of United States industries and business and trade policy;

(B) create an institutional forum where national leaders with experience and background in business, labor, government, academia, and public interest activities shall—

(i) identify economic problems inhibiting the competitiveness of United States agriculture, business, and industry;

(ii) develop long-term strategies to address such problem; and

(C) make recommendations on issues crucial to the development of coordinated competitiveness strategies;

(D) publish analysis in the form of periodic reports and recommendations concerning the United States business and trade policy.

(Pub. L. 100–418, title V, §5202, Aug. 23, 1988, 102 Stat. 1455.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 100–418, title V, §5201, Aug. 23, 1988, 102 Stat. 1454, provided that: "This subtitle [subtitle C (§§5201–5210) of title V of Pub. L. 100–418, enacting this chapter] may be cited as the 'Competitiveness Policy Council Act'."

§4802. Council established

There is established the Competitiveness Policy Council (hereafter in this chapter referred to as the "Council"), an advisory committee under the provisions of chapter 10 of title 5.

(Pub. L. 100–418, title V, §5203, Aug. 23, 1988, 102 Stat. 1456; Pub. L. 117–286, §4(a)(73), Dec. 27, 2022, 136 Stat. 4313.)

EDITORIAL NOTES

AMENDMENTS

2022—Pub. L. 117–286 substituted "chapter 10 of title 5." for "the Federal Advisory Committee Act (5 U.S.C. App.)."

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

§4803. Duties of Council

The Council shall—

(1) develop recommendations for national strategies and on specific policies intended to enhance the productivity and international competitiveness of United States industries;

(2) provide comments, when appropriate, and through any existing comment procedure, on—

(A) private sector requests for governmental assistance or relief, specifically as to whether the applicant is likely, by receiving the assistance or relief, to become internationally competitive; and

(B) what actions should be taken by the applicant as a condition of such assistance or relief to ensure that the applicant is likely to become internationally competitive;

(3) analyze information concerning current and future United States economic competitiveness useful to decision making in government and industry;

(4) create a forum where national leaders with experience and background in business, labor, academia, public interest activities, and government shall identify and develop recommendations to address problems affecting the economic competitiveness of the United States;

(5) evaluate Federal policies, regulations, and unclassified international agreement on trade, science, and technology to which the United States is a party with respect to the impact on United States competitiveness;

(6) provide policy recommendations to the Congress, the President, and the Federal departments and agencies regarding specific issues concerning competitiveness strategies;

(7) monitor the changing nature of research, science, and technology in the United States and the changing nature of the United States economy and its capacity—

(A) to provide marketable, high quality goods and services in domestic and international markets; and

(B) to respond to international competition;

(8) identify—

(A) Federal and private sector resources devoted to increased competitiveness; and

(B) State and local government programs devised to enhance competitiveness, including joint ventures between universities and corporations;

(9) establish, when appropriate, subcouncils of public and private leaders to develop recommendations on long-term strategies for sectors of the economy and for specific competitiveness issues;

(10) review policy recommendations developed by the subcouncils and transmit such recommendations to the Federal agencies responsible for the implementation of such recommendations;

(11) prepare, publish, and distribute reports containing the recommendations of the Council; and

(12) publish their analysis and recommendations in the form of an annual report to the President and the Congress which also comments on the overall competitiveness of the American economy.

(Pub. L. 100–418, title V, §5204, Aug. 23, 1988, 102 Stat. 1456.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which a report required under par. (12) of this section is listed on page 158), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

§4804. Membership

(a) Composition and representation

(1) The Council shall consist of 12 members, of whom—

(A) four members shall be appointed by the President, of whom—

(i) one shall be a national leader with experience and background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader who has been active in public interest activities; and

(iv) one shall be a head of a Federal department or agency;

(B) four members shall be appointed by the majority leader and the minority leader of the Senate, acting jointly, of whom—

(i) one shall be a national leader with experience or background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader with experience and background in the academic community; and

(iv) one shall be a representative of State or local government; and

(C) four members shall be appointed by the Speaker, the minority leader of the House of Representatives, acting jointly, of whom—

(i) one shall be a national leader with experience and background in business;

(ii) one shall be a national leader with experience and background in the labor community;

(iii) one shall be a national leader with experience and background in the academic community; and

(iv) one shall be a representative of State or local government.

(2) In addition to the head of a Federal department or agency appointed in accordance with subsection (a)(1)(A)(iv), other Federal officials may participate on an ex-officio basis as requested by the Council.

(3) All members of the Council shall be individuals who have a broad understanding of the United States economy and the United States competitive position internationally.

(4) Not more than 6 members of the Council shall be members of the same political party.

(b) Initial appointments

The initial members of the Council shall be appointed within 30 days after August 20, 1990.

(c) Vacancies

(1) A vacancy on the Council shall be filled in the same manner in which the original appointment was made.

(2) Any member appointed to fill a vacancy on the Council occurring before the expiration of the term for which the predecessor of such member was appointed shall be appointed only for the remainder of such term.

(3) A member of the Council may serve after the expiration of the term of such member until the successor of such member has taken office.

(d) Removal

Members of the Council may be removed only for malfeasance in office.

(e) Conflict of interest

A member of the Council shall not serve as an agent for a foreign principal or a lobbyist for a foreign entity (as the terms "lobbyist" and "foreign entity" are defined under section 1602 of title 2).

(f) Expenses

Each member of the Council, while engaged in duties as a member of the Council, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with subchapter I of chapter 57 of title 5.

(g) Quorum

(1) In general

Seven members of the Council constitute a quorum, except that a lesser number may hold hearings if such action is approved by a two-thirds vote of the entire Council.

(2) Initial organization

The Council shall not commence its duties until all the nongovernmental members have been appointed and have qualified.

(h) Chairperson

The Council shall elect, by a two-thirds vote of the entire Council, a chairperson from among the nongovernmental members.

(i) Meetings

The Council shall meet at the call of the chairperson or a majority of the members.

(j) Policy actions

Except as provided in subsection (g), no action establishing policy shall be taken by the Council unless approved by two-thirds of the entire membership of the Council.

(k) Alternate members

(1) Each member of the Council shall designate one alternate representative to attend any meeting that such member is unable to attend.

(2) In the course of attending any such meeting, an alternate representative shall be considered a member of the Council for all purposes, except for voting.

(Pub. L. 100–418, title V, §5205, Aug. 23, 1988, 102 Stat. 1457; Pub. L. 101–382, title I, §133(a), Aug. 20, 1990, 104 Stat. 648; Pub. L. 104–65, §12(a), Dec. 19, 1995, 109 Stat. 701.)

EDITORIAL NOTES

AMENDMENTS

1995—Subsec. (e). Pub. L. 104–65, which directed amendment of section "5206(e) of the Competitiveness Policy Council Act (15 U.S.C. 4804(e))" by inserting "or a lobbyist for a foreign entity (as the terms 'lobbyist' and 'foreign entity' are defined under section 1602 of title 2)" after "an agent for a foreign principal", was executed to section 5205(e) of such Act, which is subsec. (e) of this section, to reflect the probable intent of Congress.

1990—Subsec. (b). Pub. L. 101–382, §133(a)(1), substituted reference to Aug. 20, 1990, for reference to Jan. 21, 1989.

Subsec. (e). Pub. L. 101–382, §133(a)(2), added subsec. (e) and struck out former subsec. (e) which read as follows:

"(1) A member of the Council may not serve as an agent for a foreign principal.

"(2) Members of the Council shall be required to file a financial disclosure report under title II of the Ethics in Government Act of 1978 (Public Law 95–521), except that such reports shall be held confidential and exempt from any law otherwise requiring their public disclosure.

"(3) Members of the Council shall be deemed to be special Government employees, as defined in section 202 of title 18, for purposes of sections 201, 202, 203, 205, and 208 of such title."

Subsec. (f). Pub. L. 101–382, §133(a)(2), added subsec. (f) and struck out former subsec. (f) "Compensation" which read as follows:

"(1) Each member of the Council who is not employed by the Federal Government or any State or local government—

"(A) shall be compensated at a rate equal to the daily equivalent of the rate for GS–18 of the General Schedule pursuant to section 5332 of title 5 for each day such member is engaged in duties as a member of the Council; and

"(B) shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with section 5703 of such title.

"(2) Each member of the Council who is employed by the Federal Government or any State or local government shall serve on the Council without additional compensation, but while engaged in duties as a member of the Council shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from the usual place of residence of such member, in accordance with subchapter I of chapter 57 of title 5."

Subsec. (l). Pub. L. 101–382, §133(a)(3), struck out subsec. (l) which read as follows: "The Council may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay for GS–16 of the General Schedule."

Subsec. (m). Pub. L. 101–382, §133(a)(3), struck out subsec. (m) which read as follows: "Upon request of the Council, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this chapter."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–65 effective Jan. 1, 1996, except as otherwise provided, see section 24 of Pub. L. 104–65, set out as an Effective Date note under section 1601 of Title 2, The Congress.

§4805. Executive Director and staff

(a) Executive Director

(1) The principal administrative officer of the Council shall be an Executive Director, who shall be appointed by the Council and who shall be paid at a rate not to exceed GS–18 of the General Schedule.

(2) The Executive Director shall serve on a full-time basis.

(b) Staff

(1) Within the limitations of appropriations to the Council, the Executive Director may appoint a staff for the Council in accordance with the Federal civil service and classification laws.

(2) The staff of the Council shall be deemed to be special government employees as defined in

section 202 of title 18 for purposes of title II of the Ethics in Government Act of 1978 [1] and sections 201, 202, 203, 205, 207, and 208 of title 18.

(c) Experts and consultants

The Council may procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay for GS–16 of the General Schedule.

(d) Details

Upon request of the Council, the head of any other Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist the Council in carrying out its duties under this chapter.

(Pub. L. 100–418, title V, §5206, Aug. 23, 1988, 102 Stat. 1459; Pub. L. 101–382, title I, §133(b), Aug. 20, 1990, 104 Stat. 648.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Ethics in Government Act of 1978, referred to in subsec. (b)(2), is Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824. Title II of the Act was set out in the Appendix to Title 5, Government Organization and Employees, prior to repeal by Pub. L. 101–194, title II, §201, Nov. 30, 1989, 103 Stat. 1724. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1990—Subsecs. (c), (d). Pub. L. 101–382 added subsecs. (c) and (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

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

§4806. Powers of Council

(a) Hearings

The Council may, for the purpose of carrying out the provisions of this chapter, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Council considers appropriate. The Council may administer oaths or affirmations to witnesses appearing before the Council.

(b) Information

(1)(A) Except as provided in subparagraph (B), the Council may secure directly from any Federal agency information necessary to enable the Council to carry out the provisions of this chapter. Upon request of the chairman of the Council, the head of such agency shall promptly furnish such information to the Council.

(B) Subparagraph (A) does not apply to matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order.

(2) In any case in which the Council receives any information from a Federal agency, the Council

shall not disclose such information to the public unless such agency is authorized to disclose such information pursuant to Federal law.

(c) Consultation with President and Congress

No later than 120 days after the initial members are appointed to the Council, the Council shall submit a report to the President, the Senate Governmental Affairs Committee, and the appropriate committees of the House of Representatives and of the Senate, that proposes the type and scope of activities the Council shall undertake, including the extent to which the Council will coordinate activities with other advisory committees relating to trade and competitiveness in order to maximize the effectiveness of the Council.

(d) Gifts

The Council may accept, use, and dispose of gifts or donations of services or property.

(e) Use of mails

The Council may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(f) Administrative and support services

The Administrator of General Services shall provide to the Council, on a reimbursable basis, such administrative and support services as the Council may request.

(g) Subcouncils

(1) The Council may establish, for such period of time as the Council determines appropriate, subcouncils of public and private leaders to analyze specific competitive issues.

(2) Any such subcouncil shall include representatives of business, labor, government, and other individuals or representatives of groups whose participation is considered by the Council to be important to developing a full understanding of the subject with which the subcouncil is concerned.

(3) Any such subcouncil shall include a representative of the Federal Government.

(4) Any such subcouncil shall assess the actual or potential competitiveness problems facing the industry or the specific policy issues with which the subcouncil is concerned and shall formulate specific recommendations for responses by business, government, and labor—

(A) to encourage adjustment and modernization of the industry involved;

(B) to monitor and facilitate industry responsiveness to opportunities identified under section 4807(b)(1)(B) of this title;

(C) to encourage the ability of the industry involved to compete in markets identified under section 4807(b)(1)(C) of this title; or

(D) to alleviate the problems in a specific policy area facing more than one industry.

(5) Any discussion held by any subcouncil shall not be considered to violate any Federal or State antitrust law.

(6) Any discussion held by any subcouncil shall not be subject to the provisions of chapter 10 of title 5, except that a Federal representative shall attend all subcouncil meetings.

(7) Any subcouncil shall terminate 30 days after making recommendations, unless the Council specifically requests that the subcouncil continue in operation.

(h) Applicability of chapter 10 of title 5

The provisions of subsections (e) and (f) of section 1009 of title 5 shall not apply to the Council.

(Pub. L. 100–418, title V, §5207, Aug. 23, 1988, 102 Stat. 1459; Pub. L. 101–382, title I, §133(c), Aug. 20, 1990, 104 Stat. 649; Pub. L. 117–286, §4(a)(74), Dec. 27, 2022, 136 Stat. 4314.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (g)(6). Pub. L. 117–286, §4(a)(74)(A), substituted "chapter 10 of title 5," for "the Federal

Advisory Committee Act,".

Subsec. (h). Pub. L. 117–286, §4(a)(74)(B), substituted "chapter 10 of title 5" for "Advisory Committee Act" in heading and "subsections (e) and (f) of section 1009 of title 5" for "subsections (e) and (f) of section 10, of the Federal Advisory Committee Act" in text.

1990—Subsec. (c). Pub. L. 101–382 redesignated subsec. (d) as (c), and substituted "120" for "60".

Subsecs. (d) to (i). Pub. L. 101–382, §133(c)(1), redesignated subsecs. (e) to (i) as (d) to (h), respectively. Former subsec. (d) redesignated (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

§4807. Annual report

(a) Submission of report

The Council shall annually on March 1 submit to the President, the Senate Governmental Affairs Committee, and the appropriate Committees of the House of Representatives and the Senate a report setting forth—

(1) the goals to achieve a more competitive United States economy;

(2) the policies needed to meet such goals;

(3) a summary of existing policies of the Federal Government or State and local governments significantly affecting the competitiveness of the United States economy; and

(4) a summary of significant economic and technological developments, in the United States and abroad, affecting the competitive position of United States industries.

(b) Contents of report

The report submitted under subsection (a) shall—

(1) identify and describe actual or foreseeable developments, in the United States and abroad, which—

(A) create a significant likelihood of a competitive challenge to, or of substantial dislocation in, an established United States industry;

(B) present significant opportunities for United States industries to compete in new geographical markets or product markets, or to expand the position of such industries in established markets; or

(C) create a significant risk that United States industries shall be unable to compete successfully in significant markets;

(2) specify the industry sectors affected by the developments described in the report under paragraph (1); and

(3) contain a statement of the findings and recommendations of the Council during the previous fiscal year, including any recommendations of the Council for (a) such legislative or administrative actions as the Council considers appropriate, and (b) including the elimination, consolidation, reorganization of government agencies especially such agencies that specifically deal with research, science, technology, and international trade.

(c) Report by Congressional committees

The Council shall consult with each committee to which a report is submitted under this section and after such consultation, each such committee shall submit to its respective House a report setting forth the views and recommendations of such committee with respect to the report of the Council.

(Pub. L. 100–418, title V, §5208, Aug. 23, 1988, 102 Stat. 1461; Pub. L. 101–382, title I, §133(d), Aug. 20, 1990, 104 Stat. 649.)

EDITORIAL NOTES

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–382 substituted "on March 1" for "prepare and".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

§4808. Authorization of appropriations

There are authorized to be appropriated for each of the fiscal years 1991 and 1992 such sums as may be necessary not to exceed $5,000,000 to carry out the provisions of this chapter.

(Pub. L. 100–418, title V, §5209, Aug. 23, 1988, 102 Stat. 1461; Pub. L. 101–382, title I, §133(e), Aug. 20, 1990, 104 Stat. 649.)

EDITORIAL NOTES

AMENDMENTS

1990—Pub. L. 101–382 substituted "1991 and 1992" for "1989 and 1990".

§4809. Definitions

For purposes of this chapter—

(1) the term "Council" means the Competitiveness Policy Council established under section 4802 of this title;

(2) the term "member" means a member of the Competitiveness Policy Council;

(3) the term "United States" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and any other territory or possession of the United States; and

(4) the term "agent of a foreign principal" is defined as such term is defined under subsection (d) of section 611 of title 22 subject to the provisions of section 613 of title 22.

(Pub. L. 100–418, title V, §5210, Aug. 23, 1988, 102 Stat. 1461.)

CHAPTER 75—NATIONAL TRADE DATA BANK

Sec.

§4901. Definitions

For purposes of this chapter—

(1) the term "Committee" means the Interagency Trade Data Advisory Committee;

(2) the term "Data Bank" means the National Trade Data Bank;

(3) the term "Executive agency" has the same meaning as in section 105 of title 5;

(4) the term "export promotion data system" means the data system known as the Commercial Information Management System which is maintained and operated by the United States and Foreign Commercial Service and is established as part of the Data Bank under section 4906 [1] of this title;

(5) the term "international economic data system" means the data system established as part of the Data Bank under section 4906 of this title which contains data useful to policymakers and analysis concerned with international economics; and

(6) the term "Secretary" means the Secretary of Commerce.

(Pub. L. 100–418, title V, §5401, Aug. 23, 1988, 102 Stat. 1463.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this subtitle", meaning subtitle E (§§5401 to 5413, 5421 to 5423) of title V of Pub. L. 100–418 which, in addition to enacting this chapter, enacted section 4603a of this title and section 194b of Title 2, The Congress. For complete classification of subtitle E to the Code, see Tables.

Section 4906 of this title, referred to in par. (4), was in the original "section 3816", meaning section 3816 of Pub. L. 100–418, and was translated as if it read section 5406 of Pub. L. 100–418, to reflect the probable intent of Congress, because section 3816 was the provision which established the Data Bank in a predecessor version of H.R. 4848 (which became Pub. L. 100–418), Pub. L. 100–418 does not contain a section 3816, and section 5406 of Pub. L. 100–418 is the provision establishing the Data Bank.

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

§4902. Interagency Trade Data Advisory Committee

(a) Establishment

There is established the Interagency Trade Data Advisory Committee.

(b) Membership

The Committee shall consist of—

(1) the United States Trade Representative;

(2) the Secretary of Agriculture;

(3) the Secretary of Defense;

(4) the Secretary of Commerce;

(5) the Secretary of Labor;

(6) the Secretary of the Treasury;

(7) the Secretary of State;

(8) the Director of the Office of Management and Budget;

(9) the Director of Central Intelligence;

(10) the Chairman of the Federal Reserve Board;

(11) the Chairman of the International Trade Commission;
(12) the President of the Export-Import Bank;
(13) the Chief Executive Officer of the United States International Development Finance Corporation; and
(14) such other members as may be appointed by the President from full-time officers or employees of the Federal Government.

(c) Chairman

The Secretary of Commerce shall be Chairman of the Committee.

(d) Designees

Any member of the Committee may appoint a designee to serve in place of such member on the Committee.

(Pub. L. 100–418, title V, §5402, Aug. 23, 1988, 102 Stat. 1463; Pub. L. 115–254, div. F, title VI, §1470(f), Oct. 5, 2018, 132 Stat. 3516.)

EDITORIAL NOTES

AMENDMENTS

2018—Subsec. (b)(13). Pub. L. 115–254 substituted "the Chief Executive Officer of the United States International Development Finance Corporation" for "the President of the Overseas Private Investment Corporation".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108–458, set out as a note under section 3001 of Title 50, War and National Defense.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115–254 effective at the end of the transition period, as defined in section 9681 of Title 22, Foreign Relations and Intercourse, see section 1470(w) of Pub. L. 115–254, set out as a note under section 905 of Title 2, The Congress.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 1013 of Title 5, Government Organization and Employees.

§4903. Functions of Committee

The Committee shall advise the Secretary of Commerce, as appropriate, on the establishment, structure, contents, and operation of a National Trade Data Bank in accordance with section 4906 of this title in order to assure the timely collection of accurate data and to provide the private sector and government officials efficient access to economic and trade data collected by the Federal Government for purposes of policymaking and export promotion.

(Pub. L. 100–418, title V, §5403, Aug. 23, 1988, 102 Stat. 1464.)

§4904. Consultation with private sector and government officials

The Secretary shall regularly consult with representatives of the private sector and officials of State and local governments to assess the adequacy of United States trade information. The Secretary shall seek recommendations on how trade information can be made more accessible, understandable, and relevant. The Secretary shall seek recommendations as to what data should be included in the export promotion data system in the Data Bank.

(Pub. L. 100–418, title V, §5404, Aug. 23, 1988, 102 Stat. 1464.)

§4905. Cooperation among executive agencies

Each executive agency shall furnish to the Secretary such information for inclusion in the National Trade Data Bank as the Secretary, in consultation with the Advisory Committee, considers necessary to the operation of the Data Bank.

(Pub. L. 100–418, title V, §5405, Aug. 23, 1988, 102 Stat. 1464.)

§4906. Establishment of Data Bank

(a) Establishment

Within 2 years after August 23, 1988, the Secretary of Commerce shall establish the Data Bank. The Secretary shall manage the Data Bank. The Data Bank shall consist of two data systems, to be designated the International Economic Data System, as described in subsection (b) and the Export Promotion Data System, as described in subsection (c).

(b) International Economic Data System

The International Economic Data System shall include current and historical information determined by the Secretary to be useful (after the consultation required by section 4904 of this title) to policymakers and analysts concerned with international economics and trade and which shall include data compiled or obtained by appropriate executive agencies. Such information shall not identify parties to transactions. Such information may include data for the United States and countries with which the United States has important economic relations including—

(1) data on imports and exports, including—
  (A) aggregate import and export data for the United States and for each foreign country;
  (B) industry-specific import and export data for each foreign country;
  (C) product and service specific import and export data for the United States;
  (D) market penetration information; and
  (E) foreign destinations for exports of the United States;

(2) data on international service transactions;

(3) information on international capital markets, including—
  (A) interest rates; and
  (B) average exchange rates;

(4) information on foreign direct investment in the United States economy;

(5) international labor market information, including—
  (A) wage rates for major industries;
  (B) international unemployment rates; and
  (C) trends in international labor productivity;

(6) information on foreign government policies affecting trade, including—
  (A) trade barriers; and
  (B) export financing policies;

(7) import and export data for the United States on a State-by-State basis aggregated at the product level including—

(A) data concerning the country shipping the import, the State of first destination, and the original part [1] of entry for imports of goods and, to the extent possible, services; and

(B) data concerning the State of the exporter, the port of departure, and the country of first destination for export of goods and, to the extent possible, services; and

(8) any other economic and trade data collected by the Federal Government that the Secretary determines to be useful in carrying out the purposes of this chapter.

(c) Export Promotion Data System

The export promotion data system shall include data and information collected by the Federal Government on the industrial sectors and markets of foreign countries which are determined by the Secretary (after consultation required by section 4904 of this title) to be of the greatest interest to United States business firms that are engaged in export-related activities and to Federal and State agencies that promote exports, while providing for the confidentiality of proprietary business information, and shall be designed to use the most effective means of disseminating data and information electronically through the Department, or Department-designated offices, or through other available data bases in an accurate and timely manner. Such data system shall monitor, organize, and disseminate selected information on—

(1) specific business opportunities in foreign countries;

(2) specific industrial sectors within foreign countries with high export potential such as—

(A) size of the market;

(B) distribution of products;

(C) competition;

(D) significant applicable laws, regulations, specifications, and standards;

(E) appropriate government officials; and

(F) trade associations and other contact points; and

(3) foreign countries generally, such as—

(A) the general economic conditions;

(B) common business practices;

(C) significant tariff and trade barriers; and

(D) other significant laws and regulations regarding imports, licensing, and the protection of intellectual property;

(4) export financing information, including the availability, through public sources of funds for United States exporters and foreign competitors;

(5) transactions involving barter and countertrade; and

(6) any other similar information, that the Secretary determines to be useful in carrying out the purposes of this chapter.

(Pub. L. 100–418, title V, §5406, Aug. 23, 1988, 102 Stat. 1464.)

[1] So in original. Probably should be "port".

§4907. Operation of Data Bank

The Secretary shall manage the Data Bank to provide the most appropriate data retrieval system or systems possible. Such system or systems shall—

(1) be designed to utilize data processing and retrieval technology in monitoring, organizing, analyzing, and disseminating the data and information contained in the Data Bank;

(2) use the most effective and meaningful means of organizing and making such information available to—

(A) United States Government policymakers;
(B) United States business firms;
(C) United States workers;
(D) United States industry associations;
(E) United States agricultural interests;
(F) State and local economic development agencies; and
(G) other interested United States persons who could benefit from such information;

(3) be of such quality and timeliness and in such form as to assist coordinated trade strategies for the United States; and

(4) facilitate dissemination of information through nonprofit organizations with significant outreach programs which complement the regional outreach programs of the United States and Foreign Commercial Service.

(Pub. L. 100–418, title V, §5407, Aug. 23, 1988, 102 Stat. 1466.)

§4908. Information on service sector

(a) Service sector information

The Secretary shall ensure that, to the extent possible, there is included in the Data Bank information on service sector economic activity that is as complete and timely as information on economic activity in the merchandise sector.

(b) Survey

The Secretary shall undertake a new benchmark survey of service transactions, including transactions with respect to—

(1) banking services;
(2) information services, including computer software services;
(3) brokerage services;
(4) transportation services;
(5) travel services;
(6) engineering services;
(7) construction services; and
(8) health services.

(c) General information and index of leading indicators

The Secretary shall provide—

(1) not less than once a year, comprehensive information on the service sector of the economy; and

(2) an index of leading indicators which includes the measurement of service sector activity in direct proportion to the contribution of the service sector to the gross national product of the United States.

(Pub. L. 100–418, title V, §5408, Aug. 23, 1988, 102 Stat. 1466.)

§4909. Exclusion of information

The Data Bank shall not include any information—

(1) the disclosure of which to the public is prohibited under any other provision of law or otherwise authorized to be withheld under other provision of law; or

(2) that is specifically authorized under criteria established by statute or an Executive order not to be disclosed in the interest of national defense or foreign policy and are in fact properly

classified pursuant to such Executive order.

(Pub. L. 100–418, title V, §5409, Aug. 23, 1988, 102 Stat. 1467.)

§4910. Nonduplication

The Secretary shall ensure that information systems created or developed pursuant to this chapter do not unnecessarily duplicate information systems available from other Federal agencies or from the private sector.

(Pub. L. 100–418, title V, §5410, Aug. 23, 1988, 102 Stat. 1467.)

§4911. Collection of data

Except as provided in section 4908 of this title, nothing in this chapter shall be considered to grant independent authority to the Federal Government to collect any data or information from individuals or entities outside of the Federal Government.

(Pub. L. 100–418, title V, §5411, Aug. 23, 1988, 102 Stat. 1467.)

§4912. Fees and access

The Secretary shall provide reasonable public services and access (including electronic access) to any information maintained as part of the Data Bank and may charge reasonable fees consistent with section 552 of title 5.

(Pub. L. 100–418, title V, §5412, Aug. 23, 1988, 102 Stat. 1467.)

§4913. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 100–418, title V, §5413, Aug. 23, 1988, 102 Stat. 1467, required the Secretary to submit to committees of Congress, not more than 1 year after Aug. 23, 1988, a report describing actions taken pursuant to this chapter, and to submit to committees of Congress, not more than 3 years after Aug. 23, 1988, a report assessing the current quality and comprehensiveness of, and the ability of the public and of private entities to obtain access to trade data, describing all other actions taken and planned to be taken pursuant to this chapter, including comments by the private sector and by State agencies that promote exports on the implementation of the Data Bank, describing the extent to which the systems within the Data Bank are being used and any recommendations with regard to the operation of the system, and describing the extent to which United States citizens and firms have access to the data banks of foreign countries that is similar to the access provided to foreign citizens and firms.

CHAPTER 76—IMITATION FIREARMS

§5001. Penalties for entering into commerce of imitation firearms

(a) Acts prohibited

It shall be unlawful for any person to manufacture, enter into commerce, ship, transport, or receive any toy, look-alike, or imitation firearm unless such firearm contains, or has affixed to it, a marking approved by the Consumer Product Safety Commission, as provided in subsection (b).

(b) Distinctive marking or device; exception; waiver; adjustments and changes

(1) Except as provided in paragraph (2) or (3), each toy, look-alike, or imitation firearm shall have as an integral part, permanently affixed, a blaze orange plug inserted in the barrel of such toy, look-alike, or imitation firearm. Such plug shall be recessed no more than 6 millimeters from the muzzle end of the barrel of such firearm.

(2) The Consumer Product Safety Commission may provide for an alternate marking or device for any toy, look-alike, or imitation firearm not capable of being marked as provided in paragraph (1) and may waive the requirement of any such marking or device for any toy, look-alike, or imitation firearm that will only be used in the theatrical, movie or television industry.

(3) The Consumer Product Safety Commission is authorized to make adjustments and changes in the marking system provided for by this section, after consulting with interested persons.

(c) "Look-alike firearm" defined

For purposes of this section, the term "look-alike firearm" means any imitation of any original firearm which was manufactured, designed, and produced since 1898, including and limited to toy guns, water guns, replica nonguns, and air-soft guns firing nonmetallic projectiles. Such term does not include any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or traditional B–B, paint-ball, or pellet-firing air guns that expel a projectile through the force of air pressure.

(d) Study and report

The Director of the Bureau of Justice Statistics is authorized and directed to conduct a study of the criminal misuse of toy, look-alike and imitation firearms, including studying police reports of such incidences and shall report on such incidences relative to marked and unmarked firearms.

(e) Technical evaluation of marking systems

The Director of [1] National Institute of Justice is authorized and directed to conduct a technical evaluation of the marking systems provided for in subsection (b) to determine their effectiveness in police combat situations. The Director shall begin the study within 3 months after November 5, 1988, and such study shall be completed within 9 months after November 5, 1988.

(f) Effective date

This section shall become effective on the date 6 months after November 5, 1988, and shall apply to toy, look-alike, and imitation firearms manufactured or entered into commerce after November 5, 1988.

(g) Preemption of State or local laws or ordinances; exceptions

The provisions of this section shall supersede any provision of State or local laws or ordinances which provide for markings or identification inconsistent with provisions of this section provided that no State shall—

(1) prohibit the sale or manufacture of any look-alike, nonfiring, collector replica of an antique firearm developed prior to 1898, or

(2) prohibit the sale (other than prohibiting the sale to minors) of traditional B–B, paint ball, or pellet-firing air guns that expel a projectile through the force of air pressure.

(Pub. L. 100–615, §4, Nov. 5, 1988, 102 Stat. 3190; Pub. L. 117–167, div. B, title II, §10246(e), Aug. 9, 2022, 136 Stat. 1492.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsecs. (a), (b)(2). Pub. L. 117–167, §10246(e)(1), substituted "Consumer Product Safety

Commission" for "Secretary of Commerce".

Subsec. (b)(3). Pub. L. 117–167, §10246(e)(1), substituted "Consumer Product Safety Commission" for "Secretary".

Subsecs. (c), (e). Pub. L. 117–167, §10246(e)(2), redesignated subsec. (c) relating to technical evaluation of marking systems as (e).

Subsec. (g). Pub. L. 117–167, §10246(e)(3), redesignated cls. (i) and (ii) as pars. (1) and (2), respectively.

[1] *So in original. Probably should be "of the".*

CHAPTER 77—STEEL AND ALUMINUM ENERGY CONSERVATION AND TECHNOLOGY COMPETITIVENESS

Sec.

§5101. Findings and purposes

(a) Findings

The Congress finds that—

(1) maintaining viable domestic steel, aluminum, copper, and other metals industries is vital to the national security and economic well being of the United States; and

(2) the promotion of technology competitiveness and energy conservation in the American steel and aluminum industries by the Federal Government through a program of joint research and development will help maintain viable domestic steel and aluminum industries.

(b) Purposes

The purposes of this chapter are to—

(1) increase the energy efficiency and enhance the competitiveness of American steel, aluminum, and copper industries by providing Federal incentives for the establishment of public-private sector research and development partnerships to undertake scientific research and development to develop advanced technologies utilizing the expertise of the steel, aluminum, copper, and other metals industries, Government-owned laboratories of the Department of Energy and the National Institute of Standards and Technology, universities, State development agencies, and others; and

(2) continue steel research and development initiative efforts begun under title II of the Interior and Related Agencies portion of the joint resolution entitled "Joint Resolution making further continuing appropriations for the fiscal year 1986, and for other purposes", approved December 19, 1985 (Public Law 99–190).

(Pub. L. 100–680, §2, Nov. 17, 1988, 102 Stat. 4073.)

EDITORIAL NOTES

REFERENCES IN TEXT

Title II of the Interior and Related Agencies portion of the joint resolution entitled "Joint Resolution making further continuing appropriations for the fiscal year 1986, and for other purposes", approved December 19, 1985 (Public Law 99–190), referred to in subsec. (b)(2), is Pub. L. 99–190, §101(d) [title II], Dec. 19, 1985, 99 Stat. 1224, 1244. The provisions relating to steel research and development are not classified to the Code.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 100–680, §1, Nov. 17, 1988, 102 Stat. 4073, provided that: "This Act [enacting this chapter] may be cited as the 'Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988'."

§5102. Definitions

As used in this chapter—

(1) the term "Secretary" means the Secretary of Energy;

(2) the term "domestic company" means a company which is substantially involved in the United States domestic production, processing, or use of steel, aluminum, copper, or other metals and has a substantial percentage of its operations located within the United States;

(3) the terms "management plan" and "plan" mean the Steel Initiative Management Plan issued on April 1, 1987, by the Department of Energy, which establishes the management framework for the steel research and development initiative, and updates to that plan; and

(4) the term "research plan" means the Steel Initiative Research Plan issued in April 1988 by the Department of Energy, and updates to that plan.

(Pub. L. 100–680, §3, Nov. 17, 1988, 102 Stat. 4073.)

§5103. Establishment of scientific research and development program to develop competitive manufacturing technologies and increase energy efficiency in steel and aluminum industries

(a) General authority

The Secretary, pursuant to the authority provided under provisions of the Federal Nonnuclear Research and Development Act of 1974 (42 U.S.C. 5901, et seq.), shall reestablish an industrial energy conservation and competitive technology program to conduct scientific research and development of steel and aluminum technologies to carry out the purposes of this chapter. Such program shall provide the financial and technical assistance and other incentives which, in the judgment of the Secretary, are necessary to carry out the purposes of this chapter.

(b) Management plan

Within 6 months after November 17, 1988, the Secretary shall publish an update of the management plan to expand the steel research and development initiative to include aluminum and to carry out the purposes of this chapter. The Secretary, from time to time, may further update the management plan. The management plan shall be subject to the following conditions:

(1) For newly initiated research and development proposals submitted under the revised management plan, the non-Federal financial share shall equal at least 30 percent of the total cost of any project.

(2) Existing facilities, equipment, supplies, and other property may be included in the non-Federal share under this section only when they are directly relevant to the project.

(3) The knowledge resulting from research and development activities conducted under this chapter shall be developed for the benefit of the domestic companies who provide financial resources to the program.

(4) The Secretary, for a period of up to 5 years after the development of information that—

(A) results from research and development activities conducted under this chapter; and

(B) would be a trade secret or commercial or financial information that is privileged or confidential, as described in section 5104(a) of this title, if the information had been obtained from a domestic company,

may provide appropriate protections against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5.

(5) The plan shall assure basic research support, for the research carried out under the research plan, from independent laboratories, universities, and nonprofit organizations, by coordinating activities under the research plan with the basic research efforts of the Department of Energy, such as the Energy Conversion and Utilization Technologies Program and the Materials Processing and Sensor and Controls programs within the Office of Industrial Technologies.

(c) Priorities

Within 6 months after November 17, 1988, the Secretary shall publish an update of the research plan. In reviewing research and development activities for possible inclusion in the research plan, the Secretary shall consider the following:

(1) Steel projects

(A) The direct production of liquid steel from domestic materials.

(B) The production of near-net shape forms from liquid, powder, or solid steel.

(C) The development of universal grades of steel.

(D) The application of automatic processing technology.

(E) The removal of residual elements from steel scrap.

(F) The treatment and storage of waste materials and other byproducts from steel production and processing.

(G) The development of super-plastic steel processing.

(H) The development of advanced sheet and bar steels.

(I) The development of technologies and equipment related to the production of steel that enhance the protection of the environment and the safety and health of workers.

(J) Other steel technologies which, in the judgment of the Secretary, further the purposes of this chapter.

(K) The development of technologies which reduce greenhouse gas emissions.

(2) Aluminum and other projects

(A) The production of aluminum.

(B) The application of automatic processing technology.

(C) The treatment and storage of waste materials and other byproducts from aluminum production and processing.

(D) The manufacture of aluminum mill products.

(E) Aluminum recycling technologies.

(F) The development of technologies and equipment related to the production of aluminum that enhance the protection of the environment and the safety and health of workers.

(G) Aluminum, copper, and other metals technologies which, in the judgment of the Secretary, further the purposes of this chapter.

(d) Industry participation and review

The Secretary shall arrange for participation and review by representatives of each affected industry and by labor in the updating of the management and research plans and in the evaluation of the progress of research and development activities for their industry conducted under this chapter.

(Pub. L. 100–680, §4, Nov. 17, 1988, 102 Stat. 4074; Pub. L. 102–486, title XXI, §2106(a)(1), Oct. 24, 1992, 106 Stat. 3070; Pub. L. 110–229, title VI, §602(b), May 8, 2008, 122 Stat. 853.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Nonnuclear Research and Development Act of 1974, referred to in subsec. (a), probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, which is classified generally to chapter 74 (§5901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of Title 42 and Tables.

AMENDMENTS

2008—Subsec. (c)(1)(H). Pub. L. 110–229, §602(b)(1), substituted "sheet and bar steels" for "coatings for sheet steels".

Subsec. (c)(1)(K). Pub. L. 110–229, §602(b)(2), added subpar. (K).

1992—Subsec. (b)(5). Pub. L. 102–486 substituted "Industrial Technologies" for "Industrial Programs".

§5104. Protection of proprietary rights

(a) Proprietary rights

No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5 which is obtained from a domestic company shall be disclosed in the conduct of the management plan or research plan, or as a result of activities under this chapter.

(b) Patent rights vested in United States

All patent rights from inventions developed under the management plan or the research plan implemented pursuant to this chapter shall be vested in accordance with section 5908 of title 42.

(Pub. L. 100–680, §5, Nov. 17, 1988, 102 Stat. 4075.)

§5105. Coordination

The Secretary shall coordinate the research and development conducted under this chapter with other research and development being conducted by the Department of Energy and other Federal agencies in order to increase efficiency and avoid duplication of effort.

(Pub. L. 100–680, §6, Nov. 17, 1988, 102 Stat. 4076.)

§5106. Repealed. Pub. L. 110–229, title VI, §602(c)(1), May 8, 2008, 122 Stat. 853

Section, Pub. L. 100–680, §7, Nov. 17, 1988, 102 Stat. 4076, related to expanded steel and aluminum research program in the National Institute of Standards and Technology.

§5107. Reports

The Secretary shall prepare and submit annually to the President and the Congress at the close of each fiscal year, beginning with fiscal year 2008, a complete report of the research and development activities carried out under this chapter during the fiscal year involved, including the actual and anticipated obligation of funds, for such activities, together with such recommendations as the Secretary may consider appropriate for further legislative, administrative, and other actions, including actions by the American steel, aluminum, copper, and other metals industries, which should be taken in order to achieve the purposes of this chapter. The report submitted at the close of fiscal year 1991 shall also contain a complete summary of activities under the management plan and the research plan from the first year of their operation, along with an analysis of the extent to which they have succeeded in accomplishing the purposes of this chapter. The reports submitted at the

close of fiscal years 1993, 1995, and 1997 shall also contain a complete summary of activities under the management plan and the research plan from the first year of their operation, along with an analysis of the extent to which they have succeeded in accomplishing the purposes of this chapter.

(Pub. L. 100–680, §8, Nov. 17, 1988, 102 Stat. 4076; Pub. L. 102–486, title XXI, §2106(a)(2), Oct. 24, 1992, 106 Stat. 3070; Pub. L. 110–229, title VI, §602(c)(2), May 8, 2008, 122 Stat. 853.)

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–229 inserted ", beginning with fiscal year 2008," after "close of each fiscal year".

1992—Pub. L. 102–486 inserted sentence at end relating to reports submitted at the close of fiscal years 1993, 1995, and 1997.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 90 of House Document No. 103–7.

§5108. Authorization of appropriations

There are authorized to be appropriated to the Secretary to carry out this chapter $12,000,000 for each of the fiscal years 2008 through 2012.

(Pub. L. 100–680, §9, Nov. 17, 1988, 102 Stat. 4076; Pub. L. 102–486, title XXI, §2106(a)(3), (4), Oct. 24, 1992, 106 Stat. 3070; Pub. L. 110–229, title VI, §602(a), May 8, 2008, 122 Stat. 853.)

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–229 amended section generally. Prior to amendment, section authorized appropriations to the Secretary and to the Director of the National Institute of Standards and Technology to carry out functions under this chapter.

1992—Subsec. (a)(1). Pub. L. 102–486, §2106(3), substituted "$25,000,000 for fiscal year 1991, $17,968,000 for fiscal year 1992, and $18,091,000 for each of the fiscal years 1993 through 1997, to be derived from sums authorized under section 13451(e) of title 42" for "and $25,000,000 for fiscal year 1991".

Subsec. (b). Pub. L. 102–486, §2106(4), substituted "1991, 1992, 1993, 1994, 1995, 1996, and 1997, to be derived from sums otherwise authorized to be appropriated to the Institute" for "and 1991".

§5109. Relation of existing program

Proposals received by the Department of Energy before November 17, 1988, may be carried out without regard to changes in the management plan and research plan required by this chapter.

(Pub. L. 100–680, §10, Nov. 17, 1988, 102 Stat. 4076.)

§5110. Drug-free workplace

(a) No department, agency, or instrumentality of the United States receiving funds authorized to be appropriated under this chapter for fiscal year 1989, fiscal year 1990, fiscal year 1991, fiscal year 1992, fiscal year 1993, fiscal year 1994, fiscal year 1995, fiscal year 1996, and fiscal year 1997, or under any other Act authorizing appropriations for fiscal year 1989, fiscal year 1990, fiscal year

1991, fiscal year 1992, fiscal year 1993, fiscal year 1994, fiscal year 1995, fiscal year 1996, and fiscal year 1997, shall obligate or spend any such funds, unless such department, agency, or instrumentality has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its work places are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act [21 U.S.C. 801 et seq.]) by the officers and employees of such department, agency, or instrumentality.

(b) No funds so authorized to be appropriated to any such department, agency, or instrumentality shall be available for payment in connection with any grant, contract, or other agreement, unless the recipient of such grant, contract, or party to such agreement, as the case may be, has in place and will continue to administer in good faith a written policy, adopted by such recipient, contractor, or party's board of directors or other governing authority, satisfactory to the head of the department, agency, or instrumentality making such payment, designed to ensure that all of the workplace of such recipient, contractor, or party are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act [21 U.S.C. 801 et seq.]) by the officers and employees of such recipient, contractor, or party.

(Pub. L. 100–680, §11, Nov. 17, 1988, 102 Stat. 4077; Pub. L. 102–486, title XXI, §2106(a)(5), Oct. 24, 1992, 106 Stat. 3070.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Controlled Substances Act, referred to in text, is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–486 substituted "fiscal year 1991, fiscal year 1992, fiscal year 1993, fiscal year 1994, fiscal year 1995, fiscal year 1996, and fiscal year 1997" for "or fiscal year 1991" in two places.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 100–685, title II, §215, Nov. 17, 1988, 102 Stat. 4093, provided that:

"(a) No funds authorized to be appropriated under this Act, or under any other Act authorizing appropriations for fiscal year 1989 through 1993 for the [National Aeronautics and Space] Administration, shall be obligated or expended unless the Administration has in place, and will continue to administer in good faith, a written policy designed to ensure that all of its workplaces are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act [21 U.S.C. 801 et seq.]) by the officers and employees of the Administration.

"(b) No funds authorized to be appropriated to the Administration for fiscal years 1989 through 1993 shall be available for payment in connection with any grant, contract, or other agreement, unless the recipient of such grant, contractor, or party to such agreement, as the case may be, has in place and will continue to administer in good faith a written policy, adopted by the board of directors or other government authority of such recipient, contractor, or party, satisfactory to the Administrator of the [National Aeronautics and Space] Administration, designed to ensure that all of the workplaces of such recipient, contractor, or party are free from the illegal use, possession, or distribution of controlled substances (as defined in the Controlled Substances Act) by the officers and employees of such recipient, contractor, or party.

"(c) The provisions of this section, and the provisions of the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 [15 U.S.C. 5101 et seq.], the National Institute of Standards and Technology Authorization Act for Fiscal Year 1989 [Pub. L. 100–519, title I, Oct. 24, 1988, 102 Stat. 2589], the National Science Foundation Authorization Act for Fiscal Years 1989 and 1990 [probably means Pub. L. 100–570, Oct. 31, 1988, 102 Stat. 2865], and the National Nutrition Monitoring and Related Research Act of 1988 [probably means S. 1081, One Hundredth Congress, which was pocket vetoed], relating to a drug-free workplace, shall not be effective until January 16, 1989."

CHAPTER 78—SUPERCONDUCTIVITY AND COMPETITIVENESS

Sec.

§5201. Findings and purposes

(a) Findings

The Congress finds that—

(1) recent discoveries of high-temperature superconducting materials could result in significant new applications of these materials in such areas as microelectronics, computers, power systems, transportation, medical imaging, and nuclear fusion, yet most potential applications may well lie beyond our ability to predict them;

(2) full application of the new superconductors is expected to require 10 to 20 years, thus calling for long-term commitments by the public and private sector to appropriate research and development programs;

(3) the Nation's economic competitiveness and strategic well-being depend greatly on the development and application of critical advanced technologies such as those anticipated to evolve from the new superconducting materials;

(4) the United States manufacturing industries confront strong competition in both domestic and world markets as other countries are increasingly taking advantage of modern technology and production techniques and innovative management focused on quality;

(5) whereas we have as a Nation been highly successful in the conduct of basic research in a variety of scientific areas, including superconductivity, other nations have been highly successful in the commercial and military application of the results of such fundamental research;

(6) if the United States is to begin its competitive advantage, it must commit sufficient long-term resources to solving processing and manufacturing problems in parallel with basic research and development;

(7) Federal agencies have responded aggressively to this exciting challenge by reprogramming funds to basic superconductivity research while informally coordinating their efforts to avoid unnecessary duplication; and further commitment of Federal funding and efforts directed to developing manufacturing, materials processing, and fabrication technologies is essential so that these activities may be conducted in parallel;

(8) successful development and application of the new superconducting materials will require close collaboration between the Federal Government and the industrial and academic components of the private sector, as well as coordinating among the Federal departments and agencies involved in research and development on superconductors;

(9) a committed Federal program effort with appropriate long-term goals, priorities, and adequate resources is necessary for the rapid development and application of the new superconducting materials; and

(10) a national program should serve as a test of new agency authorities directed at technological competitiveness such as those provided to the Department of Energy.

(b) Purposes

The purposes of this chapter are—

(1) to establish a 5-year national action plan to research and develop new high-temperature superconducting materials with appropriate goals and priorities; [1]

(2) to designate the appropriate roles, mechanisms, and responsibilities of various Federal departments and agencies in implementing such a national research and development action plan.

(Pub. L. 100–697, §2, Nov. 19, 1988, 102 Stat. 4613.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 100–697, §1, Nov. 19, 1988, 102 Stat. 4613, provided that: "This Act [enacting this chapter] may be cited as the 'National Superconductivity and Competitiveness Act of 1988'."

[1] So in original. Probably should be followed by "and".

§5202. National Action Plan on Advanced Superconductivity Research and Development

(a) Establishment

(1) The Director of the Office of Science and Technology Policy shall establish a 5-year National Action Plan on Advanced Superconductivity Research and Development (hereinafter in this chapter referred to as the "Superconductivity Action Plan").

(2) The Office of Science and Technology Policy shall coordinate the development of the Superconductivity Action Plan and any recommendations required by this chapter with the National Critical Materials Council and the National Commission on Superconductivity.

(b) Content and scope

The Superconductivity Action Plan shall include—

(1) goals and priorities for advanced superconductivity research and development to be carried out by individual departments and agencies and organizational elements therein;

(2) the assignment of responsibility for the conduct of advanced superconductivity research and development among the departments, agencies, and organization elements therein;

(3) recommendation of proposed funding levels for activities relating to superconductivity of the 5 years following November 19, 1988, for each of the participating departments, agencies, and organizational elements therein; and

(4) proposals for the participation by industry and academia in the planning and implementation of the Superconductivity Action Plan.

(c) Action Plan report

The Office of Science and Technology Policy, in conjunction with the National Critical Materials Council, shall submit a report detailing the Superconductivity Action Plan to the Committee on Science, Space, and Technology of the House of Representatives, and to the Committees on Energy and Natural Resources, and Commerce, Science, and Transportation of the Senate, within 9 months after November 19, 1988.

(d) Update reports

The Office of Science and Technology Policy shall prepare an annual report setting forth and evaluating the progress of the Superconductivity Action Plan. This report shall include a description of the amount of funds expended in the previous year by all Federal departments and agencies involved with superconductivity. This report shall be submitted with the President's annual budget

request to the Committee on Science, Space, and Technology of the House of Representatives, and to the Committees on Energy and Natural Resources, and Commerce, Science, and Transportation of the Senate.

(Pub. L. 100–697, §3, Nov. 19, 1988, 102 Stat. 4614; Pub. L. 116–260, div. Z, title VII, §7002(n)(2), Dec. 27, 2020, 134 Stat. 2576.)

EDITORIAL NOTES

AMENDMENTS

2020—Subsec. (d). Pub. L. 116–260 struck out ", with the assistance of the National Critical Materials Council as specified in the National Critical Materials Act of 1984 (30 U.S.C. 1801 et seq.)," after "Policy".

§5203. Department of Energy

The Secretary of Energy shall conduct a program in superconductivity research and development. Within 180 days after November 19, 1988, and for the two succeeding years thereafter, the Secretary shall submit annual reports on the implementation of technology transfer activities under the Stevenson-Wydler Technology Innovation Act of 1980 [15 U.S.C. 3701 et seq.] and related legislation with respect to superconductivity research and development to the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate. Such report shall include recommendations for improvements in the technology transfer between government and industry, and in the management of property developed or made at the National Laboratories.

(Pub. L. 100–697, §4, Nov. 19, 1988, 102 Stat. 4615.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Stevenson-Wydler Technology Innovation Act of 1980, referred to in text, is Pub. L. 96–480, Oct. 21, 1980, 94 Stat. 2311, which is classified generally to chapter 63 (§3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

§5204. National Institute of Standards and Technology

In pursuance of the goals of this chapter, the National Institute of Standards and Technology shall promote fundamental research and materials standards to accelerate the use and application of the new superconducting materials, and shall utilize the Superconductivity Center Focusing on Electronic Applications at the National Institute of Standards and Technology in Boulder, Colorado.

(Pub. L. 100–697, §5, Nov. 19, 1988, 102 Stat. 4615.)

§5205. National Science Foundation

The National Science Foundation shall promote fundamental research in pursuance of the goals of this chapter.

(Pub. L. 100–697, §6, Nov. 19, 1988, 102 Stat. 4615.)

§5206. National Aeronautics and Space Administration

The National Aeronautics and Space Administration shall utilize existing programs in technology transfer, aeronautics and space technology, and space commercialization to promote the commercial

applications of high-temperature superconductors, including applications relating to thin film technology, communications technology, sensors, space power, and propulsion.

(Pub. L. 100–697, §7, Nov. 19, 1988, 102 Stat. 4615.)

§5207. Department of Defense

(a) Focus of research

In conformance with the Superconductivity Action Plan, the Secretary of Defense, in the superconductivity research and development activities of the Department of Defense, shall give emphasis to fundamental research, materials processing, and applications of new superconducting materials.

(b) Additional activities

In conducting research under subsection (a), the Secretary of Defense shall—

(1) systematically define the engineering parameters for high-temperature superconducting materials; and

(2) conduct the necessary development, engineering, and operational prototype testing considered appropriate to the overall mission of the Department of Defense. Such operational prototype testing shall, where appropriate, utilize criteria developed by the Defense Advanced Research Projects Agency.

(c) Defense Advanced Research Projects Agency

The Director of the Defense Advanced Research Projects Agency shall, in conformance with the Superconductivity Action Plan, conduct activities to—

(1) augment, as appropriate, basic and applied superconductivity research conducted in other Federal agencies and industry; and

(2) develop criteria for operational prototype testing within the Department of Defense.

(Pub. L. 100–697, §8, Nov. 19, 1988, 102 Stat. 4615.)

§5208. International cooperation

The President, as part of the Superconductivity Action Plan, shall establish a program of international cooperation in the conduct of fundamental and basic research on superconducting materials. Such program of international cooperation shall include the exchange of basic information and data, as well as the development of international standards for the use and application of superconducting materials.

(Pub. L. 100–697, §9, Nov. 19, 1988, 102 Stat. 4616.)

§5209. Technology transfer

(a) Promotion

In pursuance of the goals of this chapter, all Federal departments and agencies shall conduct technology transfer activities as appropriate to the overall mission of each department or agency to—

(1) complement basic superconductivity research by promoting the rapid development of manufacturing and processing technologies necessary for the commercialization of high-temperature superconductors; and

(2) promote collaborative arrangements and consortia of industry (which shall include small business) in order to lower the barriers to deployment of advanced high-temperature superconductor technology; such consortia to also include, as appropriate, universities and independent research organizations.

(b) Impediments to commercialization

The Director of the Office of Science and Technology Policy, in collaboration with the Secretary of Commerce and the Secretary of Energy, shall identify those Federal policies and regulations which impede the ability of the private sector to undertake long-term investment programs to commercialize superconductivity applications.

(Pub. L. 100–697, §10, Nov. 19, 1988, 102 Stat. 4616.)

CHAPTER 79—METAL CASTING COMPETITIVENESS RESEARCH PROGRAM

Sec.

§5301. Findings

The Congress finds that—

(1) metal casting is an important process for manufacturing many items imported into or exported from the United States;

(2) the encouragement and maintenance of a technically advanced United States metal casting industry is essential to the competitiveness of many American industries;

(3) maintaining a viable metal casting industry is vital to the national security and economic well being of the United States;

(4) the promotion of technology competitiveness and energy efficiency in the United States metal casting industry by the Federal Government is necessary to maintain a viable metal casting industry;

(5) many metal casting companies lack the resources to conduct metal casting research alone, placing them at a serious competitive disadvantage;

(6) the support of university-based research in metal casting is important in promoting technology development and providing industry with qualified engineers; and

(7) by combining the resources of the Federal Government, universities, industry, and private organizations, to conduct research and development activities, substantial technological benefits will result to the metal casting industry.

(Pub. L. 101–425, §2, Oct. 15, 1990, 104 Stat. 915.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 101–425, §1, Oct. 15, 1990, 104 Stat. 915, provided that: "This Act [enacting this chapter] may be cited as the 'Department of Energy Metal Casting Competitiveness Research Act of 1990'."

§5302. Definitions

As used in this chapter, the term—

(1) "applicant" means:
(A) an educational institution;
(B) a consortium of educational institutions;
(C) a consortium of an educational institution or educational institutions with one or more of the following: Government-owned laboratories, private research organizations, nonprofit institutions, or private firms;

that is located in a region where the metal casting industry is concentrated;
(2) "census region" means one of the four census regions (Northeast, South, Midwest, and West) that are designated as census regions by the Bureau of the Census as of October 15, 1990;
(3) "Department" means the Department of Energy;
(4) "educational institution" means a degree granting institution of at least a baccalaureate level;
(5) "non-Federal source" means the United States metal casting industry, related industries, industry-related associations, individuals, organizations, universities, State agencies, or other entities supporting the metal casting industry;
(6) "metal casting industry" or "industry" means the industries identified by codes numbered 3321, 3322, 3324, 3325, 3363, 3364, 3365, 3366, and 3369, in the Standard Industrial Classification manual [1] published by the Office of Management and Budget in 1987;
(7) "Secretary" means the Secretary of Energy.

(Pub. L. 101–425, §3, Oct. 15, 1990, 104 Stat. 915.)

[1] *So in original. Probably should be capitalized.*

§5303. Establishment of program

The Secretary, acting in accordance with authority provided in the Federal Non-Nuclear Research and Development Act of 1974 (42 U.S.C. 5901 et seq.), except as otherwise provided in this chapter, shall establish a Metal Casting Competitiveness Research Program (hereafter in this chapter referred to as the "Program") for the purpose of performing and promoting the performance of research and development on issues related to the technology competitiveness and energy efficiency of the United States metal casting industry.

(Pub. L. 101–425, §4, Oct. 15, 1990, 104 Stat. 916.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Non-Nuclear Research and Development Act of 1974, referred to in text, probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577, Dec. 31, 1974, 88 Stat. 1878, which is classified generally to chapter 74 (§5901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of Title 42 and Tables.

§5304. Operation of program

(a) Solicitation of proposals

Within one year after October 15, 1990, the Secretary shall solicit and, subject to available appropriations, select proposals on a competitive basis from applicants to carry out the program under section 5303 of this title. In order for a proposal to be considered by the Secretary, the applicant shall have in existence at the time the proposal is submitted the following qualifications:
(1) the technical capability to enable it to make use of existing research support and facilities in carrying out its research objectives;

(2) a multidisciplinary research staff experienced in metal casting or other directly related technologies; and

(3) the facilities and equipment capable of conducting at least laboratory scale testing or demonstration of metal casting or related processes.

(b) Proposal criteria

Each proposal shall—

(1) demonstrate the support of the metal casting industry by describing—

(A) how industry has participated in deciding what research activities will be undertaken;

(B) how industry will participate in the evaluation of the applicant's progress in research and development activities; and

(C) the extent to which industry funds are committed to the applicant's proposal;

(2) have a commitment for matching funds from non-Federal sources, which shall consist of:

(A) cash, or

(B) as determined by the Secretary, the fair market value of equipment, services, materials, appropriate technology transfer activities, and other assets directly related to the proposal's cost;

(3) include a single or multiyear management plan that outlines how the research and development activities will be administered and carried out;

(4) state the annual cost of the proposal and a breakdown of those costs; and

(5) describe the technology transfer mechanisms the applicant will use to make available research results to industry and to other researchers.

(c) Content of management plan

The management plan set forth in subsection (b)(3) shall—

(1) outline the basic research and development activities expected to be performed;

(2) outline who will conduct those research activities;

(3) establish the time frame over which the research activities will take place; and

(4) define the overall program management and direction by—

(A) identifying managerial, organizational and administrative procedures and responsibilities;

(B) outlining how the coordination of research and development between the individuals and organizations involved will be achieved;

(C) demonstrating how implementation and monitoring of the progress of research projects after receipt of funding from the Secretary will be achieved;

(D) demonstrating how recommendations and implementations on modifications to the plan will be achieved; and

(E) providing sufficient rationale to support the plan's costs.

(d) Selection of proposals

From the proposals submitted, the Secretary shall select proposals for funding. The Secretary shall attempt to select at least four proposals. The Secretary shall select the proposals that—

(1) will best result in carrying out needed metal casting research and development in one or more of the following general areas—

(A) solidification and casting technologies;

(B) computational modeling and design;

(C) processing technologies and design for energy efficiency, material conservation, environmental protection, or industrial productivity; and

(D) other areas of research, which in the judgment of the Secretary, after consulting with the Board established in section 5306 of this title, further the purposes of this chapter;

(2) represent research and development in specific areas identified in the "Metal Casting Research Priorities" developed annually by the Board pursuant to section 5306(b)(1) of this title;

(3) to the greatest extent possible and subject to available appropriations, ensure that at least one

applicant is selected from each of the four census regions of the country where the metal casting industry is concentrated;

(4) demonstrate strong industry support;

(5) ensure the timely transfer of technology to industry; and

(6) otherwise best carry out the purposes of this chapter.

(e) Funding of program

From amounts made available in separate appropriation Acts, the Secretary shall provide to each applicant selected the financial and technical assistance and other incentives that are necessary and appropriate to carry out the purposes of this chapter.

(f) National Metal Casting Research Institute

Each recipient of financial assistance under subsection (d) shall be known as a "National Metal Casting Research Institute".

(Pub. L. 101–425, §5, Oct. 15, 1990, 104 Stat. 916.)

§5305. Review

(a) Evaluation of research activities

The Secretary shall regularly monitor and evaluate the research activities of the applicants selected. After considering the reports of the Board provided for in section 5306(b)(2) of this title, the Secretary shall determine whether each applicant selected has complied with the management plan submitted in the original proposal and any modifications made since.

(b) Annual report

Each selected applicant in the program shall provide an annual report to the Secretary that explains the progress made, compliance with the management plan, whether changes are needed and are being made to the management plan, and what new research is planned.

(c) Discontinuation of funding

In the event a selected applicant has substantially failed in the implementation of the management plan and research activities, the Secretary shall discontinue funding.

(d) Solicitation of new proposals

Upon completion or discontinuance of any research activity authorized in section 5304 of this title, the Secretary shall, using available funds appropriated pursuant to this chapter, solicit new research proposals as set forth under the terms of this chapter.

(Pub. L. 101–425, §6, Oct. 15, 1990, 104 Stat. 918.)

§5306. Industrial Advisory Board

(a) Establishment of Board

Within 120 days after October 15, 1990, the Secretary, after consulting with representatives of trade and technical associations of the metal casting industry, shall establish an Industrial Advisory Board (hereafter in this chapter referred to as the "Board") to provide guidance and oversight in implementing the selection criteria and operation of the program. The Board shall be composed of nine members who are selected by the Secretary, a majority of whom shall be individuals from the metal casting industry or individuals affiliated with the industry. At least one member of the Board shall be chosen from each of the four census regions of the country. Each Board member shall serve for a term not to exceed five years, but may be reappointed for successive terms.

(b) Review and recommendations

(1) Within 180 days after October 15, 1990, and annually thereafter, the Board shall develop from

the general research areas identified in section 5304(d) of this title and submit to the Secretary a list of Metal Casting Research Priorities. Such list shall, to the greatest extent possible, identify specific areas of research that would be considered of a priority nature to the United States metal casting industry.

(2) On an annual basis the Board shall—

(A) review the Secretary's solicitation and selection of research proposals and make recommendations as to how each such activity can be altered so as to better achieve the purposes of this chapter; and

(B) review the research activities of each selected applicant, and the selected applicant's management plan, and report its findings and recommendations to the Secretary.

(Pub. L. 101–425, §7, Oct. 15, 1990, 104 Stat. 918.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 1001(2) and 1013 of Title 5, Government Organization and Employees.

§5307. Authorization of appropriations

There are authorized to be appropriated to the Secretary for carrying out this chapter $5,000,000 for each of the fiscal years 1991, 1992, 1993, 1994, 1995, 1996, and 1997, to be derived from such sums as are otherwise authorized under section 13451(e) of title 42.

(Pub. L. 101–425, §8, Oct. 15, 1990, 104 Stat. 919; Pub. L. 102–486, title XXI, §2106(b), Oct. 24, 1992, 106 Stat. 3070.)

EDITORIAL NOTES

AMENDMENTS

1992—Pub. L. 102–486 substituted "1993, 1994, 1995, 1996, and 1997, to be derived from such sums as are otherwise authorized under section 13451(e) of title 42" for "and 1993".

§5308. Protection of proprietary rights

(a) Proprietary rights

No trade secrets or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, which is obtained from a company as a result of activities under this chapter shall be disclosed.

(b) Commercial information

The Secretary, for a period of up to 5 years after the development of information that—

(1) results from research and development activities conducted under this chapter; and

(2) would be a trade secret or commercial or financial information that is privileged or confidential, under the meaning of section 552(b)(4) of title 5, if the information had been obtained from a company,

may provide appropriate protection against the dissemination of such information, including exemption from subchapter II of chapter 5 of title 5.

(c) Patent rights

With respect to patent rights, the Institutes shall be treated in the same manner as are nonprofit organizations and small business firms under chapter 18 of title 35, notwithstanding any provisions to the contrary contained in that chapter.

(Pub. L. 101–425, §9, Oct. 15, 1990, 104 Stat. 919.)

§5309. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 101–425, §10, Oct. 15, 1990, 104 Stat. 919, which required, at the time the President's annual budget request for the Department is submitted, that the Secretary provide to Congress a detailed review of the progress of the research and development activities authorized under this chapter, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 84 of House Document No. 103–7.

CHAPTER 80—FASTENERS

Sec.

§5401. Findings

The Congress finds that—

(1) the United States fastener industry is a significant contributor to the global economy, employing thousands of workers in hundreds of communities;

(2) the American economy uses billions of fasteners each year;

(3) state-of-the-art manufacturing and improved quality assurance systems have dramatically improved fastener quality, so virtually all fasteners sold in commerce meet or exceed the consensus standards for the uses to which they are applied;

(4) a small number of mismarked, misrepresented, and counterfeit fasteners do enter commerce in the United States; and

(5) multiple criteria for the identification of fasteners exist, including grade identification markings and manufacturer's insignia, to enable purchasers and users of fasteners to accurately evaluate the characteristics of individual fasteners.

(Pub. L. 101–592, §2, Nov. 16, 1990, 104 Stat. 2943; Pub. L. 104–113, §11(a), Mar. 7, 1996, 110 Stat. 780; Pub. L. 106–34, §2, June 8, 1999, 113 Stat. 118.)

EDITORIAL NOTES

AMENDMENTS

1999—Pub. L. 106–34 amended section generally. Prior to amendment, section consisted of subsecs. (a) and (b) stating findings of Congress and purpose of this chapter.

1996—Subsec. (a)(4) to (6). Pub. L. 104–113, §11(a)(1), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4) which read as follows: "the sale in commerce of nonconforming fasteners and the use of nonconforming fasteners in numerous critical applications have reduced the combat readiness of the Nation's military forces, endangered the safety of other Federal projects and activities, and cost both the public and private sectors large sums in connection with the retesting and purging of fastener inventories;".

Subsec. (a)(7). Pub. L. 104–113, §11(a)(2), struck out "by lot number" after "traceability".

Pub. L. 104–113, §11(a)(1), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (a)(8), (9). Pub. L. 104–113, §11(a)(1), redesignated par. (9) as (8). Former par. (8) redesignated (7).

Subsec. (b). Pub. L. 104–113, §11(a)(3), substituted "in commerce" for "used in critical applications".

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–34, §1, June 8, 1999, 113 Stat. 118, provided that: "This Act [enacting sections 5403, 5411a, and 5411b of this title, amending this section and sections 5402 and 5407 to 5411 of this title, repealing sections 5404 to 5406, 5412, and 5414 of this title, and enacting provisions set out as notes under sections 5402 and 5403 of this title] may be cited as the 'Fastener Quality Act Amendments Act of 1999'."

SHORT TITLE

Pub. L. 101–592, §1, Nov. 16, 1990, 104 Stat. 2943, provided that: "This Act [enacting this chapter] may be cited as the 'Fastener Quality Act'."

§5402. Definitions

As used in this chapter, the term—

(1) "accredited laboratory" means a fastener testing facility used to perform end-of-line testing required by a consensus standard or standards to verify that a lot of fasteners conforms to the grade identification marking called for in the consensus standard or standards to which the lot of fasteners has been manufactured, and which—

(A) meets the requirements of ISO/IEC Guide 25 (or another document approved by the Director under section 5411a(c) of this title), including revisions from time-to-time; and

(B) has been accredited by a laboratory accreditation body that meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under section 5411a(d) of this title), including revisions from time-to-time;

(2) "consensus standard" means the provisions of a document that describes fastener characteristics published by a consensus standards organization or a Federal agency, and does not include a proprietary standard;

(3) "consensus standards organization" means the American Society for Testing and Materials, the American National Standards Institute, the American Society of Mechanical Engineers, the Society of Automotive Engineers, the International Organization for Standardization, any other organization identified as a United States consensus standards organization or a foreign and international consensus standards organization in the Federal Register at 61 Fed. Reg. 50582–83 (September 26, 1996), and any successor organizations thereto;

(4) "Director" means the Director of the National Institute of Standards and Technology;

(5) "distributor" means a person who purchases fasteners for the purpose of reselling them at wholesale to unaffiliated persons within the United States (an original equipment manufacturer and its dealers shall be considered affiliated persons for purposes of this chapter);

(6) "fastener" means a metallic screw, nut, bolt, or stud having internal or external threads, with a nominal diameter of 6 millimeters or greater, in the case of such items described in metric terms, or ¼ inch or greater, in the case of such items described in terms of the English system of measurement, or a load-indicating washer, that is through-hardened or represented as meeting a consensus standard that calls for through-hardening, and that is grade identification marked or represented as meeting a consensus standard that requires grade identification marking, except that such term does not include any screw, nut, bolt, stud, or load-indicating washer that is—

(A) part of an assembly;

(B) a part that is ordered for use as a spare, substitute, service, or replacement part, unless that part is in a package containing more than 75 of any such part at the time of sale, or a part that is contained in an assembly kit;

(C) produced and marked as ASTM A 307 Grade A, or a successor standard thereto;

(D) produced in accordance with ASTM F 432, or a successor standard thereto;

(E) specifically manufactured for use on an aircraft if the quality and suitability of those fasteners for that use has been approved—

(i) by the Federal Aviation Administration; or

(ii) by a foreign airworthiness authority as described in part 21.29, 21.500, 21.502, or 21.617 of title 14 of the Code of Federal Regulations;

(F) manufactured in accordance with a fastener quality assurance system; or

(G) manufactured to a proprietary standard, whether or not such proprietary standard directly or indirectly references a consensus standard or any portion thereof;

(7) "fastener quality assurance system" means—

(A) a system that meets the requirements, including revisions from time-to-time, of—

(i) International Organization for Standardization (ISO) Standard 9000, 9001, 9002, or TS16949;

(ii) Quality System (QS) 9000 Standard;

(iii) Verband der Automobilindustrie e. V. (VDA) 6.1 Standard; or

(iv) Aerospace Basic Quality System Standard AS9000; or

(B) any fastener manufacturing system—

(i) that has as a stated goal the prevention of defects through continuous improvement;

(ii) that seeks to attain the goal stated in clause (i) by incorporating—

(I) advanced quality planning;

(II) monitoring and control of the manufacturing process;

(III) product verification embodied in a comprehensive written control plan for product and process characteristics, and process controls (including process influence factors and statistical process control), tests, and measurement systems to be used in production; and

(IV) the creation, maintenance, and retention of electronic, photographic, or paper records required by the control plan regarding the inspections, tests, and measurements performed pursuant to the control plan; and

(iii) that—

(I) is subject to certification in accordance with the requirements of ISO/IEC Guide 62 (or another document approved by the Director under section 5411a(a) of this title), including revisions from time-to-time, by a third party who is accredited by an accreditation body in accordance with the requirements of ISO/IEC Guide 61 (or another document approved by the Director under section 5411a(b) of this title), including revisions from time-to-time; or

(II) undergoes regular or random evaluation and assessment by the end user or end users of the screws, nuts, bolts, studs, or load-indicating washers produced under such fastener manufacturing system to ensure that such system meets the requirements of clauses (i) and

(ii);

(8) "grade identification marking" means any grade-mark or property class symbol appearing on a fastener purporting to indicate that the lot of fasteners conforms to a specific consensus standard, but such term does not include a manufacturer's insignia or part number;

(9) "importer" means a distributor located within the United States who contracts for the initial purchase of fasteners manufactured outside the United States;

(10) "lot" means a quantity of fasteners of one part number fabricated by the same production process from the same coil or heat number of metal as provided by the metal manufacturer;

(11) "manufacturer" means a person who fabricates fasteners for sale in commerce;

(12) "proprietary standard" means the provisions of a document that describes characteristics of a screw, nut, bolt, stud, or load-indicating washer and is issued by a person who—

(A) uses screws, nuts, bolts, studs, or load-indicating washers in the manufacture, assembly, or servicing of its products; and

(B) with respect to such screws, nuts, bolts, studs, or washers, is a developer and issuer of descriptions that have characteristics similar to consensus standards and that bear such user's identification;

(13) "record of conformance" means a record or records for each lot of fasteners sold or offered for sale that contains—

(A) the name and address of the manufacturer;

(B) a description of the type of fastener;

(C) the lot number;

(D) the nominal dimensions of the fastener (including diameter and length of bolts or screws), thread form, and class of fit;

(E) the consensus standard or specifications to which the lot of fasteners has been manufactured, including the date, number, revision, and other information sufficient to identify the particular consensus standard or specifications being referenced;

(F) the chemistry and grade of material;

(G) the coating material and characteristics and the applicable consensus standard or specifications for such coating; and

(H) the results or a summary of results of any tests performed for the purpose of verifying that a lot of fasteners conforms to its grade identification marking or to the grade identification marking the lot of fasteners is represented to meet;

(14) "represent" means to describe one or more of a fastener's purported characteristics in a document or statement that is transmitted to a purchaser through any medium;

(15) "Secretary" means the Secretary of Commerce;

(16) "specifications" means the required characteristics identified in the contractual agreement with the manufacturer or to which a fastener is otherwise produced, except that the term does not include proprietary standards; and

(17) "through-harden" means heating above the transformation temperature followed by quenching and tempering for the purpose of achieving uniform hardness.

(Pub. L. 101–592, §3, Nov. 16, 1990, 104 Stat. 2944; Pub. L. 104–113, §11(b), Mar. 7, 1996, 110 Stat. 780; Pub. L. 106–34, §3, June 8, 1999, 113 Stat. 118.)

EDITORIAL NOTES

AMENDMENTS

1999—Pub. L. 106–34 amended section catchline and text generally, restating certain definitions, adding new definitions, and striking out definitions of "alter", "container", "institute", "original equipment manufacturer", "private label distributor", and "standards and specifications".

1996—Par. (1)(B). Pub. L. 104–113, §11(b)(1), struck out "having a minimum tensile strength of 150,000

pounds per square inch" after "fasteners".

Par. (2). Pub. L. 104–113, §11(b)(2), inserted "consensus" after "or any other".

Par. (5). Pub. L. 104–113, §11(b)(3), inserted "or produced in accordance with ASTM F 432" after "307 Grade A" in closing provisions, inserted "or" at end of subpar. (B), struck out "or" at end of subpar. (C), and struck out subpar. (D) which read as follows: "any item within a category added by the Secretary in accordance with section 5403(b) of this title,".

Par. (6). Pub. L. 104–113, §11(b)(4), substituted "government agency" for "other person".

Par. (8). Pub. L. 104–113, §11(b)(5), substituted "Standards" for "Standard".

Pars. (11), (12). Pub. L. 104–113, §11(b)(6), redesignated pars. (12) and (13) as (11) and (12), respectively, and struck out former par. (11) which read as follows: " 'original equipment manufacturer' means a person who uses fasteners in the manufacture or assembly of its products and sells fasteners to authorized dealers as replacement or service parts for its products;".

Par. (13). Pub. L. 104–113, §11(b)(7), substituted "or a government agency" for ", a government agency, or a major end-user of fasteners which defines or describes dimensional characteristics, limits of size, acceptable materials, processing, functional behavior, plating, baking, inspecting, testing, packaging, and required markings of any fastener".

Pub. L. 104–113, §11(b)(6), redesignated par. (14) as (13). Former par. (13) redesignated (12).

Par. (14). Pub. L. 104–113, §11(b)(8), inserted "for the purpose of achieving a uniform hardness" after "quenching and tempering".

Pub. L. 104–113, §11(b)(6), redesignated par. (15) as (14). Former par. (14) redesignated (13).

Par. (15). Pub. L. 104–113, §11(b)(6), redesignated par. (15) as (14).

STATUTORY NOTES AND RELATED SUBSIDIARIES

COMPTROLLER GENERAL REPORT

Pub. L. 106–34, §12, June 8, 1999, 113 Stat. 125, provided that not later than 2 years after June 8, 1999, the Comptroller General would transmit to the Congress a report describing any changes in industry practice resulting from or apparently resulting from the enactment of paragraph (6)(B) of this section.

§5403. Sale of fasteners

(a) General rule

It shall be unlawful for a manufacturer or distributor, in conjunction with the sale or offer for sale of fasteners from a single lot, to knowingly misrepresent or falsify—

(1) the record of conformance for the lot of fasteners;

(2) the identification, characteristics, properties, mechanical or performance marks, chemistry, or strength of the lot of fasteners; or

(3) the manufacturer's insignia.

(b) Representations

A direct or indirect reference to a consensus standard to represent that a fastener conforms to particular requirements of the consensus standard shall not be construed as a representation that the fastener meets all the requirements of the consensus standard.

(c) Specifications

A direct or indirect contractual reference to a consensus standard for the purpose of identifying particular requirements of the consensus standard that serve as specifications shall not be construed to require that the fastener meet all the requirements of the consensus standard.

(d) Use of accredited laboratories

In the case of fasteners manufactured solely to a consensus standard or standards, end-of-line testing required by the consensus standard or standards, if any, for the purpose of verifying that a lot of fasteners conforms with the grade identification marking called for in the consensus standard or standards to which the lot of fasteners has been manufactured shall be conducted by an accredited laboratory.

(Pub. L. 101–592, §4, as added Pub. L. 106–34, §4(a), June 8, 1999, 113 Stat. 121.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5403, Pub. L. 101–592, §4, Nov. 16, 1990, 104 Stat. 2945, set out special rule under which Secretary could waive requirements of this chapter on determination that category of fasteners was not used in critical applications, but that Secretary could also determine in given case that fastener was used in critical applications and was governed accordingly, prior to repeal by Pub. L. 104–113, §11(c), Mar. 7, 1996, 110 Stat. 780.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 106–34, §4(b), June 8, 1999, 113 Stat. 122, provided that: "Subsection (d) of section 4 of the Fastener Quality Act [15 U.S.C. §5403(d)], as added by subsection (a) of this section, shall take effect 2 years after the date of the enactment of this Act [June 8, 1999]."

§§5404 to 5406. Repealed. Pub. L. 106–34, §4(a), June 8, 1999, 113 Stat. 121

Section 5404, Pub. L. 101–592, §5, Nov. 16, 1990, 104 Stat. 2945; Pub. L. 104–113, §11(d), Mar. 7, 1996, 110 Stat. 780, required testing and certification of fasteners.

Section 5405, Pub. L. 101–592, §6, Nov. 16, 1990, 104 Stat. 2947; Pub. L. 104–113, §11(e), Mar. 7, 1996, 110 Stat. 781, provided for laboratory accreditation.

Section 5406, Pub. L. 101–592, §7, Nov. 16, 1990, 104 Stat. 2948; Pub. L. 104–113, §11(f), Mar. 7, 1996, 110 Stat. 781, related to sale of domestic and imported fasteners subsequent to manufacture.

§5407. Manufacturers' insignias

(a) General rule

Unless the specifications provide otherwise, fasteners that are required by the applicable consensus standard or standards to bear an insignia identifying their manufacturer shall not be offered for sale or sold in commerce unless—

(1) the fasteners bear such insignia; and

(2) the manufacturer has complied with the insignia recordation requirements established under subsection (b).

(b) Recordation

The Secretary shall establish, by regulation, a program to provide for the recordation of the insignias of manufacturers described in subsection (a).

(Pub. L. 101–592, §5, formerly §8, Nov. 16, 1990, 104 Stat. 2950; renumbered §5 and amended Pub. L. 106–34, §5, June 8, 1999, 113 Stat. 122.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5 of Pub. L. 101–592 was classified to section 5404 of this title, prior to repeal by Pub. L. 106–34.

AMENDMENTS

1999—Subsec. (a). Pub. L. 106–34, §5(1), reenacted subsec. heading without change and amended text generally. Prior to amendment, text read as follows: "No fastener which is required by the standards and specifications to which it was manufactured to bear a raised or depressed insignia identifying its manufacturer

or private label distributor shall be offered for sale or sold in commerce unless the manufacturer or private label distributor of such fastener has complied with the requirements prescribed by the Secretary in connection with the program established under subsection (b) of this section."

Subsec. (b). Pub. L. 106–34, §5(2), substituted "described in subsection (a)" for "and private label distributors described in subsection (a), to ensure the traceability of a fastener to its manufacturer or private label distributor".

§5408. Remedies and penalties

(a) Civil remedies

(1) The Attorney General may bring an action in an appropriate United States district court for appropriate declaratory and injunctive relief against any person who violates this chapter or any regulation under this chapter.

(2) An action under paragraph (1) may not be brought more than 10 years after the date on which the cause of action accrues.

(b) Civil penalties

(1) Any person who is determined by the Secretary, after notice and an opportunity for a hearing, to have violated this chapter or any regulation under this chapter shall be liable to the United States for a civil penalty of not more than $25,000 for each violation.

(2) The amount of the penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith attempt to achieve compliance, ability to pay the penalty, and such other matters as justice may require.

(3) Any person against whom a civil penalty is assessed under paragraph (2) of this subsection may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The findings and order of the Secretary shall be set aside by such court if they are found to be unsupported by substantial evidence, as provided in section 706(2) of title 5.

(4) The Secretary may arbitrate, compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section prior to referral to the Attorney General under paragraph (5).

(5) A civil penalty assessed under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(6) For the purpose of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) Criminal penalties

(1) Whoever knowingly certifies, marks, offers for sale, or sells a fastener in violation of this chapter or a regulation under this chapter shall be fined under title 18, or imprisoned not more than 5 years, or both.

(2) Whoever intentionally fails to maintain records relating to a fastener in violation of this chapter or a regulation under this chapter shall be fined under title 18, or imprisoned not more than 5 years, or both.

(3) Whoever negligently fails to maintain records relating to a fastener in violation of this chapter or a regulation under this chapter shall be fined under title 18, or imprisoned not more than 2 years, or both.

(d) Enforcement

(1) The Secretary may designate officers or employees of the Department of Commerce to conduct investigations pursuant to this chapter. In conducting such investigations, those officers or employees may, to the extent necessary or appropriate to the enforcement of this chapter, exercise such authorities as are conferred upon them by other laws of the United States, subject to policies and procedures approved by the Attorney General.

(2) The Secretary shall establish and maintain a hotline system to facilitate the reporting of alleged violations of this chapter, and the Secretary shall evaluate allegations reported through that system and report any credible allegations to the Attorney General.

(Pub. L. 101–592, §6, formerly §9, Nov. 16, 1990, 104 Stat. 2950; Pub. L. 104–113, §11(g), Mar. 7, 1996, 110 Stat. 782; renumbered §6 and amended Pub. L. 106–34, §6, June 8, 1999, 113 Stat. 122.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 6 of Pub. L. 101–592 was classified to section 5405 of this title, prior to repeal by Pub. L. 106–34.

AMENDMENTS

1999—Subsec. (b)(3). Pub. L. 106–34, §6(1), substituted "of this subsection" for "of this section".
Subsec. (b)(4). Pub. L. 106–34, §6(2), inserted "arbitrate," after "Secretary may".
Subsec. (d). Pub. L. 106–34, §6(3), designated existing provisions as par. (1) and added par. (2).
1996—Subsec. (d). Pub. L. 104–113 added subsec. (d).

§5409. Recordkeeping requirements

Manufacturers and importers shall retain the record of conformance for fasteners for 5 years, on paper or in photographic or electronic format in a manner that allows for verification of authenticity. Upon request of a distributor who has purchased a fastener, or a person who has purchased a fastener for use in the production of a commercial product, the manufacturer or importer of the fastener shall make available information in the record of conformance to the requester.

(Pub. L. 101–592, §7, formerly §10, Nov. 16, 1990, 104 Stat. 2951; Pub. L. 104–113, §11(h), Mar. 7, 1996, 110 Stat. 782; renumbered §7 and amended Pub. L. 106–34, §7, June 8, 1999, 113 Stat. 123.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 7 of Pub. L. 101–592 was classified to section 5406 of this title, prior to repeal by Pub. L. 106–34.

AMENDMENTS

1999—Pub. L. 106–34 substituted present provisions for former provisions which consisted of subsecs. (a) and (b) relating to retention and availability of records concerning inspections, testing, and certifications of fasteners under section 5404 of this title by laboratories, manufacturers, importers, private label distributors and persons who make significant alterations.

1996—Subsec. (a). Pub. L. 104–113, §11(h)(1), substituted "5 years" for "10 years".
Subsec. (b). Pub. L. 104–113, §11(h), substituted "5 years" for "10 years" and "the subsequent purchaser"

for "any subsequent purchaser".

§5410. Relationship to State laws

Nothing in this chapter shall be construed to preempt any rights or causes of action that any buyer may have with respect to any seller of fasteners under the law of any State, except to the extent that the provisions of this chapter are in conflict with such State law.

(Pub. L. 101–592, §8, formerly §11, Nov. 16, 1990, 104 Stat. 2952; renumbered §8, Pub. L. 106–34, §8, June 8, 1999, 113 Stat. 123.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 8 of Pub. L. 101–592 was renumbered section 5 and is classified to section 5407 of this title.

§5411. Construction

Nothing in this chapter shall be construed to limit or otherwise affect the authority of any consensus standards organization to establish, modify, or withdraw any standards and specifications under any other law or authority.

(Pub. L. 101–592, §9, formerly §12, Nov. 16, 1990, 104 Stat. 2952; renumbered §9 and amended Pub. L. 106–34, §9, June 8, 1999, 113 Stat. 123.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 9 of Pub. L. 101–592 was renumbered section 6 and is classified to section 5408 of this title.

AMENDMENTS

1999—Pub. L. 106–34 struck out "in effect on November 16, 1990" after "law or authority".

§5411a. Certification and accreditation

(a) Certification

A person publishing a document setting forth guidance or requirements for the certification of manufacturing systems as fastener quality assurance systems by an accredited third party may petition the Director to approve such document for use as described in section 5402(7)(B)(iii)(I) of this title. The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 62.

(b) Accreditation

A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit third parties described in subsection (a) may petition the Director to approve such document for use as described in section 5402(7)(B)(iii)(I) of this title. The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 61.

(c) Laboratory accreditation

A person publishing a document setting forth guidance or requirements for the accreditation of laboratories may petition the Director to approve such document for use as described in section 5402(1)(A) of this title. The Director shall act upon a petition within 180 days after its filing, and

shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 25.

(d) Approval of accreditation bodies

A person publishing a document setting forth guidance or requirements for the approval of accreditation bodies to accredit laboratories may petition the Director to approve such document for use as described in section 5402(1)(B) of this title. The Director shall act upon a petition within 180 days after its filing, and shall approve such petition if the document provides equal or greater rigor and reliability as compared to ISO/IEC Guide 58. In addition to any other voluntary laboratory accreditation programs that may be established by private sector persons, the Director shall establish a National Voluntary Laboratory Accreditation Program, for the accreditation of laboratories as described in section 5402(1)(B) of this title, that meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under this subsection), including revisions from time-to-time.

(e) Affirmation

(1) An accreditation body accrediting third parties who certify manufacturing systems as fastener quality assurance systems as described in section 5402(7)(B)(iii)(I) of this title shall affirm to the Director that it meets the requirements of ISO/IEC Guide 61 (or another document approved by the Director under subsection (b)), including revisions from time-to-time.

(2) An accreditation body accrediting laboratories as described in section 5402(1)(B) of this title shall affirm to the Director that it meets the requirements of ISO/IEC Guide 58 (or another document approved by the Director under subsection (d)), including revisions from time-to-time.

(3) An affirmation required under paragraph (1) or (2) shall take the form of a self-declaration that the accreditation body meets the requirements of the applicable Guide, signed by an authorized representative of the accreditation body, without requirement for accompanying documentation. Any such affirmation shall be considered to be a continuous affirmation that the accreditation body meets the requirements of the applicable Guide, unless and until the affirmation is withdrawn by the accreditation body.

(Pub. L. 101–592, §10, as added Pub. L. 106–34, §10, June 8, 1999, 113 Stat. 123.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10 of Pub. L. 101–592 was renumbered section 7 and is classified to section 5409 of this title.

§5411b. Applicability

The requirements of this chapter shall be applicable only to fasteners fabricated 180 days or more after June 8, 1999, except that if a manufacturer or distributor of fasteners fabricated before June 8, 1999, prepares a record of conformance for such fasteners, representations about such fasteners shall be subject to the requirements of this chapter.

(Pub. L. 101–592, §11, as added Pub. L. 106–34, §11, June 8, 1999, 113 Stat. 124.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11 of Pub. L. 101–592 was renumbered section 8 and is classified to section 5410 of this title.

§5412. Repealed. Pub. L. 106–34, §10, June 8, 1999, 113 Stat. 123

Section, Pub. L. 101–592, §13, Nov. 16, 1990, 104 Stat. 2952; Pub. L. 104–113, §11(i), Mar. 7, 1996, 110 Stat. 782, required the Secretary to issue regulations necessary to implement chapter.

§5413. Repealed. Pub. L. 104–113, §11(j), Mar. 7, 1996, 110 Stat. 782

Section, Pub. L. 101–592, §14, Nov. 16, 1990, 104 Stat. 2952, related to appointment of an advisory committee to be available for consultation with Secretary on matters related to fasteners.

§5414. Repealed. Pub. L. 106–34, §10, June 8, 1999, 113 Stat. 123

Section, Pub. L. 101–592, §15, Nov. 16, 1990, 104 Stat. 2952; Pub. L. 105–234, §1, Aug. 14, 1998, 112 Stat. 1536, related to applicability of this chapter.

CHAPTER 81—HIGH-PERFORMANCE COMPUTING

Sec.

§5501. Findings

The Congress finds the following:

(1) Advances in computer science and technology are vital to the Nation's prosperity, national and economic security, industrial production, engineering, and scientific advancement.

(2) The United States currently leads the world in the development and use of networking and information technology, including high-performance computing, for national security, industrial productivity, science, and engineering, but that lead is being challenged by foreign competitors.

(3) Further research and development, expanded educational programs, improved computer research networks, and more effective technology transfer from government to industry are necessary for the United States to reap fully the benefits of networking and information technology, including high-performance computing.

(4) A high-capacity, flexible, high-speed national research and education computer network is needed to provide researchers and educators with access to computational and information resources, act as a test bed for further research and development for high-capacity and high-speed computer networks, and provide researchers the necessary vehicle for continued network technology improvement through research.

(5) Several Federal agencies have ongoing networking and information technology, including high-performance computing, programs, but improved long-term interagency coordination, cooperation, and planning would enhance the effectiveness of these programs.

(6) A 1991 report entitled "Grand Challenges: High-Performance Computing and Communications" by the Office of Science and Technology Policy, outlining a research and development strategy for high-performance computing, provides a framework for a multiagency high-performance computing program. Such a program would provide American researchers and educators with the computer and information resources they need, and demonstrate how advanced computers, high-capacity and high-speed networks, and electronic data bases can improve the national information infrastructure for use by all Americans.

(7) Additional research must be undertaken to lay the foundation for the development of new applications that can result in economic growth, improved health care, and improved educational opportunities.

(8) Research in new networking technologies holds the promise of easing the economic burdens of information access disproportionately borne by rural users of the Internet.

(9) Information security is an important part of computing, information, and communications systems and applications, and research into security architectures is a critical aspect of computing, information, and communications research programs.

(Pub. L. 102–194, §2, Dec. 9, 1991, 105 Stat. 1594; Pub. L. 105–305, §2(b), Oct. 28, 1998, 112 Stat. 2919; Pub. L. 114–329, title I, §105(b), Jan. 6, 2017, 130 Stat. 2976.)

EDITORIAL NOTES

AMENDMENTS

2017—Par. (2). Pub. L. 114–329, §105(b)(1), substituted "networking and information technology, including high-performance computing," for "high-performance computing".

Par. (3). Pub. L. 114–329, §105(b)(2), substituted "networking and information technology, including high-performance computing" for "high-performance computing".

Par. (5). Pub. L. 114–329, §105(b)(1), substituted "networking and information technology, including high-performance computing," for "high-performance computing".

1998—Par. (4). Pub. L. 105–305, §2(b)(1), added par. (4) and struck out former par. (4) which read as follows: "A high-capacity and high-speed national research and education computer network would provide researchers and educators with access to computer and information resources and act as a test bed for further research and development of high-capacity and high-speed computer networks."

Pars. (7) to (9). Pub. L. 105–305, §2(b)(2), added pars. (7) to (9).

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2017 AMENDMENT

Pub. L. 114–329, title I, §105(a), Jan. 6, 2017, 130 Stat. 2976, provided that: "This section [enacting section 5512 of this title, amending this section, sections 5502, 5503, 5511, 5521 to 5524, 5527, 7403, and 7431 of this title, and section 17912 of Title 42, The Public Health and Welfare, and repealing sections 5512, 5513, 5525, 5526, 5528, and 5543 of this title] may be cited as the 'Networking and Information Technology Research and Development Modernization Act of 2016'."

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–305, §1, Oct. 28, 1998, 112 Stat. 2919, provided that: "This Act [enacting section 5513 of this title, amending this section and sections 5502, 5503, and 5511 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Next Generation Internet Research Act of 1998'."

SHORT TITLE

Pub. L. 102–194, §1, Dec. 9, 1991, 105 Stat. 1594, provided that: "This Act [enacting this chapter] may be cited as the 'High-Performance Computing Act of 1991'."

Pub. L. 108–423, §1, Nov. 30, 2004, 118 Stat. 2400, as amended by Pub. L. 115–246, title III, §304(b)(1)(A), formerly §304(a)(1)(A), Sept. 28, 2018, 132 Stat. 3145, renumbered §304(b)(1)(A) by Pub. L. 117–167, div. B, title I, §10104(a)(1), Aug. 9, 2022, 136 Stat. 1433, provided that: "This Act [enacting subchapter III of this chapter, amending sections 205l of this title and 1862n–9 of Title 42, The Public Health and Welfare, and enacting provisions set out as a note under section 1862n–9 of Title 42] may be cited as the 'American Super Computing Leadership Act of 2017'."

CONGRESSIONAL FINDINGS

Pub. L. 105–305, §2(a), Oct. 28, 1998, 112 Stat. 2919, provided that: "The Congress finds that—

"(1) United States leadership in science and technology has been vital to the Nation's prosperity, national and economic security, and international competitiveness, and there is every reason to believe that maintaining this tradition will lead to long-term continuation of United States strategic advantages in information technology;

"(2) the United States investment in science and technology has yielded a scientific and engineering enterprise without peer, and that Federal investment in research is critical to the maintenance of United States leadership;

"(3) previous Federal investment in computer networking technology and related fields has resulted in the creation of new industries and new jobs in the United States;

"(4) the Internet is playing an increasingly important role in keeping citizens informed of the actions of their government; and

"(5) continued inter-agency cooperation is necessary to avoid wasteful duplication in Federal networking research and development programs."

PURPOSES

Pub. L. 105–305, §3(a), Oct. 28, 1998, 112 Stat. 2920, provided that: "The purposes of this Act [see Short Title of 1998 Amendment note above] are—

"(1) to authorize, through the High-Performance Computing Act of 1991 (15 U.S.C. 5501 et seq.), research programs related to—

"(A) high-end computing and computation;

"(B) human-centered systems;

"(C) high confidence systems; and

"(D) education, training, and human resources; and

"(2) to provide, through the High-Performance Computing Act of 1991 (15 U.S.C. 5501 et seq.), for the development and coordination of a comprehensive and integrated United States research program which will—

"(A) focus on the research and development of a coordinated set of technologies that seeks to create a network infrastructure that can support greater speed, robustness, and flexibility than is currently available and promote connectivity and interoperability among advanced computer networks of Federal agencies and departments;

"(B) focus on research in technology that may result in high-speed data access for users that is both economically viable and does not impose a geographic penalty; and

"(C) encourage researchers to pursue approaches to networking technology that lead to maximally flexible and extensible solutions wherever feasible."

DEFINITIONS

Pub. L. 105–305, §7(a), Oct. 28, 1998, 112 Stat. 2924, provided that: "For purposes of this Act [see Short Title of 1998 Amendment note above]—

"(1) GEOGRAPHIC PENALTY.—The term 'geographic penalty' means the imposition of costs on users of the Internet in rural or other locations, attributable to the distance of the user from network facilities, the low population density of the area in which the user is located, or other factors, that are disproportionately greater than the costs imposed on users in locations closer to such facilities or on users in locations with significantly greater population density.

"(2) INTERNET.—The term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13702. CREATING A NATIONAL STRATEGIC COMPUTING INITIATIVE

Ex. Ord. No. 13702, July 29, 2015, 80 F.R. 46177, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to maximize benefits of high-performance computing (HPC) research, development, and deployment, it is hereby ordered as follows:

SECTION 1. *Policy*. In order to maximize the benefits of HPC for economic competitiveness and scientific discovery, the United States Government must create a coordinated Federal strategy in HPC research, development, and deployment. Investment in HPC has contributed substantially to national economic prosperity and rapidly accelerated scientific discovery. Creating and deploying technology at the leading edge is vital to advancing my Administration's priorities and spurring innovation. Accordingly, this order establishes the National Strategic Computing Initiative (NSCI). The NSCI is a whole-of-government effort designed to create a cohesive, multi-agency strategic vision and Federal investment strategy, executed in collaboration with industry and academia, to maximize the benefits of HPC for the United States.

Over the past six decades, U.S. computing capabilities have been maintained through continuous research and the development and deployment of new computing systems with rapidly increasing performance on applications of major significance to government, industry, and academia. Maximizing the benefits of HPC in the coming decades will require an effective national response to increasing demands for computing power, emerging technological challenges and opportunities, and growing economic dependency on and competition with other nations. This national response will require a cohesive, strategic effort within the Federal Government and a close collaboration between the public and private sectors.

It is the policy of the United States to sustain and enhance its scientific, technological, and economic leadership position in HPC research, development, and deployment through a coordinated Federal strategy guided by four principles:

(1) The United States must deploy and apply new HPC technologies broadly for economic competitiveness and scientific discovery.

(2) The United States must foster public-private collaboration, relying on the respective strengths of government, industry, and academia to maximize the benefits of HPC.

(3) The United States must adopt a whole-of-government approach that draws upon the strengths of and seeks cooperation among all executive departments and agencies with significant expertise or equities in HPC while also collaborating with industry and academia.

(4) The United States must develop a comprehensive technical and scientific approach to transition HPC research on hardware, system software, development tools, and applications efficiently into development and, ultimately, operations.

This order establishes the NSCI to implement this whole-of-government strategy, in collaboration with industry and academia, for HPC research, development, and deployment.

SEC. 2. *Objectives*. Executive departments, agencies, and offices (agencies) participating in the NSCI shall pursue five strategic objectives:

(1) Accelerating delivery of a capable exascale computing system that integrates hardware and software capability to deliver approximately 100 times the performance of current 10 petaflop systems across a range of applications representing government needs.

(2) Increasing coherence between the technology base used for modeling and simulation and that used for data analytic computing.

(3) Establishing, over the next 15 years, a viable path forward for future HPC systems even after the limits of current semiconductor technology are reached (the "post-Moore's Law era").

(4) Increasing the capacity and capability of an enduring national HPC ecosystem by employing a holistic approach that addresses relevant factors such as networking technology, workflow, downward scaling, foundational algorithms and software, accessibility, and workforce development.

(5) Developing an enduring public-private collaboration to ensure that the benefits of the research and development advances are, to the greatest extent, shared between the United States Government and industrial and academic sectors.

SEC. 3. *Roles and Responsibilities*. To achieve the five strategic objectives, this order identifies lead agencies, foundational research and development agencies, and deployment agencies. Lead agencies are charged with developing and delivering the next generation of integrated HPC capability and will engage in mutually supportive research and development in hardware and software, as well as in developing the workforce to support the objectives of the NSCI. Foundational research and development agencies are charged with fundamental scientific discovery work and associated advances in engineering necessary to support the

NSCI objectives. Deployment agencies will develop mission-based HPC requirements to influence the early stages of the design of new HPC systems and will seek viewpoints from the private sector and academia on target HPC requirements. These groups may expand to include other government entities as HPC-related mission needs emerge.

(a) *Lead Agencies*. There are three lead agencies for the NSCI: the Department of Energy (DOE), the Department of Defense (DOD), and the National Science Foundation (NSF). The DOE Office of Science and DOE National Nuclear Security Administration will execute a joint program focused on advanced simulation through a capable exascale computing program emphasizing sustained performance on relevant applications and analytic computing to support their missions. NSF will play a central role in scientific discovery advances, the broader HPC ecosystem for scientific discovery, and workforce development. DOD will focus on data analytic computing to support its mission. The assignment of these responsibilities reflects the historical roles that each of the lead agencies have played in pushing the frontiers of HPC, and will keep the Nation on the forefront of this strategically important field. The lead agencies will also work with the foundational research and development agencies and the deployment agencies to support the objectives of the NSCI and address the wide variety of needs across the Federal Government.

(b) *Foundational Research and Development Agencies*. There are two foundational research and development agencies for the NSCI: the Intelligence Advanced Research Projects Activity (IARPA) and the National Institute of Standards and Technology (NIST). IARPA will focus on future computing paradigms offering an alternative to standard semiconductor computing technologies. NIST will focus on measurement science to support future computing technologies. The foundational research and development agencies will coordinate with deployment agencies to enable effective transition of research and development efforts that support the wide variety of requirements across the Federal Government.

(c) *Deployment Agencies*. There are five deployment agencies for the NSCI: the National Aeronautics and Space Administration, the Federal Bureau of Investigation, the National Institutes of Health, the Department of Homeland Security, and the National Oceanic and Atmospheric Administration. These agencies may participate in the co-design process to integrate the special requirements of their respective missions and influence the early stages of design of new HPC systems, software, and applications. Agencies will also have the opportunity to participate in testing, supporting workforce development activities, and ensuring effective deployment within their mission contexts.

SEC. 4. *Executive Council*. (a) To ensure accountability for and coordination of research, development, and deployment activities within the NSCI, there is established an NSCI Executive Council to be co-chaired by the Director of the Office of Science and Technology Policy (OSTP) and the Director of the Office of Management and Budget (OMB). The Director of OSTP shall designate members of the Executive Council from within the executive branch. The Executive Council will include representatives from agencies with roles and responsibilities as identified in this order.

(b) The Executive Council shall coordinate and collaborate with the National Science and Technology Council established by Executive Order 12881 of November 23, 1993, and its subordinate entities as appropriate to ensure that HPC efforts across the Federal Government are aligned with the NSCI. The Executive Council shall also consult with representatives from other agencies as it determines necessary. The Executive Council may create additional task forces as needed to ensure accountability and coordination.

(c) The Executive Council shall meet regularly to assess the status of efforts to implement this order. The Executive Council shall meet no less often than twice yearly in the first year after issuance of this order. The Executive Council may revise the meeting frequency as needed thereafter. In the event the Executive Council is unable to reach consensus, the Co-Chairs will be responsible for documenting issues and potential resolutions through a process led by OSTP and OMB.

(d) The Executive Council will encourage agencies to collaborate with the private sector as appropriate. The Executive Council may seek advice from the President's Council of Advisors on Science and Technology through the Assistant to the President for Science and Technology and may interact with other private sector groups consistent with the Federal Advisory Committee Act.

SEC. 5. *Implementation*. (a) The Executive Council shall, within 90 days of the date of this order, establish an implementation plan to support and align efforts across agencies in support of the NSCI objectives. Annually thereafter for 5 years, the Executive Council shall update the implementation plan as required and document the progress made in implementing the plan, engaging with the private sector, and taking actions to implement this order. After 5 years, updates to the implementation plan may be requested at the discretion of the Co-Chairs.

(b) The Co-Chairs shall prepare a report each year until 5 years from the date of this order on the status of the NSCI for the President. After 5 years, reports may be prepared at the discretion of the Co-Chairs.

SEC. 6. *Definitions*. For the purposes of this order:

The term "high-performance computing" refers to systems that, through a combination of processing capability and storage capacity, can solve computational problems that are beyond the capability of small- to medium-scale systems.

The term "petaflop" refers to the ability to perform one quadrillion arithmetic operations per second.

The term "exascale computing system" refers to a system operating at one thousand petaflops.

SEC. 7. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

§5502. Purposes

The purposes of this chapter are to help ensure the continued leadership of the United States in networking and information technology and its applications by—

(1) supporting Federal research, development, and application of networking and information technology in order to—

(A) expand the number of researchers, educators, and students with training in networking and information technology and access to networking and information technology resources;

(B) promote the further development of an information infrastructure of data bases, services, access mechanisms, and research facilities available for use through the Internet;

(C) stimulate research on and promote more rapid development of high-end computing systems software and applications software;

(D) accelerate the development of high-end computing systems and subsystems;

(E) provide for the application of networking and information technology to Grand Challenges;

(F) invest in basic research and education, and promote the inclusion of networking and information technology into educational institutions at all levels; and

(G) promote greater collaboration among government, Federal laboratories, industry, high-end computing centers, and universities;

(2) improving the interagency planning and coordination of Federal research and development on networking and information technology and maximizing the effectiveness of the Federal Government's networking and information technology research and development programs;

(3) promoting the more rapid development and wider distribution of networking management and development tools; and

(4) promoting the rapid adoption of open network standards.

(Pub. L. 102–194, §3, Dec. 9, 1991, 105 Stat. 1594; Pub. L. 105–305, §3(b), Oct. 28, 1998, 112 Stat. 2920; Pub. L. 114–329, title I, §105(c), Jan. 6, 2017, 130 Stat. 2976.)

EDITORIAL NOTES

AMENDMENTS

2017—Pub. L. 114–329, §105(c)(1), substituted "networking and information technology" for "high-performance computing" in introductory provisions.

Par. (1). Pub. L. 114–329, §105(c)(2)(A), substituted "supporting Federal research, development, and application of networking and information technology" for "expanding Federal support for research, development, and application of high-performance computing" in introductory provisions.

Par. (1)(A). Pub. L. 114–329, §105(c)(2)(B), substituted "networking and information technology" for "high-performance computing" in two places.

Par. (1)(C). Pub. L. 114–329, §105(c)(2)(C), (D), added subpar. (C) and struck out former subpar. (C) which read as follows: "stimulate research on software technology;".

Par. (1)(D). Pub. L. 114–329, §105(c)(2)(C), (E), (F), redesignated subpar. (E) as (D), inserted "high-end" after "the development of", and struck out former subpar. (D) which read as follows: "promote the more rapid development and wider distribution of computing software tools and applications software;".

Par. (1)(E), (F). Pub. L. 114–329, §105(c)(2)(E), (G), redesignated subpars. (F) and (G) as (E) and (F), respectively, and substituted "networking and information technology" for "high-performance computing". Former subpar. (E) redesignated (D).

Par. (1)(G), (H). Pub. L. 114–329, §105(c)(2)(E), (H), redesignated subpar. (H) as (G) and substituted "high-end" for "high-performance". Former subpar. (G) redesignated (F).

Par. (2). Pub. L. 114–329, §105(c)(3), substituted "networking and information technology and" for "high-performance computing and" and "networking and information technology" for "high-performance computing network".

1998—Pub. L. 105–305, §3(b)(1), substituted "Purposes" for "Purpose" as section catchline.

Pub. L. 105–305, §3(b)(2), substituted "purposes of this chapter are" for "purpose of this chapter is" in introductory provisions.

Par. (1)(A). Pub. L. 105–305, §3(b)(3), redesignated subpar. (B) as (A) and struck out former subpar. (A) which read as follows: "establish a high-capacity and high-speed National Research and Education Network;".

Par. (1)(B). Pub. L. 105–305, §3(b)(3), (4), redesignated subpar. (C) as (B) and substituted "Internet" for "Network". Former subpar. (B) redesignated (A).

Par. (1)(C) to (I). Pub. L. 105–305, §3(b)(3), (5), redesignated subpars. (D) to (I) as (C) to (H), respectively, and struck out "and" at end of par. (H).

Par. (2). Pub. L. 105–305, §3(b)(6), substituted "network research and development programs;" for "efforts."

Pars. (3), (4). Pub. L. 105–305, §3(b)(7), added pars. (3) and (4).

§5503. Definitions

As used in this chapter, the term—

(1) "cyber-physical systems" means physical or engineered systems whose networking and information technology functions and physical elements are deeply integrated and are actively connected to the physical world through sensors, actuators, or other means to enable safe and effective, real-time performance in safety-critical and other applications;

(2) "Director" means the Director of the Office of Science and Technology Policy;

(3) "Grand Challenge" means a fundamental problem in science or engineering, with broad economic and scientific impact, whose solution will require the application of networking and information technology resources and multidisciplinary teams of researchers;

(4) "high-end computing" means the most advanced and capable computing systems, including their hardware, storage, networking and software, encompassing both massive computational capability and large-scale data analytics to solve computational problems of national importance that are beyond the capability of small- to medium-scale systems, including computing formerly known as high-performance computing;

(5) "Internet" means the international computer network of both Federal and non-Federal interoperable data networks;

(6) "networking and information technology" means high-end computing, communications, and information technologies, high-capacity and high-speed networks, special purpose and experimental systems, high-end computing systems software and applications software, and the management of large data sets;

(7) "participating agency" means an agency described in section 5511(a)(3)(C) of this title;

(8) "Program" means the Networking and Information Technology Research and Development Program described in section 5511 of this title; and

(9) "Program Component Areas" means the major subject areas under which related individual projects and activities carried out under the Program are grouped.

(Pub. L. 102–194, §4, Dec. 9, 1991, 105 Stat. 1595; Pub. L. 105–305, §7(b), Oct. 28, 1998, 112 Stat. 2924; Pub. L. 110–69, title VII, §7024(a)(2), Aug. 9, 2007, 121 Stat. 689; Pub. L. 114–329, title I,

§105(d), Jan. 6, 2017, 130 Stat. 2977.)

EDITORIAL NOTES

AMENDMENTS

2017—Pars. (1), (2). Pub. L. 114–329, §105(d)(2), (3), added par. (1) and redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Par. (3). Pub. L. 114–329, §105(d)(1), (2), (4), redesignated par. (2) as (3), substituted "networking and information technology" for "high-performance computing", and struck out former par. (3) which read as follows: " 'high-performance computing' means advanced computing, communications, and information technologies, including supercomputer systems, high-capacity and high-speed networks, special purpose and experimental systems, applications and systems software, and the management of large data sets;".

Par. (4). Pub. L. 114–329, §105(d)(5), added par. (4). Former par. (4) redesignated (5).

Par. (5). Pub. L. 114–329, §105(d)(1), (2), redesignated par. (4) as (5) and struck out former par. (5) which read as follows: " 'Network' means a computer network referred to as the National Research and Education Network established under section 5512 of this title;".

Pars. (6), (7). Pub. L. 114–329, §105(d)(6), added pars. (6) and (7). Former pars. (6) and (7) redesignated (8) and (9), respectively.

Par. (8). Pub. L. 114–329, §105(d)(2), (7), redesignated par. (6) as (8) and substituted "Networking and Information Technology Research and Development Program" for "National High-Performance Computing Program".

Par. (9). Pub. L. 114–329, §105(d)(2), redesignated par. (7) as (9).

2007—Par. (2). Pub. L. 110–69, §7024(a)(2)(A), inserted "and multidisciplinary teams of researchers" after "high-performance computing resources".

Par. (3). Pub. L. 110–69, §7024(a)(2)(B), struck out "scientific workstations," after "technologies, including" and "(including vector supercomputers and large scale parallel systems)" after "supercomputer systems", substituted "applications" for "and applications", and inserted ", and the management of large data sets" after "systems software".

Par. (4). Pub. L. 110–69, §7024(a)(2)(C), struck out "packet switched" before "data networks".

Par. (7). Pub. L. 110–69, §7024(a)(2)(D)–(F), added par. (7).

1998—Pars. (4) to (6). Pub. L. 105–305 added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

SUBCHAPTER I—NETWORKING AND INFORMATION TECHNOLOGY RESEARCH AND DEVELOPMENT

EDITORIAL NOTES

CODIFICATION

Pub. L. 114–329, title I, §105(e), Jan. 6, 2017, 130 Stat. 2978, substituted "NETWORKING AND INFORMATION TECHNOLOGY" for "HIGH-PERFORMANCE COMPUTING" in subchapter heading.

§5511. Networking and Information Technology Research and Development Program

(a) Networking and Information Technology research and development

(1) The President shall implement a Networking and Information Technology Research and Development Program, which shall—

(A) provide for long-term basic and applied research on networking and information technology;

(B) provide for research and development on, and demonstration of, technologies to advance the capacity and capabilities of high-end computing and networking systems, and related software;

(C) provide for sustained access by the research community throughout the United States to high-end computing, distributed, and networking systems that are among the most advanced in the world in terms of performance in solving scientific and engineering problems, including provision for technical support for users of such systems;

(D) provide for efforts to increase software security and reliability;

(E) provide for high-performance networks, including experimental testbed networks, to enable research and development on, and demonstration of, advanced applications enabled by such networks;

(F) provide for computational science and engineering research on mathematical modeling and algorithms for applications in all fields of science and engineering;

(G) provide for the technical support of, and research and development on, high-end computing systems and software required to address Grand Challenges;

(H) provide support and guidance for educating and training additional undergraduate and graduate students in software engineering, computer science, computer and network security, applied mathematics, library and information science, and computational science;

(I) provide for improving the security, reliability, and resilience of computing and networking systems, including Federal systems, including providing for research required to establish security standards and practices for these systems;

(J) provide for improving the security, reliability, and resiliency of computing and networking systems used by institutions of higher education and other nonprofit research institutions for the processing, storage and transmission of sensitive federally funded research and associated data;

(K) provide for increased understanding of the scientific principles of cyber-physical systems and improve the methods available for the design, development, and operation of cyber-physical systems that are characterized by high reliability, safety, and security;

(L) provide for research and development on human-computer interactions, visualization, and big data;

(M) provide for research and development on the enhancement of cybersecurity, including the human facets of cyber threats and secure cyber systems;

(N) provide for the understanding of the science, engineering, policy, and privacy protection related to networking and information technology;

(O) provide for the transition of high-end computing hardware, system software, development tools, and applications into development and operations; and

(P) foster public-private collaboration among government, industry research laboratories, academia, and nonprofit organizations to maximize research and development efforts and the benefits of networking and information technology, including high-end computing.

(2) The Director shall—

(A) establish the goals and priorities for Federal networking and information technology research, development, education, and other activities;

(B) establish Program Component Areas that implement the goals established under subparagraph (A), and identify the Grand Challenges that the Program should address;

(C) provide for interagency coordination of Federal networking and information technology research, development, education, and other activities undertaken pursuant to the Program—

(i) among the participating agencies; and

(ii) to the extent practicable, with other Federal agencies not described in paragraph (3)(C), other Federal and private research laboratories, industry, research entities, institutions of higher education, relevant nonprofit organizations, and international partners of the United States;

(D) submit to the Congress an annual report, along with the President's annual budget request, describing the implementation of the Program;

(E) encourage and monitor the efforts of the agencies participating in the Program to allocate the level of resources and management attention necessary to ensure that the strategic plans under subsection (e) are developed and executed effectively and that the objectives of the Program are

met; and

(F) consult with academic, State, industry, and other appropriate groups conducting research on and using high-end computing.

(3) The annual report submitted under paragraph (2)(D) shall—

(A) provide a detailed description of the Program Component Areas, including a description of any changes in the definition of or activities under the Program Component Areas from the preceding report, and the reasons for such changes, and a description of Grand Challenges addressed under the Program;

(B) provide a detailed description of the nature and scope of research infrastructure designated as such under the Program;

(C) set forth the relevant programs and activities, for the fiscal year with respect to which the budget submission applies, of each Federal agency and department, including—

(i) the Department of Justice;

(ii) the Department of Commerce;

(iii) the Department of Defense;

(iv) the Department of Education;

(v) the Department of Energy;

(vi) the Department of Health and Human Services;

(vii) the Department of Homeland Security;

(viii) the National Archives and Records Administration;

(ix) the Environmental Protection Agency;

(x) the National Aeronautics and Space Administration;

(xi) the National Science Foundation; and

(xii) such other agencies and departments as the President or the Director considers appropriate;

(D) describe the levels of Federal funding for the fiscal year during which such report is submitted, the levels for the previous fiscal year, and the levels proposed for the fiscal year with respect to which the budget submission applies, for each Program Component Area and research area supported in accordance with section 5512 of this title;

(E) describe the levels of Federal funding for each participating agency, and for each Program Component Area, for the fiscal year during which such report is submitted, the levels for the previous fiscal year, and the levels proposed for the fiscal year with respect to which the budget submission applies;

(F) include a description of how the objectives for each Program Component Area, and the objectives for activities that involve multiple Program Component Areas, relate to the objectives of the Program identified in the strategic plans required under subsection (e); and

(G) include an analysis of the progress made toward achieving the goals and priorities established for the Program and the extent to which the Program incorporates the recommendations of the advisory committee established under subsection (b).

(b) Advisory committee

(1) The President shall establish an advisory committee on networking and information technology, consisting of geographically dispersed non-Federal members, including representatives of the research, education, and library communities, network and related software providers, and industry representatives in the Program Component Areas, who are specially qualified to provide the Director with advice and information on networking and information technology. Each chair of the advisory committee shall meet the qualifications of committee membership and may be a member of the President's Council of Advisors on Science and Technology. The recommendations of the advisory committee shall be considered in reviewing and revising the Program. The advisory committee shall provide the Director with an independent assessment of—

(A) progress made in implementing the Program;

(B) the need to revise the Program;

(C) the balance between the components of the Program, including funding levels for the Program Component Areas;

(D) whether the research and development undertaken pursuant to the Program is helping to maintain United States leadership in networking and information technology; and

(E) other issues identified by the Director.

(2) In addition to the duties outlined in paragraph (1), the advisory committee shall conduct periodic evaluations of the funding, management, coordination, implementation, and activities of the Program. The advisory committee shall report not less frequently than once every 3 fiscal years to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on its findings and recommendations.

(3) Section 1013 of title 5 shall not apply to the advisory committee established under this subsection.

(c) Office of Management and Budget

(1) Each Federal agency and department participating in the Program shall, as part of its annual request for appropriations to the Office of Management and Budget, submit a report to the Office of Management and Budget which—

(A) identifies each element of its networking and information technology activities which contributes directly to the Program Component Areas or benefits from the Program; and

(B) states the portion of its request for appropriations that is allocated to each such element.

(2) The Office of Management and Budget shall review each such report in light of the goals, priorities, and agency and departmental responsibilities set forth in the annual report submitted under subsection (a)(2)(D), and shall include, in the President's annual budget estimate, a statement of the portion of each appropriate agency's or department's annual budget estimate relating to its activities undertaken pursuant to the Program.

(d) Periodic reviews

The heads of the participating agencies, working through the National Science and Technology Council and the Program, shall—

(1) periodically assess and update, as appropriate, the structure of the Program, including the Program Component Areas and associated contents, scope, and funding levels, taking into consideration any relevant recommendations of the advisory committee established under subsection (b); and

(2) ensure that such agency's implementation of the Program includes foundational, large-scale, long-term, and interdisciplinary information technology research and development activities, including activities described in section 5512 of this title.

(e) Strategic plans

(1) In general

The heads of the participating agencies, working through the National Science and Technology Council and the Program, shall develop and implement strategic plans to guide—

(A) emerging activities of Federal networking and information technology research and development; and

(B) the activities described in subsection (a)(1).

(2) Updates

The heads of the participating agencies shall update the strategic plans as appropriate.

(3) Contents

Each strategic plan shall—

(A) specify near-term and long-term objectives for the portions of the Program relevant to the strategic plan, the anticipated schedule for achieving the near-term and long-term objectives,

and the metrics to be used for assessing progress toward the near-term and long-term objectives;

(B) specify how the near-term and long-term objectives complement research and development areas in which academia and the private sector are actively engaged;

(C) describe how the heads of the participating agencies will support mechanisms for foundational, large-scale, long-term, and interdisciplinary information technology research and development and for Grand Challenges, including through collaborations—

(i) across Federal agencies;

(ii) across Program Component Areas; and

(iii) with industry, Federal and private research laboratories, research entities, institutions of higher education, relevant nonprofit organizations, and international partners of the United States;

(D) describe how the heads of the participating agencies will foster the rapid transfer of research and development results into new technologies and applications in the national interest, including through cooperation and collaborations with networking and information technology research, development, and technology transition initiatives supported by the States; and

(E) describe how the portions of the Program relevant to the strategic plan will address long-term challenges for which solutions require foundational, large-scale, long-term, and interdisciplinary information technology research and development.

(4) Private sector efforts

In developing, implementing, and updating strategic plans, the heads of the participating agencies, working through the National Science and Technology Council and the Program, shall coordinate with industry, academia, and other interested stakeholders to ensure, to the extent practicable, that the Federal networking and information technology research and development activities carried out under this section do not duplicate the efforts of the private sector.

(5) Recommendations

In developing and updating strategic plans, the heads of the participating agencies shall solicit recommendations and advice from—

(A) the advisory committee under subsection (b);

(B) the Committee on Science and relevant subcommittees of the National Science and Technology Council; and

(C) a wide range of stakeholders, including industry, academia, National Laboratories, and other relevant organizations and institutions.

(f) Reports

The heads of the participating agencies, working through the National Science and Technology Council and the Program, shall submit to the advisory committee, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Science, Space, and Technology of the House of Representatives—

(1) the strategic plans developed under subsection (e)(1); and

(2) each update under subsection (e)(2).

(Pub. L. 102–194, title I, §101, Dec. 9, 1991, 105 Stat. 1595; Pub. L. 104–66, title I, §1052(k), Dec. 21, 1995, 109 Stat. 719; Pub. L. 105–305, §4, Oct. 28, 1998, 112 Stat. 2921; Pub. L. 110–69, title VII, §7024(a)(1)(B)–(D), Aug. 9, 2007, 121 Stat. 686–689; Pub. L. 114–329, title I, §105(f), Jan. 6, 2017, 130 Stat. 2978; Pub. L. 117–167, div. B, title III, §10374(d)(1), Aug. 9, 2022, 136 Stat. 1572; Pub. L. 117–286, §4(a)(75), Dec. 27, 2022, 136 Stat. 4314.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (a)(1)(D). Pub. L. 117–167, §10374(d)(1)(A), realigned margins.

Subsec. (a)(1)(J) to (P). Pub. L. 117–167, §10374(d)(1), added subpar. (J), redesignated former subpars. (J)

to (O) as (K) to (P), respectively, and realigned margins.

Subsec. (b)(3). Pub. L. 117–286 substituted "Section 1013 of title 5" for "Section 14 of the Federal Advisory Committee Act".

2017—Pub. L. 114–329, §105(f)(1), substituted "Networking and Information Technology Research and Development Program" for "National High-Performance Computing Program" in section catchline.

Subsec. (a). Pub. L. 114–329, §105(f)(2)(A), substituted "Networking and Information Technology research and development" for "National High-Performance Computing Program" in heading.

Subsec. (a)(1). Pub. L. 114–329, §105(f)(2)(B)(i), substituted "Networking and Information Technology Research and Development Program" for "National High-Performance Computing Program" in introductory provisions.

Subsec. (a)(1)(A). Pub. L. 114–329, §105(f)(2)(B)(ii), substituted "networking and information technology" for "high-performance computing, including networking".

Subsec. (a)(1)(B). Pub. L. 114–329, §105(f)(2)(B)(iii), substituted "high-end" for "high-performance".

Subsec. (a)(1)(C). Pub. L. 114–329, §105(f)(2)(B)(iv), substituted "high-end computing, distributed, and networking" for "high-performance computing and networking".

Subsec. (a)(1)(D). Pub. L. 114–329, §105(f)(2)(B)(v), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "provide for widely dispersed efforts to increase software availability, productivity, capability, security, portability, and reliability;".

Subsec. (a)(1)(G). Pub. L. 114–329, §105(f)(2)(B)(iii), substituted "high-end" for "high-performance".

Subsec. (a)(1)(H). Pub. L. 114–329, §105(f)(2)(B)(vi), inserted "support and guidance" after "provide" and struck out "and" at end.

Subsec. (a)(1)(I). Pub. L. 114–329, §105(f)(2)(B)(vii), substituted "improving the security, reliability, and resilience" for "improving the security" and semicolon for period at end.

Subsec. (a)(1)(J) to (O). Pub. L. 114–329, §105(f)(2)(B)(viii), added subpars. (J) to (O).

Subsec. (a)(2)(A). Pub. L. 114–329, §105(f)(2)(C)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "establish the goals and priorities for Federal high-performance computing research, development, networking, and other activities;".

Subsec. (a)(2)(C). Pub. L. 114–329, §105(f)(2)(C)(ii), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "provide for interagency coordination of Federal high-performance computing research, development, networking, and other activities undertaken pursuant to the Program;".

Subsec. (a)(2)(E). Pub. L. 114–329, §105(f)(2)(C)(iii), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: "develop and maintain a research, development, and deployment roadmap covering all States and regions for the provision of high-performance computing and networking systems under paragraph (1)(C); and".

Subsec. (a)(2)(F). Pub. L. 114–329, §105(f)(2)(C)(iv), substituted "high-end" for "high-performance".

Subsec. (a)(3)(B). Pub. L. 114–329, §105(f)(2)(D)(ii), added subpar. (B). Former subpar. (B) redesignated (C).

Subsec. (a)(3)(C). Pub. L. 114–329, §105(f)(2)(D)(i), redesignated subpar. (B) as (C). Former subpar. (C) redesignated (D).

Subsec. (a)(3)(C)(i). Pub. L. 114–329, §105(f)(2)(D)(iii)(I), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "the Department of Agriculture;".

Subsec. (a)(3)(C)(vii). Pub. L. 114–329, §105(f)(2)(D)(iii)(III), added cl. (vii). Former cl. (vii) redesignated (viii).

Subsec. (a)(3)(C)(viii). Pub. L. 114–329, §105(f)(2)(D)(iii)(II), (IV), redesignated cl. (vii) as (viii) and amended it generally. Prior to amendment, cl. (viii) read as follows: "the Department of the Interior;". Former cl. (viii) redesignated (ix).

Subsec. (a)(3)(C)(ix) to (xii). Pub. L. 114–329, §105(f)(2)(D)(iii)(II), redesignated cls. (viii) to (xi) as (ix) to (xii), respectively.

Subsec. (a)(3)(D). Pub. L. 114–329, §105(f)(2)(D)(i), (iv), redesignated subpar. (C) as (D) and substituted "is submitted, the levels for the previous fiscal year," for "is submitted," and "each Program Component Area and research area supported in accordance with section 5512 of this title;" for "each Program Component Area;". Former subpar. (D) redesignated (E).

Subsec. (a)(3)(E). Pub. L. 114–329, §105(f)(2)(D)(i), (v), redesignated subpar. (D) as (E) and amended it generally. Prior to amendment, subpar. (E) read as follows: "describe the levels of Federal funding for each agency and department participating in the Program, and for each Program Component Area, for the fiscal year during which such report is submitted, and the levels proposed for the fiscal year with respect to which the budget submission applies; and". Former subpar. (E) redesignated (G).

Subsec. (a)(3)(F). Pub. L. 114–329, §105(f)(2)(D)(vi), added subpar. (F).

Subsec. (a)(3)(G). Pub. L. 114–329, §105(f)(2)(D)(i), redesignated subpar. (E) as (G).

Subsec. (b)(1). Pub. L. 114–329, §105(f)(3)(A), in introductory provisions, substituted "networking and information technology" for "high-performance computing" in two places and inserted "Each chair of the advisory committee shall meet the qualifications of committee membership and may be a member of the President's Council of Advisors on Science and Technology." before "The recommendations".

Subsec. (b)(1)(D). Pub. L. 114–329, §105(f)(3)(B), substituted "networking and information technology" for "high-performance computing, networking technology, and related software".

Subsec. (b)(2). Pub. L. 114–329, §105(f)(3)(C), substituted "3 fiscal years" for "2 fiscal years" and "Committee on Science, Space, and Technology" for "Committee on Science and Technology" and struck out at end "The first report shall be due within 1 year after August 9, 2007."

Subsec. (c)(1)(A). Pub. L. 114–329, §105(f)(4), substituted "networking and information technology" for "high-performance computing".

Subsecs. (d) to (f). Pub. L. 114–329, §105(f)(5), added subsecs. (d) to (f).

2007—Subsec. (a)(1)(A) to (I). Pub. L. 110–69, §7024(a)(1)(B)(i), added subpars. (A) to (I) and struck out former subpars. (A) and (B) which read as follows:

"(A) establish the goals and priorities for Federal high-performance computing research, development, networking, and other activities; and

"(B) provide for interagency coordination of Federal high-performance computing research, development, networking, and other activities undertaken pursuant to the Program."

Subsec. (a)(2). Pub. L. 110–69, §7024(a)(1)(B)(ii), redesignated par. (3) as (2) and struck out former par. (2) which provided additional requirements for the National High-Performance Computing Program.

Subsec. (a)(2)(A) to (F). Pub. L. 110–69, §7024(a)(1)(B)(iii), added subpars. (A) to (C) and (E), redesignated former subpars. (A) and (C) as (D) and (F), respectively, and struck out former subpar. (B) which read as follows: "provide for interagency coordination of the Program; and".

Subsec. (a)(3). Pub. L. 110–69, §7024(a)(1)(B)(iv)(I), substituted "paragraph (2)(D)" for "paragraph (3)(A)" in introductory provisions.

Pub. L. 110–69, §7024(a)(1)(B)(ii), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (a)(3)(A). Pub. L. 110–69, §7024(a)(1)(B)(iv)(II), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: "include a detailed description of the goals and priorities established by the President for the Program;".

Subsec. (a)(3)(C). Pub. L. 110–69, §7024(a)(1)(B)(iv)(III), substituted "each Program Component Area" for "specific activities, including education, research, hardware and software development, and support for the establishment of the Network".

Subsec. (a)(3)(D). Pub. L. 110–69, §7024(a)(1)(B)(iv)(IV), (V), inserted ", and for each Program Component Area," after "participating in the Program" and "and" after "applies;".

Subsec. (a)(3)(E), (F). Pub. L. 110–69, §7024(a)(1)(B)(iv)(VI), (VII), redesignated subpar. (F) as (E), inserted "and the extent to which the Program incorporates the recommendations of the advisory committee established under subsection (b)" after "for the Program", and struck out former subpar. (E) which read as follows: "include the report of the Secretary of Energy required by section 5523(d) of this title; and".

Subsec. (b). Pub. L. 110–69, §7024(a)(1)(C), added subsec. (b) and struck out heading and text of former subsec. (b). Text consisted of pars. (1) to (5) which contained provisions similar to those now contained in par. (1).

Subsec. (c)(1)(A). Pub. L. 110–69, §7024(a)(1)(D)(i), substituted "Program Component Areas or" for "Program or".

Subsec. (c)(2). Pub. L. 110–69, §7024(a)(1)(D)(ii), substituted "subsection (a)(2)(D)" for "subsection (a)(3)(A)".

1998—Subsec. (a)(2)(A), (B). Pub. L. 105–305, §4(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. read as follows:

"(A) provide for the establishment of policies for management and access to the Network;

"(B) provide for oversight of the operation and evolution of the Network;".

Subsec. (b). Pub. L. 105–305, §4(b), struck out "High-performance computing" before "advisory committee" in heading.

1995—Subsec. (a)(4)(D) to (F). Pub. L. 104–66 struck out "and" at end of subpar. (D), added subpar. (E), and redesignated former subpar. (E) as (F).

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 1013 of Title 5, Government Organization and Employees.

EXECUTIVE DOCUMENTS

DELEGATION OF FUNCTIONS

President's Council of Advisors on Science and Technology to serve as the advisory committee identified in subsec. (b) of this section and to be known as the President's Innovation and Technology Advisory Committee when so serving, see section 3(b)(iii) of Ex. Ord. No. 14007, set out in a note under section 6601 of Title 42, The Public Health and Welfare.

EX. ORD. NO. 13035. PRESIDENT'S INFORMATION TECHNOLOGY ADVISORY COMMITTEE

Ex. Ord. No. 13035, Feb. 11, 1997, 62 F.R. 7131, as amended by Ex. Ord. No. 13092, July 24, 1998, 63 F.R. 40167; Ex. Ord. No. 13113, Feb. 10, 1999, 64 F.R. 7489; Ex. Ord. No. 13200, Feb. 11, 2001, 66 F.R. 10183; Ex. Ord. No. 13215, May 31, 2001, 66 F.R. 30285; Ex. Ord. No. 13305, May 28, 2003, 68 F.R. 32323, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the High-Performance Computing Act of 1991 (Public Law 102–194) ("Act") [15 U.S.C. 5501 et seq.], as amended by the Next Generation Internet Research Act of 1998 (Public Law 105–305) ("Research Act") [see Short Title of 1998 Amendment note set out under section 5501 of this title], and in order to establish an advisory committee on high-performance computing and communications, Information Technology [sic], and the Next Generation Internet, it is hereby ordered as follows:

SECTION 1. *Establishment*. There is established the "President's Information Technology Advisory Committee" ("Committee"). The Committee shall consist of not more than 30 nonfederal members appointed by the President, including representatives of the research, education, and library communities, network providers, and representatives from critical industries. Members appointed prior to June 1, 2001, shall serve until December 1, 2001, unless reappointed by the President. Members appointed or reappointed on or after June 1, 2001, shall serve for no more than 2 years from the date of their appointment, unless their period of service is extended by the President. The President shall designate two co-chairs from among the members of the Committee. A co-chair may serve for a term of 2 years or until the end of his or her service as a member of the Committee, whichever is the shorter period.

SEC. 2. *Functions*. (a) The Committee shall provide the National Science and Technology Council (NSTC), through the Director of the Office of Science and Technology Policy ("Director"), with advice and information on high-performance computing and communications, information technology, and the Next Generation Internet. The Committee shall provide an independent assessment of:

(1) progress made in implementing the High-Performance Computing and Communications (HPCC) Program;

(2) progress in designing and implementing the Next Generation Internet initiative;

(3) the need to revise the HPCC Program;

(4) balance among components of the HPCC Program;

(5) whether the research and development undertaken pursuant to the HPCC Program is helping to maintain United States leadership in advanced computing and communications technologies and their applications; and

(6) other issues as specified by the Director.

(b) The Committee shall carry out its responsibilities under the Research Act in the manner described in the Research Act.

SEC. 3. *Administration*. To the extent permitted by law and subject to the availability of appropriations, the Department of Defense shall provide the financial and administrative support for the Committee. Further, the Director of the National Coordination Office for Computing Information, and Communications ("Director of the NCO") shall provide such coordination and technical assistance to the Committee as the co-chairs of the Committee may request.

(a) The heads of executive agencies shall, to the extent permitted by law, provide to the Committee such information as it may require for the purpose of carrying out its functions.

(b) The co-chairs may, from time to time, invite experts to submit information to the Committee and may form subcommittees or working groups within the Committee to review specific issues.

(c) Members of the Committee shall serve without compensation but shall be allowed travel expenses,

including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

SEC. 4. *General*. (a) Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended [see 5 U.S.C. 1001 et seq.], except that of reporting to the Congress, that are applicable to the Committee shall be performed by the Director of the NCO in accordance with guidelines that have been issued by the Administrator of General Services.

(b) The Committee shall terminate June 1, 2005, unless extended by the President prior to such date.

§5512. Grand Challenges in areas of national importance

(a) In general

The Program shall encourage the participating agencies to support foundational, large-scale, long-term, interdisciplinary, and interagency information technology research and development activities in networking and information technology directed toward agency mission areas that have the potential for significant contributions to national economic competitiveness and for other significant societal benefits. Such activities, ranging from basic research to the demonstration of technical solutions, shall be designed to advance the development of fundamental discoveries. The advisory committee established under section 5511(b) of this title shall make recommendations to the Program for candidate research and development areas for support under this section.

(b) Characteristics

(1) In general

Research and development activities under this section shall—

(A) include projects selected on the basis of applications for support through a competitive, merit-based process;

(B) to the extent practicable, involve collaborations among researchers in institutions of higher education and industry, and may involve nonprofit research institutions and Federal laboratories, as appropriate;

(C) to the extent practicable, leverage Federal investments through collaboration with related State and private sector initiatives; and

(D) include a plan for fostering the transfer of research discoveries and the results of technology demonstration activities, including from institutions of higher education and Federal laboratories, to industry for commercial development.

(2) Cost-sharing

In selecting applications for support, the agencies may give special consideration to projects that include cost sharing from non-Federal sources.

(Pub. L. 102–194, title I, §102, as added Pub. L. 114–329, title I, §105(i), Jan. 6, 2017, 130 Stat. 2982.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5512, Pub. L. 102–194, title I, §102, Dec. 9, 1991, 105 Stat. 1598, related to the National Research and Education Network, prior to repeal by Pub. L. 114–329, title I, §105(g), Jan. 6, 2017, 130 Stat. 2982.

§5513. Repealed. Pub. L. 114–329, title I, §105(h), Jan. 6, 2017, 130 Stat. 2982

Section, Pub. L. 102–194, title I, §103, as added Pub. L. 105–305, §5, Oct. 28, 1998, 112 Stat. 2921; amended Pub. L. 106–65, div. A, title X, §1067(20), Oct. 5, 1999, 113 Stat. 775, related to the Next Generation Internet program.

SUBCHAPTER II—AGENCY ACTIVITIES

§5521. National Science Foundation activities

As part of the Program described in subchapter I—

(1) the National Science Foundation shall provide high-end computing and networking infrastructure support for all science and engineering disciplines, and support basic research and human resource development in all aspects of networking and information technology; and

(2) the National Science Foundation shall use its existing programs, in collaboration with other agencies, as appropriate, to improve the teaching and learning of networking and information technology at all levels of education and to increase participation in networking and information technology fields, including by individuals identified in sections 1885a and 1885b of title 42.

(Pub. L. 102–194, title II, §201, Dec. 9, 1991, 105 Stat. 1599; Pub. L. 114–329, title I, §105(j), Jan. 6, 2017, 130 Stat. 2983.)

EDITORIAL NOTES

AMENDMENTS

2017—Pub. L. 114–329, §105(j)(1)(A), (2), struck out subsec. (a) designation and heading "General responsibilities" and struck out subsec. (b) which authorized appropriations for fiscal years 1992 to 1996.

Par. (1). Pub. L. 114–329, §105(j)(1)(B), inserted "high-end" after "National Science Foundation shall provide" and substituted "networking and information technology; and" for "high-performance computing and advanced high-speed computer networking;".

Par. (2). Pub. L. 114–329, §105(j)(1)(C), (D), added par. (2) and struck out former par. (2) which read as follows: "to the extent that colleges, universities, and libraries cannot connect to the Network with the assistance of the private sector, the National Science Foundation shall have primary responsibility for assisting colleges, universities, and libraries to connect to the Network;".

Pars. (3), (4). Pub. L. 114–329, §105(j)(1)(C), struck out pars. (3) and (4) which read as follows:

"(3) the National Science Foundation shall serve as the primary source of information on access to and use of the Network; and

"(4) the National Science Foundation shall upgrade the National Science Foundation funded network, assist regional networks to upgrade their capabilities, and provide other Federal departments and agencies the opportunity to connect to the National Science Foundation funded network."

§5522. National Aeronautics and Space Administration activities

As part of the Program described in subchapter I, the National Aeronautics and Space Administration shall conduct basic and applied research in networking and information technology, particularly in the field of computational science, with emphasis on aerospace sciences, earth and space sciences, and remote exploration and experimentation.

(Pub. L. 102–194, title II, §202, Dec. 9, 1991, 105 Stat. 1600; Pub. L. 114–329, title I, §105(k), Jan. 6, 2017, 130 Stat. 2983.)

EDITORIAL NOTES

AMENDMENTS

2017—Pub. L. 114–329 struck out subsec. (a) designation and heading "General responsibilities", substituted "networking and information technology" for "high-performance computing", and struck out subsec. (b) which authorized appropriations for fiscal years 1992 to 1996.

§5523. Department of Energy activities

As part of the Program described in subchapter I, the Secretary of Energy shall—

(1) conduct and support basic and applied research in networking and information technology to support fundamental research in science and engineering disciplines related to energy applications; and

(2) provide computing and networking infrastructure support, including—

(A) the provision of high-end computing systems that are among the most advanced in the world in terms of performance in solving scientific and engineering problems; and

(B) support for advanced software and applications development for science and engineering disciplines related to energy applications.

(Pub. L. 102–194, title II, §203, Dec. 9, 1991, 105 Stat. 1600; Pub. L. 104–66, title I, §1052(j), Dec. 21, 1995, 109 Stat. 719; Pub. L. 109–58, title IX, §976(b), Aug. 8, 2005, 119 Stat. 903; Pub. L. 114–329, title I, §105(l), Jan. 6, 2017, 130 Stat. 2984.)

EDITORIAL NOTES

AMENDMENTS

2017—Pub. L. 114–329, §105(l)(1), (4), struck out subsec. (a) designation and heading "General responsibilities" and struck out subsec. (b) which authorized to be appropriated to the Secretary of Energy such sums as necessary to carry out this section.

Par. (1). Pub. L. 114–329, §105(l)(2), substituted "networking and information technology" for "high-performance computing and networking".

Par. (2)(A). Pub. L. 114–329, §105(l)(3), substituted "high-end" for "high-performance".

2005—Pub. L. 109–58 reenacted section catchline without change and amended text generally, substituting provisions relating to general responsibilities and authorization of appropriations for provisions relating to general responsibilities, establishment of High-Performance Computing Research and Development Collaborative Consortia, transfer of technology to private sector and others, reports on activities, and authorization of appropriations.

1995—Subsec. (d). Pub. L. 104–66 amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows: "Within one year after December 9, 1991, and every year thereafter, the Secretary of Energy shall transmit to the Congress a report on activities taken to carry out this chapter."

§5524. Department of Commerce activities

(a) General responsibilities

As part of the Program described in subchapter I—

(1) the National Institute of Standards and Technology shall—

(A) conduct basic and applied measurement research needed to support various networking and information technology systems and capabilities;

(B) develop and propose standards and guidelines, and develop measurement techniques and test methods, for the interoperability and usability of networking and information technology systems; and

(C) be responsible for developing benchmark tests and standards for networking and information technology systems and software; and

(2) the National Oceanic and Atmospheric Administration shall conduct basic and applied research in weather prediction and ocean sciences, particularly in development of new forecast models, in computational fluid dynamics, and in the incorporation of evolving computer architectures and networks into the systems that carry out agency missions.

(b) Networking and information technology security

The National Institute of Standards and Technology shall be responsible for developing and proposing standards and guidelines needed to assure the cost-effective security and privacy of

Federal agency information and information systems.

(Pub. L. 102–194, title II, §204, Dec. 9, 1991, 105 Stat. 1601; Pub. L. 114–329, title I, §105(m), Jan. 6, 2017, 130 Stat. 2984.)

EDITORIAL NOTES

AMENDMENTS

2017—Subsec. (a)(1)(A). Pub. L. 114–329, §105(m)(1)(A), substituted "networking and information technology systems and capabilities" for "high-performance computing systems and networks".

Subsec. (a)(1)(B). Pub. L. 114–329, §105(m)(1)(B), substituted "interoperability and usability of networking and information technology systems" for "interoperability of high-performance computing systems in networks and for common user interfaces to systems".

Subsec. (a)(1)(C). Pub. L. 114–329, §105(m)(1)(C), substituted "networking and information technology" for "high-performance computing".

Subsec. (b). Pub. L. 114–329, §105(m)(2), in heading, substituted "Networking and information technology" for "High-performance computing and network" and, in text, substituted "The National Institute" for "Pursuant to the Computer Security Act of 1987 (Public Law 100–235; 101 Stat. 1724), the National Institute" and "Federal agency information and information systems" for "sensitive information in Federal computer systems".

Subsecs. (c), (d). Pub. L. 114–329, §105(m)(3), struck out subsecs. (c) and (d) which required a study of the impact of Federal procurement regulations and authorized appropriations for fiscal years 1992 to 1996.

§5525. Repealed. Pub. L. 114–329, title I, §105(n), Jan. 6, 2017, 130 Stat. 2984

Section, Pub. L. 102–194, title II, §205, Dec. 9, 1991, 105 Stat. 1602, described Environmental Protection Agency activities and authorized appropriations for fiscal years 1992 to 1996.

§5526. Repealed. Pub. L. 114–329, title I, §105(o), Jan. 6, 2017, 130 Stat. 2984

Section, Pub. L. 102–194, title II, §206, Dec. 9, 1991, 105 Stat. 1602, described the role of the Department of Education and authorized appropriations for fiscal years 1992 to 1996.

§5527. Miscellaneous provisions

(a) Nonapplicability

Except to the extent the appropriate Federal agency or department head determines, the provisions of this chapter shall not apply to—

(1) programs or activities regarding computer systems that process classified information; or

(2) computer systems the function, operation, or use of which are those delineated in section 3552(b)(6)(A)(i) of title 44.

(b) Acquisition of prototype and early production models

In accordance with Federal contracting law, Federal agencies and departments participating in the Program may acquire prototype or early production models of new networking and information technology systems and subsystems to stimulate hardware and software development. Items of computing equipment acquired under this subsection shall be considered research computers for purposes of applicable acquisition regulations.

(Pub. L. 102–194, title II, §207, Dec. 9, 1991, 105 Stat. 1602; Pub. L. 114–329, title I, §105(p), Jan. 6, 2017, 130 Stat. 2984.)

EDITORIAL NOTES

AMENDMENTS

2017—Subsec. (a)(2). Pub. L. 114–329, §105(p)(1), substituted "section 3552(b)(6)(A)(i) of title 44" for "paragraphs (1) through (5) of section 2315(a) of title 10".

Subsec. (b). Pub. L. 114–329, §105(p)(2), substituted "networking and information technology" for "high-performance computing".

§5528. Repealed. Pub. L. 114–329, title I, §105(q), Jan. 6, 2017, 130 Stat. 2984

Section, Pub. L. 102–194, title II, §208, Dec. 9, 1991, 105 Stat. 1603; Pub. L. 110–69, title III, §3002(c)(6), Aug. 9, 2007, 121 Stat. 587, related to findings and annual reports for fostering United States competitiveness in high-performance computing and related activities.

SUBCHAPTER III—DEPARTMENT OF ENERGY HIGH-END COMPUTING REVITALIZATION

§5541. Definitions

In this subchapter:

(1) Department

The term "Department" means the Department of Energy.

(2) Exascale computing

The term "exascale computing" means computing through the use of a computing machine that performs near or above 10 to the 18th power operations per second.

(3) High-end computing system

The term "high-end computing system" means a computing system with performance that substantially exceeds that of systems that are commonly available for advanced scientific and engineering applications.

(4) Leadership System

The term "Leadership System" means a high-end computing system that is among the most advanced in the world in terms of performance in solving scientific and engineering problems.

(5) Institution of higher education

The term "institution of higher education" has the meaning given the term in section 1001(a) of title 20.

(6) Secretary

The term "Secretary" means the Secretary of Energy.

(Pub. L. 108–423, §2, Nov. 30, 2004, 118 Stat. 2400; Pub. L. 115–246, title III, §304(b)(2), formerly §304(a)(2), Sept. 28, 2018, 132 Stat. 3145, renumbered §304(b)(2), Pub. L. 117–167, div. B, title I, §10104(a)(1), Aug. 9, 2022, 136 Stat. 1433.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–423, Nov. 30, 2004, 118 Stat. 2400, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

CODIFICATION

This section was enacted as part of the American Super Computing Leadership Act of 2017 which comprises this subchapter, and not as part of the High-Performance Computing Act of 1991 which comprises this chapter.

AMENDMENTS

2018—Pars. (1) to (5). Pub. L. 115–246, §304(b)(2)(A), (B), formerly §304(a)(2)(A), (B), as renumbered by Pub. L. 117–167, added pars. (1) and (2), redesignated former pars. (2) to (4) as (3) to (5), respectively, and struck out former par. (1) which defined "Center". Former par. (5) redesignated (6).

Par. (6). Pub. L. 115–246, §304(b)(2)(A), (C), formerly §304(a)(2)(A), (C), as renumbered by Pub. L. 117–167, redesignated par. (5) as (6) and struck out ", acting through the Director of the Office of Science of the Department of Energy" before period at end.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

This subchapter known as the "American Super Computing Leadership Act of 2017", see Short Title note set out under section 5501 of this title.

§5542. Department of Energy high-end computing research and development program

(a) In general

The Secretary shall—

(1) carry out a coordinated program across the Department of research and development (including development of software and hardware) to advance high-end computing systems; and

(2) develop and deploy high-end computing systems for advanced scientific and engineering applications.

(b) Program

The program shall—

(1) support both individual investigators and multidisciplinary teams of investigators;

(2) conduct research in multiple architectures;

(3) conduct research on software for high-end computing systems, including research on algorithms, programming environments, tools, languages, and operating systems for high-end computing systems, in collaboration with architecture development efforts;

(4) provide for sustained access by the research community in the United States to high-end computing systems and to Leadership Systems, including provision of technical support for users of such systems;

(5) support technology transfer to the private sector and others in accordance with applicable law; and

(6) ensure that the high-end computing activities of the Department of Energy are coordinated with relevant activities in industry and with other Federal agencies, including the National Science Foundation, the Defense Advanced Research Projects Agency, the National Nuclear Security Administration, the National Security Agency, the National Institutes of Health, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Institutes of Standards and Technology, and the Environmental Protection Agency.

(c) Leadership Systems facilities

(1) In general

As part of the program carried out under this subchapter, the Secretary shall establish and operate 1 or more Leadership Systems facilities to—

(A) conduct advanced scientific and engineering research and development using Leadership Systems; and

(B) develop potential advancements in high-end computing system hardware and software.

(2) Administration

In carrying out this subsection, the Secretary shall provide to Leadership Systems, on a competitive, merit-reviewed basis, access to researchers in United States industry, institutions of higher education, national laboratories, and other Federal agencies.

(d) Exascale Computing Program

(1) In general

The Secretary shall conduct a research program (referred to in this subsection as the "Program") for exascale computing, including the development of two or more exascale computing machine architectures, to promote the missions of the Department.

(2) Execution

(A) In general

In carrying out the Program, the Secretary shall—

(i) establish two or more National Laboratory partnerships with industry partners and institutions of higher education for the research and development of two or more exascale computing architectures across all applicable organizations of the Department;

(ii) conduct mission-related codesign activities in developing the exascale computing architectures under clause (i);

(iii) develop such advancements in hardware and software technology as are required to fully realize the potential of an exascale production system in addressing Department target applications and solving scientific problems involving predictive modeling and simulation and large scale data analytics and management;

(iv) explore the use of exascale computing technologies to advance a broad range of science and engineering; and

(v) provide, as appropriate, on a competitive, merit-reviewed basis, access for researchers in industries in the United States, institutions of higher education, National Laboratories, and other Federal agencies to the exascale computing systems developed pursuant to clause (i).

(B) Selection of partners

The Secretary shall select the partnerships with the computing facilities of the Department under subparagraph (A) through a competitive, peer-review process.

(3) Codesign and application development

(A) In general

The Secretary shall—

(i) carry out the Program through an integration of applications, computer science, applied mathematics, and computer hardware architecture using the partnerships established pursuant to paragraph (2) to ensure that, to the maximum extent practicable, two or more exascale computing machine architectures are capable of solving Department target applications and broader scientific problems, including predictive modeling and simulation and large scale data analytics and management; and

(ii) conduct outreach programs to increase the readiness for the use of such platforms by domestic industries, including manufacturers.

(B) Report

The Secretary shall submit to Congress a report describing—

(i) how the integration under subparagraph (A) is furthering application science data and computational workloads across application interests, including national security, material science, physical science, cybersecurity, biological science, the Materials Genome and BRAIN Initiatives of the President, advanced manufacturing, and the national electric grid; and

(ii) the roles and responsibilities of National Laboratories and industry, including the

definition of the roles and responsibilities within the Department to ensure an integrated program across the Department.

(4) Project review

(A) In general

The exascale architectures developed pursuant to partnerships established pursuant to paragraph (2) shall be reviewed through a project review process.

(B) Report

Not later than 90 days after September 28, 2018, the Secretary shall submit to Congress a report on—

(i) the results of the review conducted under subparagraph (A); and

(ii) the coordination and management of the Program to ensure an integrated research program across the Department.

(5) Annual reports

At the time of the budget submission of the Department for each fiscal year, the Secretary, in consultation with the members of the partnerships established pursuant to paragraph (2), shall submit to Congress a report that describes funding for the Program as a whole by functional element of the Department and critical milestones.

(Pub. L. 108–423, §3, Nov. 30, 2004, 118 Stat. 2400; Pub. L. 115–246, title III, §304(b)(3), formerly §304(a)(3), Sept. 28, 2018, 132 Stat. 3145, renumbered §304(b)(3), Pub. L. 117–167, div. B, title I, §10104(a)(1), Aug. 9, 2022, 136 Stat. 1433.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsec. (c)(1), was in the original "this Act", meaning Pub. L. 108–423, Nov. 30, 2004, 118 Stat. 2400, which is classified principally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

CODIFICATION

This section was enacted as part of the American Super Computing Leadership Act of 2017 which comprises this subchapter, and not as part of the High-Performance Computing Act of 1991 which comprises this chapter.

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115–246, §304(b)(3)(A), formerly §304(a)(3)(A), as renumbered by Pub. L. 117–167, substituted "coordinated program across the Department" for "program".

Subsec. (b)(2). Pub. L. 115–246, §304(b)(3)(B), formerly §304(a)(3)(B), as renumbered by Pub. L. 117–167, struck out ", which may include vector, reconfigurable logic, streaming, processor-in-memory, and multithreading architectures" before semicolon at end.

Subsec. (d). Pub. L. 115–246, §304(b)(3)(C), formerly §304(a)(3)(C), as renumbered by Pub. L. 117–167, added subsec. (d) and struck out former subsec. (d) which related to the establishment of a High-End Software Development Center.

§5543. Repealed. Pub. L. 114–329, title I, §105(u), Jan. 6, 2017, 130 Stat. 2985

Section, Pub. L. 108–423, §4, Nov. 30, 2004, 118 Stat. 2402, authorized appropriations for fiscal years 2005 to 2007.

§5544. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 116–260, div. Z, title IX, §9008, Dec. 27, 2020, 134 Stat. 2600, which related to veterans' health initiative, was transferred to section 9462 of this title.

CHAPTER 82—LAND REMOTE SENSING POLICY

§5601. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 102–555, §2, Oct. 28, 1992, 106 Stat. 4163, which related to findings, was transferred and is set out as a note under section 60101 of Title 51, National and Commercial Space Programs.

§5602. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section, Pub. L. 102–555, §3, Oct. 28, 1992, 106 Stat. 4164, provided definitions for this chapter. See section 60101 of Title 51, National and Commercial Space Programs.

SUBCHAPTER I—LANDSAT

§§5611 to 5615. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5611, Pub. L. 102–555, title I, §101, Oct. 28, 1992, 106 Stat. 4166, related to management of the Landsat Program. See section 60111 of Title 51, National and Commercial Space Programs.

Section 5612, Pub. L. 102–555, title I, §102, Oct. 28, 1992, 106 Stat. 4168, related to procurement of Landsat 7.

Section 5613, Pub. L. 102–555, title I, §103, Oct. 28, 1992, 106 Stat. 4168, related to data policy for Landsat 4 through 6.

Section 5614, Pub. L. 102–555, title I, §104, Oct. 28, 1992, 106 Stat. 4170, related to transfer of Landsat 6 program responsibilities. See section 60112 of Title 51.

Section 5615, Pub. L. 102–555, title I, §105, Oct. 28, 1992, 106 Stat. 4170, related to data policy for Landsat 7. See section 60113 of Title 51.

SUBCHAPTER II—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

§§5621 to 5625. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5621, Pub. L. 102–555, title II, §201, Oct. 28, 1992, 106 Stat. 4171; Pub. L. 105–303, title I, §107(f)(1), Oct. 28, 1998, 112 Stat. 2854, related to general licensing authority. See section 60121 of Title 51, National and Commercial Space Programs.

Section 5622, Pub. L. 102–555, title II, §202, Oct. 28, 1992, 106 Stat. 4172; Pub. L. 105–303, title I, §107(f)(2), Oct. 28, 1998, 112 Stat. 2854, related to conditions for operation. See section 60122 of Title 51.

Section 5623, Pub. L. 102–555, title II, §203, Oct. 28, 1992, 106 Stat. 4172, related to administrative authority of Secretary. See section 60123 of Title 51.

Section 5624, Pub. L. 102–555, title II, §204, Oct. 28, 1992, 106 Stat. 4173, related to regulatory authority of Secretary. See section 60124 of Title 51.

Section 5625, Pub. L. 102–555, title II, §205, Oct. 28, 1992, 106 Stat. 4173, related to agency activities. See section 60125 of Title 51.

SUBCHAPTER III—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

§§5631 to 5633. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5631, Pub. L. 102–555, title III, §301, Oct. 28, 1992, 106 Stat. 4174, related to continued Federal research and development. See section 60131 of Title 51, National and Commercial Space Programs.

Section 5632, Pub. L. 102–555, title III, §302, Oct. 28, 1992, 106 Stat. 4174, related to availability of federally gathered unenhanced data. See section 60132 of Title 51.

Section 5633, Pub. L. 102–555, title III, §303, Oct. 28, 1992, 106 Stat. 4174, related to technology demonstration program. See section 60133 of Title 51.

SUBCHAPTER IV—ASSESSING OPTIONS FOR SUCCESSOR LAND REMOTE SENSING SYSTEM

§5641. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section, Pub. L. 102–555, title IV, §401, Oct. 28, 1992, 106 Stat. 4175, related to assessing options for successor land remote sensing system. See section 60134 of Title 51, National and Commercial Space Programs.

SUBCHAPTER V—GENERAL PROVISIONS

§§5651 to 5658. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5651, Pub. L. 102–555, title V, §501, Oct. 28, 1992, 106 Stat. 4176, related to nondiscriminatory data availability. See section 60141 of Title 51, National and Commercial Space Programs.

Section 5652, Pub. L. 102–555, title V, §502, Oct. 28, 1992, 106 Stat. 4176, related to archiving of data. See section 60142 of Title 51.

Section 5653, Pub. L. 102–555, title V, §503, Oct. 28, 1992, 106 Stat. 4177, related to nonreproduction of unenhanced data. See section 60143 of Title 51.

Section 5654, Pub. L. 102–555, title V, §504, Oct. 28, 1992, 106 Stat. 4177, related to reimbursement for assistance. See section 60144 of Title 51.

Section 5655, Pub. L. 102–555, title V, §505, Oct. 28, 1992, 106 Stat. 4177, related to acquisition of equipment. See section 60145 of Title 51.

Section 5656, Pub. L. 102–555, title V, §506, Oct. 28, 1992, 106 Stat. 4177, related to radio frequency allocation. See section 60146 of Title 51.

Section 5657, Pub. L. 102–555, title V, §507, Oct. 28, 1992, 106 Stat. 4178, related to consultation regarding national security, international obligations, status reports, and certain reimbursements. See section 60147 of Title 51.

Section 5658, Pub. L. 102–555, title V, §508, Oct. 28, 1992, 106 Stat. 4179, related to enforcement of

prohibition of data use for commercial purposes. See section 60148 of Title 51.

SUBCHAPTER VI—PROHIBITION OF COMMERCIALIZATION OF WEATHER SATELLITES

§§5671, 5672. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5671, Pub. L. 102–555, title VI, §601, Oct. 28, 1992, 106 Stat. 4179, prohibited commercialization of weather satellite systems. See section 60161 of Title 51, National and Commercial Space Programs.

Section 5672, Pub. L. 102–555, title VI, §602, Oct. 28, 1992, 106 Stat. 4180, related to future considerations. See section 60162 of Title 51.

CHAPTER 83—TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION

Sec.

§5701. Short title; findings

(a) Short title

This chapter may be cited as the "Telephone Disclosure and Dispute Resolution Act".

(b) Findings

The Congress finds the following:

(1) The use of pay-per-call services, most commonly through the use of 900 telephone numbers, has grown exponentially in the past few years into a national, billion-dollar industry as a result of recent technological innovations. Such services are convenient to consumers, cost-effective to vendors, and profitable to communications common carriers.

(2) Many pay-per-call businesses provide valuable information, increase consumer choices, and stimulate innovative and responsive services that benefit the public.

(3) The interstate nature of the pay-per-call industry means that its activities are beyond the reach of individual States and therefore requires Federal regulatory treatment to protect the public interest.

(4) The lack of nationally uniform regulatory guidelines has led to confusion for callers, subscribers, industry participants, and regulatory agencies as to the rights of callers and the oversight responsibilities of regulatory authorities, and has allowed some pay-per-call businesses to engage in practices that abuse the rights of consumers.

(5) Some interstate pay-per-call businesses have engaged in practices which are misleading to the consumer, harmful to the public interest, or contrary to accepted standards of business

practices and thus cause harm to the many reputable businesses that are serving the public.

(6) Because the consumer most often incurs a financial obligation as soon as a pay-per-call transaction is completed, the accuracy and descriptiveness of vendor advertisements become crucial in avoiding consumer abuse. The obligation for accuracy should include price-per-call and duration-of-call information, odds disclosure for lotteries, games, and sweepstakes, and obligations for obtaining parental consent from callers under 18.

(7) The continued growth of the legitimate pay-per-call industry is dependent upon consumer confidence that unfair and deceptive behavior will be effectively curtailed and that consumers will have adequate rights of redress.

(8) Vendors of telephone-billed goods and services must also feel confident in their rights and obligations for resolving billing disputes if they are to use this new marketplace for the sale of products of more than nominal value.

(Pub. L. 102–556, §1, Oct. 28, 1992, 106 Stat. 4181.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 102–556, Oct. 28, 1992, 106 Stat. 4181, which enacted this chapter and section 228 of Title 47, Telecommunications, amended sections 227 and 302a of Title 47, enacted provisions set out as a note under section 302a of Title 47, and amended provisions set out as a note under section 227 of Title 47. For complete classification of this Act to the Code, see Tables.

SUBCHAPTER I—REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH PAY-PER-CALL SERVICES

§5711. Federal Trade Commission regulations

(a) In general

(1) Advertising regulations

The Commission shall prescribe rules in accordance with this subsection to prohibit unfair and deceptive acts and practices in any advertisement for pay-per-call services. Such rules shall require that the person offering such pay-per-call services—

(A) clearly and conspicuously disclose in any advertising the cost of the use of such telephone number, including the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(B) in the case of an advertisement which offers a prize or award or a service or product at no cost or for a reduced cost, clearly and conspicuously disclose the odds of being able to receive such prize, award, service, or product at no cost or reduced cost, or, if such odds are not calculable in advance, disclose the factors determining such odds;

(C) in the case of an advertisement that promotes a service that is not operated or expressly authorized by a Federal agency but that provides information on a Federal program, include at the beginning of such advertisement a clear disclosure that the service is not authorized, endorsed, or approved by any Federal agency;

(D) shall not direct such advertisement at children under the age of 12, unless such service is a bona fide educational service;

(E) in the case of advertising directed primarily to individuals under the age of 18, clearly and conspicuously state in such advertising that such individual must have the consent of such

individual's parent or legal guardian for the use of such services;

(F) be prohibited from using advertisements that emit electronic tones which can automatically dial a pay-per-call telephone number;

(G) ensure that, whenever the number to be called is shown in television and print media advertisements, the charges for the call are clear and conspicuous and (when shown in television advertisements) displayed for the same duration as that number is displayed;

(H) in delivering any telephone message soliciting calls to a pay-per-call service, specify clearly, and at no less than the audible volume of the solicitation, the total cost and the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred; and

(I) not advertise an 800 telephone number, or any other telephone number advertised or widely understood to be toll free, from which callers are connected to an access number for a pay-per-call service.

(2) Pay-per-call service standards

The Commission shall prescribe rules to require that each provider of pay-per-call services—

(A) include in each pay-per-call message an introductory disclosure message that—

(i) describes the service being provided;

(ii) specifies clearly and at a reasonably understandable volume the total cost or the cost per minute and any other fees for that service and for any other pay-per-call service to which the caller may be transferred;

(iii) informs the caller that charges for the call begin at the end of the introductory message;

(iv) informs the caller that parental consent is required for calls made by children; and

(v) in the case of a pay-per-call service that is not operated or expressly authorized by a Federal agency but that provides information on any Federal program, a statement that clearly states that the service is not authorized, endorsed, or approved by any Federal agency;

(B) enable the caller to hang up at or before the end of the introductory message without incurring any charge whatsoever;

(C) not direct such services at children under the age of 12, unless such service is a bona fide educational service;

(D) stop the assessment of time-based charges immediately upon disconnection by the caller;

(E) disable any bypass mechanism which allows frequent callers to avoid listening to the disclosure message described in subparagraph (A) after the institution of any price increase and for a period of time sufficient to give such frequent callers adequate and sufficient notice of the price change;

(F) be prohibited from providing pay-per-call services through an 800 number or other telephone number advertised or widely understood to be toll free;

(G) be prohibited from billing consumers in excess of the amounts described in the introductory message and from billing for services provided in violation of the rules prescribed by the Commission pursuant to this section;

(H) ensure that any billing statement for such provider's charges shall—

(i) display any charges for pay-per-call services in a part of the consumer's bill that is identified as not being related to local and long distance telephone charges; and

(ii) for each charge so displayed, specify, at a minimum, the type of service, the amount of the charge, and the date, time, and duration of the call;

(I) be liable for refunds to consumers who have been billed for pay-per-call services pursuant to programs that have been found to have violated the regulations prescribed pursuant to this section or subchapter II of this chapter or any other Federal law; and

(J) comply with such additional standards as the Commission may prescribe to prevent abusive practices.

(3) Access to information

The Commission shall by rule require a common carrier that provides telephone services to a provider of pay-per-call services to make available to the Commission any records and financial information maintained by such carrier relating to the arrangements (other than for the provision of local exchange service) between such carrier and any provider of pay-per-call services.

(4) Evasions

The rules issued by the Commission under this section shall include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this subchapter, including through the use of alternative billing or other procedures.

(5) Exemptions

The regulations prescribed by the Commission pursuant to paragraph (2)(A) may exempt from the requirements of such paragraph—

(A) calls from frequent callers or regular subscribers using a bypass mechanism to avoid listening to the disclosure message required by such regulations, subject to the requirements of paragraph (2)(E); or

(B) pay-per-call services provided at nominal charges, as defined by the Commission in such regulations.

(6) Consideration of other rules required

In conducting a proceeding under this section, the Commission shall consider requiring, by rule or regulation, that providers of pay-per-call services—

(A) automatically disconnect a call after one full cycle of the program; and

(B) include a beep tone or other appropriate and clear signal during a live interactive group program so that callers will be alerted to the passage of time.

(7) Special rule for infrequent publications

The rules prescribed by the Commission under subparagraphs (A) and (G) of paragraph (1) may permit, in the case of publications that are widely distributed, that are printed annually or less frequently, and that have an established policy of not publishing specific prices, advertising that in lieu of the cost disclosures required by such subparagraphs, clearly and conspicuously disclose that use of the telephone number may result in a substantial charge.

(8) Treatment of rules

A rule issued under this subsection shall be treated as a rule issued under section 57a(a)(1)(B) of this title.

(b) Rulemaking

The Commission shall prescribe the rules under subsection (a) within 270 days after October 28, 1992. Such rules shall be prescribed in accordance with section 553 of title 5.

(c) Enforcement

Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule respecting unfair or deceptive acts or practices under section 45 of this title. Notwithstanding section 45(a)(2) of this title, communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this subchapter.

(Pub. L. 102–556, title II, §201, Oct. 28, 1992, 106 Stat. 4187.)

§5712. Actions by States

(a) In general

Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged

or is engaging in a pattern or practice which violates any rule of the Commission under section 5711(a) of this title, the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such pattern or practice, to enforce compliance with such rule of the Commission, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(b) Notice

The State shall serve prior written notice of any civil action under subsection (a) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) Venue

Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

(d) Investigatory powers

For purposes of bringing any civil action under this section, nothing in this chapter shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) Effect on State court proceedings

Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

(f) Limitation

Whenever the Commission has instituted a civil action for violation of any rule or regulation under this chapter, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(g) Actions by other State officials

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers and who are designated by the Commission to bring an action under subsection (a) against persons that the Commission has determined have or are engaged in a pattern or practice which violates a rule of the Commission under section 5711(a) of this title.

(Pub. L. 102–556, title II, §202, Oct. 28, 1992, 106 Stat. 4190.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (d) and (f), was in the original "this Act", meaning Pub. L. 102–556, Oct. 28, 1992, 106 Stat. 4181, known as the Telephone Disclosure and Dispute Resolution Act. For complete classification of this Act to the Code, see References in Text note set out under section 5701 of this title and Tables.

§5713. Administration and applicability of subchapter

(a) In general

Except as otherwise provided in section 5712 of this title, this subchapter shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this chapter, except for purposes of this subchapter.

(b) Actions by Commission

The Commission shall prevent any person from violating a rule of the Commission under section 5711 of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this subchapter. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this subchapter.

(Pub. L. 102–556, title II, §203, Oct. 28, 1992, 106 Stat. 4191.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

§5714. Definitions

For purposes of this subchapter:

(1) The term "pay-per-call services" has the meaning provided in section 228(i) of title 47, except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of section 228(i)(1) of title 47, extend such definition to other similar services providing audio information or audio entertainment if the Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 5711(a) of this title.

(2) The term "attorney general" means the chief legal officer of a State.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "Commission" means the Federal Trade Commission.

(Pub. L. 102–556, title II, §204, Oct. 28, 1992, 106 Stat. 4191; Pub. L. 104–104, title VII, §701(b)(1), Feb. 8, 1996, 110 Stat. 147.)

EDITORIAL NOTES

AMENDMENTS

1996—Par. (1). Pub. L. 104–104 amended par. (1) generally. Prior to amendment, par. (1) read as follows: "The term 'pay-per-call services' has the meaning provided in section 228 of title 47."

SUBCHAPTER II—BILLING AND COLLECTION

§5721. Regulations

(a) In general

(1) Rules required

The Commission shall, in accordance with the requirements of this section, prescribe rules establishing procedures for the correction of billing errors with respect to telephone-billed purchases. The rules prescribed by the Commission shall also include provisions to prohibit unfair or deceptive acts or practices that evade such rules or undermine the rights provided to customers under this subchapter.

(2) Substantial similarity to credit billing

The Commission shall promulgate rules under this section that impose requirements that are substantially similar to the requirements imposed, with respect to the resolution of credit disputes, under the Truth in Lending and Fair Credit Billing Acts [15 U.S.C. 1601 et seq., 1666 et seq.].

(3) Treatment of rule

A rule issued under paragraph (1) shall be treated as a rule issued under section 57a(a)(1)(B) of this title.

(b) Rulemaking schedule and procedure

The Commission shall prescribe the rules under subsection (a) within 270 days after October 28, 1992. Such rules shall be prescribed in accordance with section 553 of title 5.

(c) Enforcement

Any violation of any rule prescribed under subsection (a) shall be treated as a violation of a rule under section 45 of this title regarding unfair or deceptive acts or practices. Notwithstanding section 45(a)(2) of this title, communications common carriers shall be subject to the jurisdiction of the Commission for purposes of this subchapter.

(d) Correction of billing errors and correction of credit reports

In prescribing rules under this section, the Commission shall consider, with respect to telephone-billed purchases, the following:

(1) The initiation of a billing review by a customer.

(2) Responses by billing entities and providing carriers to the initiation of a billing review.

(3) Investigations concerning delivery of telephone-billed purchases.

(4) Limitations upon providing carrier responsibilities, including limitations on a carrier's responsibility to verify delivery of audio information or entertainment.

(5) Requirements on actions by billing entities to set aside charges from a customer's billing statement.

(6) Limitations on collection actions by billing entities and vendors.

(7) The regulation of credit reports on billing disputes.

(8) The prompt notification of credit to an account.

(9) Rights of customers and telephone common carriers regarding claims and defenses.

(10) The extent to which the regulations should diverge from requirements under the Truth in Lending and Fair Credit Billing Acts [15 U.S.C. 1601 et seq., 1666 et seq.] in order to protect customers, and in order to be cost effective to billing entities.

(Pub. L. 102–556, title III, §301, Oct. 28, 1992, 106 Stat. 4191.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Truth in Lending Act, referred to in subsecs. (a)(2) and (d)(10), is title I of Pub. L. 90–321, May 29, 1968, 82 Stat. 146, which is classified generally to subchapter I (§1601 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

The Fair Credit Billing Act, referred to in subsecs. (a)(2) and (d)(10), is title III of Pub. L. 93–495, Oct. 28, 1974, 88 Stat. 1511, which is classified principally to part D (§1666 et seq.) of subchapter I of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 1601 of this title and Tables.

§5722. Relation to State laws

(a) State law applicable unless inconsistent

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with, the laws of any State with respect to telephone billing practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. The Commission is authorized to determine whether such inconsistencies exist. The Commission may not determine that any State law is inconsistent with any provision of this subchapter [1] if the Commission determines that such law gives greater protection to the consumer.

(b) Regulatory exemptions

The Commission shall by regulation exempt from the requirements of this subchapter any class of telephone-billed purchase transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this subchapter [1] or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

(Pub. L. 102–556, title III, §302, Oct. 28, 1992, 106 Stat. 4192.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to the last time in subsecs. (a) and (b), was in the original "this chapter" and was translated as reading "this title" meaning title III of Pub. L. 102–556, to reflect the probable intent of Congress because Pub. L. 102–556 does not contain chapters.

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

§5723. Enforcement

The Commission shall enforce the requirements of this subchapter. For the purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All the functions and powers of the Commission under that Act are available to the Commission to enforce compliance by any person with the requirements imposed under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in that Act. The Commission may prescribe such regulations as are necessary or appropriate to implement the provisions of this subchapter.

(Pub. L. 102–556, title III, §303, Oct. 28, 1992, 106 Stat. 4192.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

§5724. Definitions

As used in this subchapter—

(1) The term "telephone-billed purchase" means any purchase that is completed solely as a consequence of the completion of the call or a subsequent dialing, touch tone entry, or comparable action of the caller. Such term does not include—

(A) a purchase by a caller pursuant to a preexisting agreement with the vendor;

(B) local exchange telephone services or interexchange telephone services or any service that the Federal Communications Commission determines, by rule—

(i) is closely related to the provision of local exchange telephone services or interexchange telephone services; and

(ii) is subject to billing dispute resolution procedures required by Federal or State statute or regulation; or

(C) the purchase of goods or services which is otherwise subject to billing dispute resolution procedures required by Federal statute or regulation.

(2) A "billing error" consists of any of the following:

(A) A reflection on a billing statement for a telephone-billed purchase which was not made by the customer or, if made, was not in the amount reflected on such statement.

(B) A reflection on a billing statement of a telephone-billed purchase for which the customer requests additional clarification, including documentary evidence thereof.

(C) A reflection on a billing statement of a telephone-billed purchase that was not accepted by the customer or not provided to the customer in accordance with the stated terms of the transaction.

(D) A reflection on a billing statement of a telephone-billed purchase for a call made to an 800 or other toll free telephone number.

(E) The failure to reflect properly on a billing statement a payment made by the customer or a credit issued to the customer with respect to a telephone-billed purchase.

(F) A computation error or similar error of an accounting nature on a statement.

(G) Failure to transmit the billing statement to the last known address of the customer, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(H) Any other error described in regulations prescribed by the Commission pursuant to section 553 of title 5.

(3) The term "Commission" means the Federal Trade Commission.

(4) The term "providing carrier" means a local exchange or interexchange common carrier providing telephone services (other than local exchange services) to a vendor for a telephone-billed purchase that is the subject of a billing error complaint.

(5) The term "vendor" means any person who, through the use of the telephone, offers goods or services for a telephone-billed purchase.

(6) The term "customer" means any person who acquires or attempts to acquire goods or services in a telephone-billed purchase.

(Pub. L. 102–556, title III, §304, Oct. 28, 1992, 106 Stat. 4193.)

CHAPTER 84—COMMERCIAL SPACE COMPETITIVENESS

§5801. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 102–588, title V, §501, Nov. 4, 1992, 106 Stat. 5122, which related to findings, was transferred and is set out as a note under section 50501 of Title 51, National and Commercial Space Programs.

§§5802, 5803. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5802, Pub. L. 102–588, title V, §502, Nov. 4, 1992, 106 Stat. 5123, provided definitions for this chapter. See section 50501 of Title 51, National and Commercial Space Programs.

Section 5803, Pub. L. 102–588, title V, §504, Nov. 4, 1992, 106 Stat. 5124; Pub. L. 105–303, title I, §103, Oct. 28, 1998, 112 Stat. 2851, related to launch voucher demonstration program. See section 50502 of Title 51.

§5804. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 102–588, title V, §505, Nov. 4, 1992, 106 Stat. 5124, related to space transportation infrastructure matching grants.

§§5805 to 5808. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444

Section 5805, Pub. L. 102–588, title V, §506, Nov. 4, 1992, 106 Stat. 5127, related to identification of launch support facilities.

Section 5806, Pub. L. 102–588, title V, §507, Nov. 4, 1992, 106 Stat. 5127, related to anchor tenancy and termination liability. See section 50503 of Title 51, National and Commercial Space Programs.

Section 5807, Pub. L. 102–588, title V, §508, Nov. 4, 1992, 106 Stat. 5128, related to use of Government facilities. See section 50504 of Title 51.

Section 5808, Pub. L. 102–588, title V, §510, Nov. 4, 1992, 106 Stat. 5129, related to Commercial Space Achievement Award. See section 50506 of Title 51.

CHAPTER 85—ARMORED CAR INDUSTRY RECIPROCITY

Sec.

§5901. Findings

Congress finds that—

(1) the distribution of goods and services to consumers in the United States requires the free flow of currency, bullion, securities, supplemental nutrition assistance program benefits, and other items of unusual value in interstate commerce;

(2) the armored car industry transports and protects such items in interstate commerce, including daily transportation of currency and supplemental nutrition assistance program benefits valued at more than $1,000,000,000;

(3) armored car crew members are often subject to armed attack by individuals attempting to steal such items;

(4) to protect themselves and the items they transport, such crew members are armed with weapons;

(5) various States require both weapons training and a criminal record background check before licensing a crew member to carry a weapon; and

(6) there is a need for each State to reciprocally accept weapons licenses of other States for armored car crew members to assure the free and safe transport of valuable items in interstate commerce.

(Pub. L. 103–55, §2, July 28, 1993, 107 Stat. 276; Pub. L. 110–234, title IV, §4002(b)(1)(E), (2)(L), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(E), (2)(L), June 18, 2008, 122 Stat. 1664, 1857, 1858.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Pars. (1), (2). Pub. L. 110–246, §4002(b)(1)(E), (2)(L), substituted "supplemental nutrition assistance program benefits" for "food stamps".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(E), (2)(L) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–287, §1, Oct. 27, 1998, 112 Stat. 2776, provided that: "This Act [amending section 5902 of this title and enacting provisions set out as a note under section 5902 of this title] may be cited as the 'Armored Car Reciprocity Amendments of 1998'."

SHORT TITLE

Pub. L. 103–55, §1, July 28, 1993, 107 Stat. 276, provided that: "This Act [enacting this chapter] may be cited as the 'Armored Car Industry Reciprocity Act of 1993'."

§5902. State reciprocity of weapons licenses issued to armored car company crew members

(a) In general

If an armored car crew member employed by an armored car company—

(1) has in effect a license issued by the appropriate State agency (in the State in which such member is primarily employed by such company) to carry a weapon while acting in the services of such company in that State, and such State agency meets the minimum requirements under subsection (b); and

(2) has met all other applicable requirements to act as an armored car crew member in the State in which such member is primarily employed by such company,

then such crew member shall be entitled to lawfully carry any weapon to which such license relates and function as an armored car crew member in any State while such member is acting in the service of such company.

(b) Minimum State requirements

A State agency meets the minimum State requirements of this subsection if—

(1) in issuing an initial weapons license to an armored car crew member described in subsection (a), the agency determines to its satisfaction that—

(A) the crew member has received classroom and range training in weapons safety and marksmanship during the current year from a qualified instructor for each weapon that the crew member will be licensed to carry; and

(B) the receipt or possession of a weapon by the crew member would not violate Federal law, determined on the basis of a criminal record background check conducted during the current year;

(2) in issuing a renewal of a weapons license to an armored car crew member described in subsection (a), the agency determines to its satisfaction that—

(A) the crew member has received continuing training in weapons safety and marksmanship from a qualified instructor for each weapon that the crew member is licensed to carry; and

(B) the receipt or possession of a weapon by the crew member would not violate Federal law, as determined by the agency; and

(3) in issuing a weapons license under paragraph (1) or paragraph (2), as the case may be—

(A) the agency issues such license for a period not to exceed 2 years; or

(B) the agency issues such license for a period not to exceed 5 years in the case of a State that enacted a State law before October 1, 1996, that provides for the issuance of an initial weapons license or a renewal of a weapons license, as the case may be, for a period not to exceed 5 years.

(Pub. L. 103–55, §3, July 28, 1993, 107 Stat. 276; Pub. L. 105–287, §2, Oct. 27, 1998, 112 Stat. 2776.)

EDITORIAL NOTES

AMENDMENTS

1998—Subsec. (a). Pub. L. 105–287, §2(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "If an armored car crew member employed by an armored car company has in effect a license issued by the appropriate State agency (in the State in which such member is primarily employed by such company) to carry a weapon while acting in the services of such company in that State, and such State agency meets the minimum State requirements under subsection (b) of this section, then such crew member shall be entitled to lawfully carry any weapon to which such license relates in any State while such crew member is acting in the service of such company."

Subsec. (b). Pub. L. 105–287, §2(b), amended heading and text of subsec. (b) generally. Prior to amendment, text read as follows: "A State agency meets the minimum State requirements of this subsection if in issuing a weapons license to an armored car crew member described in subsection (a) of this section, the agency requires the crew member to provide information on an annual basis to the satisfaction of the agency that—

"(1) the crew member has received classroom and range training in weapons safety and marksmanship during the current year by a qualified instructor for each weapon that the crew member is licensed to carry; and

"(2) the receipt or possession of a weapon by the crew member would not violate Federal law, determined on the basis of a criminal record background check conducted during the current year."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–287, §3, Oct. 27, 1998, 112 Stat. 2777, provided that: "The amendments made by section 2 [amending this section] shall take effect 30 days after the date of the enactment of this Act [Oct. 27, 1998]."

§5903. Relation to other laws

This chapter shall supersede any provision of State law (or the law of any political subdivision of a State) that is inconsistent with this chapter.

(Pub. L. 103–55, §4, July 28, 1993, 107 Stat. 277.)

§5904. Definitions

As used in this chapter:

(1) The term "armored car crew member" means an individual who provides protection for goods transported by an armored car company.

(2) The term "armored car company" means a company—

(A) subject to regulation under subchapter I of chapter 135 of title 49; and

(B) is [1] registered under chapter 139 of such title, in order to engage in the business of transporting and protecting currency, bullion, securities, precious metals, supplemental nutrition assistance program benefits, and other articles of unusual value in interstate commerce.

(3) The term "State" means any State of the United States or the District of Columbia.

(Pub. L. 103–55, §5, July 28, 1993, 107 Stat. 277; Pub. L. 104–88, title III, §336, Dec. 29, 1995, 109 Stat. 954; Pub. L. 110–234, title IV, §4002(b)(1)(E), (2)(L), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110–246, §4(a), title IV, §4002(b)(1)(E), (2)(L), June 18, 2008, 122 Stat. 1664, 1857, 1858.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Par. (2)(B). Pub. L. 110–246, §4002(b)(1)(E), (2)(L), substituted "supplemental nutrition assistance program benefits" for "food stamps".

1995—Par. (2). Pub. L. 104–88 substituted "subchapter I of chapter 135" for "subchapter II of chapter 105" in subpar. (A) and "is registered under chapter 139" for "holding the appropriate certificate, permit, or license issued under subchapter II of chapter 109" in subpar. (B).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, except as otherwise provided, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(E), (2)(L) of Pub. L. 110–246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110–246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

[1] So in original. The word "is" probably should not appear.

CHAPTER 86—CHILDREN'S BICYCLE HELMET SAFETY

Sec.

§6001. Establishment of program

(a) In general

The Administrator of the National Highway Traffic Safety Administration may, in accordance with section 6002 of this title, make grants to States, political subdivisions of States, and nonprofit organizations for programs that require or encourage individuals under the age of 16 to wear approved bicycle helmets. In making those grants, the Administrator shall allow grantees to use wide discretion in designing programs that effectively promote increased bicycle helmet use.

(b) Federal share

The amount provided by a grant under this section shall not exceed 80 percent of the cost of the program for which the grant is made. In crediting the recipient State, political subdivision, or nonprofit organization for the non-Federal share of the cost of such a program (other than planning and administration), the aggregate of all expenditures made by such State, political subdivision, or nonprofit organization (exclusive of Federal funds) for the purposes described in section 6002 of this title (other than expenditures for planning and administration) shall be available for such crediting, without regard to whether such expenditures were actually made in connection with such program.

(Pub. L. 103–267, title II, §202, June 16, 1994, 108 Stat. 726.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 103–267, title II, §201, June 16, 1994, 108 Stat. 726, provided that: "This title [enacting this chapter] may be cited as the 'Children's Bicycle Helmet Safety Act of 1994'."

§6002. Purposes for grants

A grant made under section 6001 of this title may be used by a grantee to—

(1) enforce a law that requires individuals under the age of 16 to wear approved bicycle helmets on their heads while riding on bicycles;

(2) provide assistance, to individuals under the age of 16 who may not be able to afford approved bicycle helmets, to enable such individuals to acquire such helmets;

(3) develop and administer a program to educate individuals under the age of 16 and their families on the importance of wearing such helmets in order to improve bicycle safety; or

(4) carry out any combination of the activities described in paragraphs (1), (2), and (3).

The Administrator shall review grant applications for compliance with this section prior to awarding grants.

(Pub. L. 103–267, title II, §203, June 16, 1994, 108 Stat. 727.)

§6003. Report to Congress

Not later than May 1, 1997, the Administrator of the National Highway Traffic Safety Administration shall report to Congress on the effectiveness of the grant program established by

section 6001 of this title. The report shall include a list of grant recipients, a summary of the types of programs implemented by the grantees, and any recommendation by the Administrator regarding how the program should be changed in the future.

(Pub. L. 103–267, title II, §204, June 16, 1994, 108 Stat. 727.)

§6004. Standards

(a) In general

Bicycle helmets manufactured 9 months or more after June 16, 1994, shall conform to—

(1) any interim standard described under subsection (b), pending the establishment of a final standard pursuant to subsection (c); and

(2) the final standard, once it has been established under subsection (c).

(b) Interim standards

The interim standards are as follows:

(1) The American National Standards Institute standard designated as "Z90.4–1984".

(2) The Snell Memorial Foundation standard designated as "B–90".

(3) The American Society for Testing and Materials (ASTM) standard designated as "F 1447".

(4) Any other standard that the Commission determines is appropriate.

(c) Final standard

Not later than 60 days after June 16, 1994, the Commission shall begin a proceeding under section 553 of title 5 to—

(1) review the requirements of the interim standards set forth in subsection (a) and establish a final standard based on such requirements;

(2) include in the final standard a provision to protect against the risk of helmets coming off the heads of bicycle riders;

(3) include in the final standard provisions that address the risk of injury to children; and

(4) include additional provisions as appropriate.

Sections 7, 9, and 30(d) [1] of the Consumer Product Safety Act (15 U.S.C. 2056, 2058, 2079(d)) shall not apply to the proceeding under this subsection and section 11 of such Act (15 U.S.C. 2060) shall not apply with respect to any standard issued under such proceeding. The final standard shall take effect 1 year from the date it is issued.

(d) Failure to meet standards

(1) Failure to meet interim standard

Until the final standard takes effect, a bicycle helmet that does not conform to an interim standard as required under subsection (a)(1) shall be considered in violation of a consumer product safety standard promulgated under the Consumer Product Safety Act [15 U.S.C. 2051 et seq.].

(2) Status of final standard

The final standard developed under subsection (c) shall be considered a consumer product safety standard promulgated under the Consumer Product Safety Act.

(Pub. L. 103–267, title II, §205, June 16, 1994, 108 Stat. 727.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 30(d) of the Consumer Product Safety Act, referred to in subsec. (c), was classified to section 2079(d) of this title prior to repeal by Pub. L. 110–314, title II, §237, Aug. 14, 2008, 122 Stat. 3076.

The Consumer Product Safety Act, referred to in subsec. (d), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to chapter 47 (§2051 et seq.) of this title. For complete classification of this

Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

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

§6005. Authorization of appropriations

For the National Highway Traffic Safety Administration to carry out the grant program authorized by this chapter, there are authorized to be appropriated $2,000,000 for fiscal year 1995, $3,000,000 for fiscal year 1996, and $4,000,000 for fiscal year 1997.

(Pub. L. 103–267, title II, §206, June 16, 1994, 108 Stat. 728.)

§6006. "Approved bicycle helmet" defined

In this chapter, the term "approved bicycle helmet" means a bicycle helmet that meets—

(1) any interim standard described in section 6004(b) of this title, pending establishment of a final standard under section 6004(c) of this title; and

(2) the final standard, once it is established under section 6004(c) of this title.

(Pub. L. 103–267, title II, §207, June 16, 1994, 108 Stat. 728.)

CHAPTER 87—TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION

Sec.

§6101. Findings

The Congress makes the following findings:

(1) Telemarketing differs from other sales activities in that it can be carried out by sellers across State lines without direct contact with the consumer. Telemarketers also can be very mobile, easily moving from State to State.

(2) Interstate telemarketing fraud has become a problem of such magnitude that the resources of the Federal Trade Commission are not sufficient to ensure adequate consumer protection from such fraud.

(3) Consumers and others are estimated to lose $40 billion a year in telemarketing fraud.

(4) Consumers are victimized by other forms of telemarketing deception and abuse.

(5) Consequently, Congress should enact legislation that will offer consumers necessary protection from telemarketing deception and abuse.

(Pub. L. 103–297, §2, Aug. 16, 1994, 108 Stat. 1545.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–56, title X, §1011(a), Oct. 26, 2001, 115 Stat. 396, provided that: "This section [amending sections 6102 and 6106 of this title and sections 917 and 2325 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Crimes Against Charitable Americans Act of 2001'."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–534, §1, Nov. 22, 2000, 114 Stat. 2555, provided that: "This Act [enacting provisions set out as notes under this section and section 3732 of Title 42, The Public Health and Welfare] may be cited as the 'Protecting Seniors From Fraud Act'."

SHORT TITLE

Pub. L. 103–297, §1, Aug. 16, 1994, 108 Stat. 1545, provided that: "This Act [enacting this chapter and section 9b of Title 7, Agriculture, and amending section 52 of this title] may be cited as the 'Telemarketing and Consumer Fraud and Abuse Prevention Act'."

CONGRESSIONAL FINDINGS

Pub. L. 106–534, §2, Nov. 22, 2000, 114 Stat. 2555, provided that: "Congress makes the following findings:

"(1) Older Americans are among the most rapidly growing segments of our society.

"(2) Our Nation's elderly are too frequently the victims of violent crime, property crime, and consumer and telemarketing fraud.

"(3) The elderly are often targeted and retargeted in a range of fraudulent schemes.

"(4) The TRIAD program, originally sponsored by the National Sheriffs' Association, International Association of Chiefs of Police, and the American Association of Retired Persons unites sheriffs, police chiefs, senior volunteers, elder care providers, families, and seniors to reduce the criminal victimization of the elderly.

"(5) Congress should continue to support TRIAD and similar community partnerships that improve the safety and quality of life for millions of senior citizens.

"(6) There are few other community-based efforts that forge partnerships to coordinate criminal justice and social service resources to improve the safety and security of the elderly.

"(7) According to the National Consumers League, telemarketing fraud costs consumers nearly $40,000,000,000 each year.

"(8) Senior citizens are often the target of telemarketing fraud.

"(9) Fraudulent telemarketers compile the names of consumers who are potentially vulnerable to telemarketing fraud into the so-called 'mooch lists'.

"(10) It is estimated that 56 percent of the names on such 'mooch lists' are individuals age 50 or older.

"(11) The Federal Bureau of Investigation and the Federal Trade Commission have provided resources to assist private-sector organizations to operate outreach programs to warn senior citizens whose names appear on confiscated 'mooch lists'.

"(12) The Administration on Aging was formed, in part, to provide senior citizens with the resources, information, and assistance their special circumstances require.

"(13) The Administration on Aging has a system in place to inform senior citizens of the dangers of telemarketing fraud.

"(14) Senior citizens need to be warned of the dangers of telemarketing fraud before they become victims of such fraud."

SENIOR FRAUD PREVENTION PROGRAM

Pub. L. 106–534, §3, Nov. 22, 2000, 114 Stat. 2556, provided that:

"(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Attorney General $1,000,000 for each of the fiscal years 2001 through 2005 for programs for the National Association of TRIAD.

"(b) COMPTROLLER GENERAL.—The Comptroller General of the United States shall submit to Congress a report on the effectiveness of the TRIAD program 180 days prior to the expiration of the authorization under this Act [see Short Title of 2000 Amendment note above], including an analysis of TRIAD programs and activities; identification of impediments to the establishment of TRIADs across the Nation; and recommendations to improve the effectiveness of the TRIAD program."

DISSEMINATION OF INFORMATION

Pub. L. 106–534, §4, Nov. 22, 2000, 114 Stat. 2556, provided that:

"(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Assistant Secretary

of Health and Human Services for Aging, shall provide to the Attorney General of each State and publicly disseminate in each State, including dissemination to area agencies on aging, information designed to educate senior citizens and raise awareness about the dangers of fraud, including telemarketing and sweepstakes fraud.

"(b) INFORMATION.—In carrying out subsection (a), the Secretary shall—

"(1) inform senior citizens of the prevalence of telemarketing and sweepstakes fraud targeted against them;

"(2) inform senior citizens how telemarketing and sweepstakes fraud work;

"(3) inform senior citizens how to identify telemarketing and sweepstakes fraud;

"(4) inform senior citizens how to protect themselves against telemarketing and sweepstakes fraud, including an explanation of the dangers of providing bank account, credit card, or other financial or personal information over the telephone to unsolicited callers;

"(5) inform senior citizens how to report suspected attempts at or acts of fraud;

"(6) inform senior citizens of their consumer protection rights under Federal law; and

"(7) provide such other information as the Secretary considers necessary to protect senior citizens against fraudulent telemarketing and sweepstakes promotions.

"(c) MEANS OF DISSEMINATION.—The Secretary shall determine the means to disseminate information under this section. In making such determination, the Secretary shall consider—

"(1) public service announcements;

"(2) a printed manual or pamphlet;

"(3) an Internet website;

"(4) direct mailings; and

"(5) telephone outreach to individuals whose names appear on so-called 'mooch lists' confiscated from fraudulent marketers.

"(d) PRIORITY.—In disseminating information under this section, the Secretary shall give priority to areas with high incidents of fraud against senior citizens."

§6102. Telemarketing rules

(a) In general

(1) The Commission shall prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.

(2) The Commission shall include in such rules respecting deceptive telemarketing acts or practices a definition of deceptive telemarketing acts or practices which shall include fraudulent charitable solicitations, and which may include acts or practices of entities or individuals that assist or facilitate deceptive telemarketing, including credit card laundering.

(3) The Commission shall include in such rules respecting other abusive telemarketing acts or practices—

(A) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy,

(B) restrictions on the hours of the day and night when unsolicited telephone calls can be made to consumers,

(C) a requirement that any person engaged in telemarketing for the sale of goods or services shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to sell goods or services and make such other disclosures as the Commission deems appropriate, including the nature and price of the goods and services; [1] and

(D) a requirement that any person engaged in telemarketing for the solicitation of charitable contributions, donations, or gifts of money or any other thing of value, shall promptly and clearly disclose to the person receiving the call that the purpose of the call is to solicit charitable contributions, donations, or gifts, and make such other disclosures as the Commission considers appropriate, including the name and mailing address of the charitable organization on behalf of which the solicitation is made.

In prescribing the rules described in this paragraph, the Commission shall also consider

recordkeeping requirements.

(b) Rulemaking authority

The Commission shall have authority to prescribe rules under subsection (a), in accordance with section 553 of title 5. In prescribing a rule under this section that relates to the provision of a consumer financial product or service that is subject to the Consumer Financial Protection Act of 2010, including any enumerated consumer law thereunder, the Commission shall consult with the Bureau of Consumer Financial Protection regarding the consistency of a proposed rule with standards, purposes, or objectives administered by the Bureau of Consumer Financial Protection.

(c) Violations

Any violation of any rule prescribed under subsection (a)—

(1) shall be treated as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices; and

(2) that is committed by a person subject to the Consumer Financial Protection Act of 2010 shall be treated as a violation of a rule under section 1031 of that Act [12 U.S.C. 5531] regarding unfair, deceptive, or abusive acts or practices.

(d) Securities and Exchange Commission rules

(1) Promulgation

(A) In general

Except as provided in subparagraph (B), not later than 6 months after the effective date of rules promulgated by the Federal Trade Commission under subsection (a), the Securities and Exchange Commission shall promulgate, or require any national securities exchange or registered securities association to promulgate, rules substantially similar to such rules to prohibit deceptive and other abusive telemarketing acts or practices by persons described in paragraph (2).

(B) Exception

The Securities and Exchange Commission is not required to promulgate a rule under subparagraph (A) if it determines that—

(i) Federal securities laws or rules adopted by the Securities and Exchange Commission thereunder provide protection from deceptive and other abusive telemarketing by persons described in paragraph (2) substantially similar to that provided by rules promulgated by the Federal Trade Commission under subsection (a); or

(ii) such a rule promulgated by the Securities and Exchange Commission is not necessary or appropriate in the public interest, or for the protection of investors, or would be inconsistent with the maintenance of fair and orderly markets.

If the Securities and Exchange Commission determines that an exception described in clause (i) or (ii) applies, the Securities and Exchange Commission shall publish in the Federal Register its determination with the reasons for it.

(2) Application

(A) In general

The rules promulgated by the Securities and Exchange Commission under paragraph (1)(A) shall apply to a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company, or any individual associated with a broker, dealer, transfer agent, municipal securities dealer, municipal securities broker, government securities broker, government securities dealer, investment adviser or investment company. The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in the preceding sentence.

(B) Definitions

For purposes of subparagraph (A)—

(i) the terms "broker", "dealer", "transfer agent", "municipal securities dealer", "municipal securities broker", "government securities broker", and "government securities dealer" have the meanings given such terms by paragraphs (4), (5), (25), (30), (31), (43), and (44) of section 78c(a) of this title;

(ii) the term "investment adviser" has the meaning given such term by section 80b–2(a)(11) of this title; and

(iii) the term "investment company" has the meaning given such term by section 80a–3(a) of this title.

(e) Commodity Futures Trading Commission rules

(1) Application

The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to persons described in section 9b(1) of title 7.

(2) Omitted

(Pub. L. 103–297, §3, Aug. 16, 1994, 108 Stat. 1545; Pub. L. 107–56, title X, §1011(b)(1), (2), Oct. 26, 2001, 115 Stat. 396; Pub. L. 111–203, title X, §1100C(a), July 21, 2010, 124 Stat. 2110.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (b) and (c)(2), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, which enacted subchapter V (§5481 et seq.) of chapter 53 of Title 12, Banks and Banking, and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

CODIFICATION

Section is comprised of section 3 of Pub. L. 103–297. Subsec. (e)(2) of section 3 of Pub. L. 103–297 enacted section 9b of Title 7, Agriculture.

AMENDMENTS

2010—Subsecs. (b), (c). Pub. L. 111–203 added subsecs. (b) and (c) and struck out former subsecs. (b) and (c) which read as follows:

"(b) RULEMAKING.—The Commission shall prescribe the rules under subsection (a) of this section within 365 days after August 16, 1994. Such rules shall be prescribed in accordance with section 553 of title 5.

"(c) ENFORCEMENT.—Any violation of any rule prescribed under subsection (a) of this section shall be treated as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices."

2001—Subsec. (a)(2). Pub. L. 107–56, §1011(b)(1), inserted "which shall include fraudulent charitable solicitations, and" before "which may include".

Subsec. (a)(3)(D). Pub. L. 107–56, §1011(b)(2), added subpar. (D).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] *So in original. The semicolon probably should be a comma.*

§6103. Actions by States

(a) In general

Whenever an attorney general of any State has reason to believe that the interests of the residents

of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Commission under section 6102 of this title, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such telemarketing, to enforce compliance with such rule of the Commission, to obtain damages, restitution, or other compensation on behalf of residents of such State, or to obtain such further and other relief as the court may deem appropriate.

(b) Notice

The State shall serve prior written notice of any civil action under subsection (a) or (f)(2) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (1) to intervene in such action, (2) upon so intervening, to be heard on all matters arising therein, and (3) to file petitions for appeal.

(c) Construction

For purposes of bringing any civil action under subsection (a), nothing in this chapter shall prevent an attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(d) Actions by Commission or the Bureau of Consumer Financial Protection

Whenever a civil action has been instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection for violation of any rule prescribed under section 6102 of this title, no State may, during the pendency of such action instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection, institute a civil action under subsection (a) or (f)(2) against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

(e) Venue; service of process

Any civil action brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(f) Actions by other State officials

(1) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

(2) In addition to actions brought by an attorney general of a State under subsection (a), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

(Pub. L. 103–297, §4, Aug. 16, 1994, 108 Stat. 1548; Pub. L. 111–203, title X, §1100C(b), July 21, 2010, 124 Stat. 2111.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this Act", meaning Pub. L. 103–297, Aug. 16, 1994, 108 Stat. 1545, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–203 inserted "or the Bureau of Consumer Financial Protection" after "Commission" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6104. Actions by private persons

(a) In general

Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Commission under section 6102 of this title, or an authorized person acting on such person's behalf, may, within 3 years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds the sum or value of $50,000 in actual damages for each person adversely affected by such telemarketing. Such an action may be brought to enjoin such telemarketing, to enforce compliance with any rule of the Commission under section 6102 of this title, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.

(b) Notice

The plaintiff shall serve prior written notice of the action upon the Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the person shall serve such notice immediately upon instituting such action. The Commission shall have the right (A) to intervene in the action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(c) Action by Commission or the Bureau of Consumer Financial Protection

Whenever a civil action has been instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection for violation of any rule prescribed under section 6102 of this title, no person may, during the pendency of such action instituted by or on behalf of the Commission or the Bureau of Consumer Financial Protection, institute a civil action against any defendant named in the complaint in such action for violation of any rule as alleged in such complaint.

(d) Cost and fees

The court, in issuing any final order in any action brought under subsection (a), may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.

(e) Construction

Nothing in this section shall restrict any right which any person may have under any statute or common law.

(f) Venue; service of process

Any civil action brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

(Pub. L. 103–297, §5, Aug. 16, 1994, 108 Stat. 1549; Pub. L. 111–203, title X, §1100C(c), July 21, 2010, 124 Stat. 2111.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–203 inserted "or the Bureau of Consumer Financial Protection" after "Commission" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6105. Administration and applicability of chapter

(a) In general

Except as otherwise provided in sections 6102(d), 6102(e), 6103, and 6104 of this title, this chapter shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.). Consequently, no activity which is outside the jurisdiction of that Act shall be affected by this chapter.

(b) Actions by Commission

The Commission shall prevent any person from violating a rule of the Commission under section 6102 of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter. Any person who violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this chapter.

(c) Effect on other laws

Nothing contained in this chapter shall be construed to limit the authority of the Commission under any other provision of law.

(d) Enforcement by Bureau of Consumer Financial Protection

Except as otherwise provided in sections 6102(d), 6102(e), 6103, and 6104 of this title, and subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], this chapter shall be enforced by the Bureau of Consumer Financial Protection under subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], with respect to the offering or provision of a consumer financial product or service subject to that Act.

(Pub. L. 103–297, §6, Aug. 16, 1994, 108 Stat. 1549; Pub. L. 111–203, title X, §1100C(d), July 21, 2010, 124 Stat. 2111.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

This chapter, referred to in subsecs. (c) and (d), was in the original "this Act", meaning Pub. L. 103–297, Aug. 16, 1994, 108 Stat. 1545, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Consumer Financial Protection Act of 2010, referred to in subsec. (d), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–203 added subsec. (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6106. Definitions

For purposes of this chapter:

(1) The term "attorney general" means the chief legal officer of a State.

(2) The term "Commission" means the Federal Trade Commission.

(3) The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any territory or possession of the United States.

(4) The term "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of goods or services, or a charitable contribution, donation, or gift of money or any other thing of value, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of a catalog which—

(A) contains a written description, or illustration of the goods or services offered for sale,

(B) includes the business address of the seller,

(C) includes multiple pages of written material or illustrations, and

(D) has been issued not less frequently than once a year,

where the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation.

(Pub. L. 103–297, §7, Aug. 16, 1994, 108 Stat. 1550; Pub. L. 107–56, title X, §1011(b)(3), Oct. 26, 2001, 115 Stat. 396.)

EDITORIAL NOTES

AMENDMENTS

2001—Par. (4). Pub. L. 107–56 inserted ", or a charitable contribution, donation, or gift of money or any other thing of value," after "services" in introductory provisions.

§6107. Enforcement of orders

(a) General authority

Subject to subsections (b) and (c), the Federal Trade Commission may bring a criminal contempt action for violations of orders of the Commission obtained in cases brought under section 53(b) of this title.

(b) Appointment

An action authorized by subsection (a) may be brought by the Federal Trade Commission only after, and pursuant to, the appointment by the Attorney General of an attorney employed by the Commission, as a special assistant United States Attorney.

(c) Request for appointment

(1) Appointment upon request or motion

A special assistant United States Attorney may be appointed under subsection (b) upon the request of the Federal Trade Commission or the court which has entered the order for which

contempt is sought or upon the Attorney General's own motion.

(2) Timing

The Attorney General shall act upon any request made under paragraph (1) within 45 days of the receipt of the request.

(d) Termination of authority

The authority of the Federal Trade Commission to bring a criminal contempt action under subsection (a) expires 2 years after the date of the first promulgation of rules under section 6102 of this title. The expiration of such authority shall have no effect on an action brought before the expiration date.

(Pub. L. 103–297, §9, Aug. 16, 1994, 108 Stat. 1550.)

§6108. Review

Upon the expiration of 5 years following the date of the first promulgation of rules under section 6102 of this title, the Commission shall review the implementation of this chapter and its effect on deceptive telemarketing acts or practices and report the results of the review to the Congress.

(Pub. L. 103–297, §10, Aug. 16, 1994, 108 Stat. 1551.)

CHAPTER 87A—NATIONAL DO-NOT-CALL REGISTRY

Sec.

EDITORIAL NOTES

CODIFICATION

This chapter is comprised principally of Pub. L. 108–10, Mar. 11, 2003, 117 Stat. 557, which was formerly set out as a note under section 6101 of this title.

§6151. National Do-Not-Call Registry

(a) Authority

The Federal Trade Commission is authorized under section 6102(a)(3)(A) of this title to implement and enforce a national do-not-call registry.

(b) Ratification

The do-not-call registry provision of the Telemarketing Sales Rule (16 C.F.R. 310.4(b)(1)(iii)), which was promulgated by the Federal Trade Commission, effective March 31, 2003, is ratified.

(Pub. L. 108–82, §1, Sept. 29, 2003, 117 Stat. 1006.)

EDITORIAL NOTES

CODIFICATION

Section was formerly set out as a note under section 6102 of this title.

Section was enacted as part of Pub. L. 108–82, and not as part of the Do-Not-Call Implementation Act which comprises this chapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2008 AMENDMENT

Pub. L. 110–188, §1, Feb. 15, 2008, 122 Stat. 635, provided that: "This Act [amending sections 6152 and 6154 of this title and enacting provisions set out as a note under section 6152 of this title] may be cited as the 'Do-Not-Call Registry Fee Extension Act of 2007'."

Pub. L. 110–187, §1, Feb. 15, 2008, 122 Stat. 633, provided that: "This Act [enacting section 6155 of this title] may be cited as the 'Do-Not-Call Improvement Act of 2007'."

SHORT TITLE

Pub. L. 108–10, §1, Mar. 11, 2003, 117 Stat. 557, provided that: "This Act [enacting this chapter] may be cited as the 'Do-Not-Call Implementation Act'."

§6152. Telemarketing Sales Rule; do-not-call registry fees

(a) In general

The Federal Trade Commission shall assess and collect an annual fee pursuant to this section in order to implement and enforce the "do-not-call" registry as provided for in section 310.4(b)(1)(iii) of title 16, Code of Federal Regulations, or any other regulation issued by the Commission under section 6102 of this title.

(b) Annual fees

(1) In general

The Commission shall charge each person who accesses the "do-not-call" registry an annual fee that is equal to the lesser of—

(A) $54 for each area code of data accessed from the registry; or

(B) $14,850 for access to every area code of data contained in the registry.

(2) Exception

The Commission shall not charge a fee to any person—

(A) for accessing the first 5 area codes of data; or

(B) for accessing area codes of data in the registry if the person is permitted to access, but is not required to access, the "do-not-call" registry under section [1] 310 of title 16, Code of Federal Regulations, section 64.1200 of title 47, Code of Federal Regulations, or any other Federal regulation or law.

(3) Duration of access

(A) In general

The Commission shall allow each person who pays the annual fee described in paragraph (1), each person excepted under paragraph (2) from paying the annual fee, and each person excepted from paying an annual fee under section 310.4(b)(1)(iii)(B) of title 16, Code of Federal Regulations, to access the area codes of data in the "do-not-call" registry for which the person has paid during that person's annual period.

(B) Annual period

In this paragraph, the term "annual period" means the 12-month period beginning on the first day of the month in which a person pays the fee described in paragraph (1).

(c) Additional fees

(1) In general

The Commission shall charge a person required to pay an annual fee under subsection (b) an additional fee for each additional area code of data the person wishes to access during that person's annual period.

(2) Rates

For each additional area code of data to be accessed during the person's annual period, the Commission shall charge—

(A) $54 for access to such data if access to the area code of data is first requested during the first 6 months of the person's annual period; or

(B) $27 for access to such data if access to the area code of data is first requested after the first 6 months of the person's annual period.

(d) Adjustment of fees

(1) In general

(A) Fiscal year 2009

The dollar amount described in subsection (b) or (c) is the amount to be charged for fiscal year 2009.

(B) Fiscal years after 2009

For each fiscal year beginning after fiscal year 2009, each dollar amount in subsection (b)(1) and (c)(2) shall be increased by an amount equal to—

(i) the dollar amount in paragraph (b)(1) or (c)(2), whichever is applicable, multiplied by

(ii) the percentage (if any) by which the CPI for the most recently ended 12-month period ending on June 30 exceeds the baseline CPI.

(2) Rounding

Any increase under subparagraph (B) shall be rounded to the nearest dollar.

(3) Changes less than 1 percent

The Commission shall not adjust the fees under this section if the change in the CPI is less than 1 percent.

(4) Publication

Not later than September 1 of each year the Commission shall publish in the Federal Register the adjustments to the applicable fees, if any, made under this subsection.

(5) Definitions

In this subsection:

(A) CPI

The term "CPI" means the average of the monthly consumer price index (for all urban consumers published by the Department of Labor).

(B) Baseline CPI

The term "baseline CPI" means the CPI for the 12-month period ending June 30, 2008.

(e) Prohibition against fee sharing

No person may enter into or participate in an arrangement (as such term is used in section 310.8(c) of the Commission's regulations (16 C.F.R. 310.8(c))) to share any fee required by subsection (b) or (c), including any arrangement to divide the costs to access the registry among various clients of a telemarketer or service provider.

(f) Handling of fees

(1) In general

The Commission shall deposit and credit as offsetting collections any fee collected under this section in the account "Federal Trade Commission—Salaries and Expenses", and such sums shall remain available until expended.

(2) Limitation

No amount shall be collected as a fee under this section for any fiscal year except to the extent provided in advance by appropriations Acts.

(Pub. L. 108–10, §2, Mar. 11, 2003, 117 Stat. 557; Pub. L. 110–188, §2, Feb. 15, 2008, 122 Stat. 635.)

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–188 amended section generally. Prior to amendment, text read as follows: "The Federal Trade Commission may promulgate regulations establishing fees sufficient to implement and enforce the provisions relating to the 'do-not-call' registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)), promulgated under the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6101 et seq.). Such regulations shall be promulgated in accordance with section 553 of title 5, United States Code. Fees may be collected pursuant to this section for fiscal years 2003 through 2007, and shall be deposited and credited as offsetting collections to the account, Federal Trade Commission—Salaries and Expenses, and shall remain available until expended. No amounts shall be collected as fees pursuant to this section for such fiscal years except to the extent provided in advance in appropriations Acts. Such amounts shall be available for expenditure only to offset the costs of activities and services related to the implementation and enforcement of the Telemarketing Sales Rule, and other activities resulting from such implementation and enforcement."

STATUTORY NOTES AND RELATED SUBSIDIARIES

RULEMAKING

Pub. L. 110–188, §4, Feb. 15, 2008, 122 Stat. 637, provided that: "The Federal Trade Commission may issue rules, in accordance with section 553 of title 5, United States Code, as necessary and appropriate to carry out the amendments to the Do-Not-Call Implementation Act (15 U.S.C. 6101 note) [now this chapter] made by this Act [amending this section and section 6154 of this title]."

[1] *So in original. Probably should be "part".*

§6153. Federal Communications Commission do-not-call regulations

Not later than 180 days after March 11, 2003, the Federal Communications Commission shall issue a final rule pursuant to the rulemaking proceeding that it began on September 18, 2002, under the Telephone Consumer Protection Act (47 U.S.C. 227 et seq.). In issuing such rule, the Federal Communications Commission shall consult and coordinate with the Federal Trade Commission to maximize consistency with the rule promulgated by the Federal Trade Commission (16 CFR 310.4(b)).

(Pub. L. 108–10, §3, Mar. 11, 2003, 117 Stat. 557.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Telephone Consumer Protection Act, referred to in text, probably means the Telephone Consumer Protection Act of 1991, Pub. L. 102–243, Dec. 20, 1991, 105 Stat. 2394, which enacted section 227 of Title 47, Telecommunications, amended sections 152 and 331 of Title 47, and enacted provisions set out as notes under sections 227 and 609 of Title 47. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 609 of Title 47 and Tables.

§6154. Reporting requirements

(a) Biennial reports

Not later than December 31, 2009, and biennially thereafter, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate

Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce that includes—

(1) the number of consumers who have placed their telephone numbers on the registry;

(2) the number of persons paying fees for access to the registry and the amount of such fees;

(3) the impact on the "do-not-call" registry of—

(A) the 5-year reregistration requirement;

(B) new telecommunications technology; and

(C) number portability and abandoned telephone numbers; and

(4) the impact of the established business relationship exception on businesses and consumers.

(b) Additional report

Not later than December 31, 2009, the Federal Trade Commission, in consultation with the Federal Communications Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce that includes—

(1) the effectiveness of do-not-call outreach and enforcement efforts with regard to senior citizens and immigrant communities;

(2) the impact of the exceptions to the do-not-call registry on businesses and consumers, including an analysis of the effectiveness of the registry and consumer perceptions of the registry's effectiveness; and

(3) the impact of abandoned calls made by predictive dialing devices on do-not-call enforcement.

(Pub. L. 108–10, §4, Mar. 11, 2003, 117 Stat. 557; Pub. L. 110–188, §3, Feb. 15, 2008, 122 Stat. 637.)

EDITORIAL NOTES

AMENDMENTS

2008—Pub. L. 110–188 amended section generally. Prior to amendment, section related to reports on regulatory coordination between Federal Trade Commission and Federal Communications Commission and reports on "do-not-call" registry for fiscal years 2003 through 2007.

§6155. Prohibition of expiration date

(a) No automatic removal of numbers

Telephone numbers registered on the national "do-not-call" registry of the Telemarketing Sales Rule (16 CFR 310.4(b)(1)(iii)) since the establishment of the registry and telephone numbers registered on such registry after March 11, 2003, shall not be removed from such registry except as provided for in subsection (b) or upon the request of the individual to whom the telephone number is assigned.

(b) Removal of invalid, disconnected, and reassigned telephone numbers

The Federal Trade Commission shall periodically check telephone numbers registered on the national "do-not-call" registry against national or other appropriate databases and shall remove from such registry those telephone numbers that have been disconnected and reassigned. Nothing in this section prohibits the Federal Trade Commission from removing invalid telephone numbers from the registry at any time.

(Pub. L. 108–10, §5, as added Pub. L. 110–187, §2, Feb. 15, 2008, 122 Stat. 633.)

CHAPTER 88—INTERNATIONAL ANTITRUST ENFORCEMENT

ASSISTANCE

§6201. Disclosure to foreign antitrust authority of antitrust evidence

In accordance with an antitrust mutual assistance agreement in effect under this chapter, subject to section 6207 of this title, and except as provided in section 6204 of this title, the Attorney General of the United States and the Federal Trade Commission may provide to a foreign antitrust authority with respect to which such agreement is in effect under this chapter, antitrust evidence to assist the foreign antitrust authority—

(1) in determining whether a person has violated or is about to violate any of the foreign antitrust laws administered or enforced by the foreign antitrust authority, or

(2) in enforcing any of such foreign antitrust laws.

(Pub. L. 103–438, §2, Nov. 2, 1994, 108 Stat. 4597.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in original "this Act", meaning Pub. L. 103–438, Nov. 2, 1994, 108 Stat. 4597, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 103–438, §1, Nov. 2, 1994, 108 Stat. 4597, provided that: "This Act [enacting this chapter and amending sections 46, 57b–1, 1311, and 1312 of this title] may be cited as the 'International Antitrust Enforcement Assistance Act of 1994'."

§6202. Investigations to assist foreign antitrust authority in obtaining antitrust evidence

(a) Request for investigative assistance

A request by a foreign antitrust authority for investigative assistance under this section shall be made to the Attorney General, who may deny the request in whole or in part. No further action shall be taken under this section with respect to any part of a request that has been denied by the Attorney General.

(b) Authority to investigate

In accordance with an antitrust mutual assistance agreement in effect under this chapter, subject to

section 6207 of this title, and except as provided in section 6204 of this title, the Attorney General and the Commission may, using their respective authority to investigate possible violations of the Federal antitrust laws, conduct investigations to obtain antitrust evidence relating to a possible violation of the foreign antitrust laws administered or enforced by the foreign antitrust authority with respect to which such agreement is in effect under this chapter, and may provide such antitrust evidence to the foreign antitrust authority, to assist the foreign antitrust authority—

(1) in determining whether a person has violated or is about to violate any of such foreign antitrust laws, or

(2) in enforcing any of such foreign antitrust laws.

(c) Special scope of authority

An investigation may be conducted under subsection (b), and antitrust evidence obtained through such investigation may be provided, without regard to whether the conduct investigated violates any of the Federal antitrust laws.

(d) Rights and privileges preserved

A person may not be compelled in connection with an investigation under this section to give testimony or a statement, or to produce a document or other thing, in violation of any legally applicable right or privilege.

(Pub. L. 103–438, §3, Nov. 2, 1994, 108 Stat. 4597.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of section 3 of Pub. L. 103–438. Subsec. (e) of section 3 of Pub. L. 103–438 amended sections 46, 57b–1, 1311, and 1312 of this title.

§6203. Jurisdiction of district courts of United States

(a) Authority of district courts

On the application of the Attorney General made in accordance with an antitrust mutual assistance agreement in effect under this chapter, the United States district court for the district in which a person resides, is found, or transacts business may order such person to give testimony or a statement, or to produce a document or other thing, to the Attorney General to assist a foreign antitrust authority with respect to which such agreement is in effect under this chapter—

(1) in determining whether a person has violated or is about to violate any of the foreign antitrust laws administered or enforced by the foreign antitrust authority, or

(2) in enforcing any of such foreign antitrust laws.

(b) Contents of order

(1) Use of appointee to receive evidence

(A) An order issued under subsection (a) may direct that testimony or a statement be given, or a document or other thing be produced, to a person who shall be recommended by the Attorney General and appointed by the court.

(B) A person appointed under subparagraph (A) shall have power to administer any necessary oath and to take such testimony or such statement.

(2) Practice and procedure

(A) An order issued under subsection (a) may prescribe the practice and procedure for taking testimony and statements and for producing documents and other things.

(B) Such practice and procedure may be in whole or in part the practice and procedure of the foreign state, or the regional economic integration organization, represented by the foreign antitrust authority with respect to which the Attorney General requests such order.

(C) To the extent such order does not prescribe otherwise, any testimony and statements required to be taken shall be taken, and any documents and other things required to be produced shall be produced, in accordance with the Federal Rules of Civil Procedure.

(c) Rights and privileges preserved

A person may not be compelled under an order issued under subsection (a) to give testimony or a statement, or to produce a document or other thing, in violation of any legally applicable right or privilege.

(d) Voluntary conduct

This section does not preclude a person in the United States from voluntarily giving testimony or a statement, or producing a document or other thing, in any manner acceptable to such person for use in an investigation by a foreign antitrust authority.

(Pub. L. 103–438, §4, Nov. 2, 1994, 108 Stat. 4599.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2)(C), are classified to Title 28, Appendix, Judiciary and Judicial Procedure.

§6204. Limitations on authority

Sections 6201, 6202, and 6203 of this title shall not apply with respect to the following antitrust evidence:

(1) Antitrust evidence that is received by the Attorney General or the Commission under section 18a of this title. Nothing in this paragraph shall affect the ability of the Attorney General or the Commission to disclose to a foreign antitrust authority antitrust evidence that is obtained otherwise than under section 18a of this title.

(2) Antitrust evidence that is matter occurring before a grand jury and with respect to which disclosure is prevented by Federal law, except that for the purpose of applying Rule 6(e)(3)(C)(iv) of the Federal Rules of Criminal Procedure with respect to this section—

(A) a foreign antitrust authority with respect to which a particularized need for such antitrust evidence is shown shall be considered to be an appropriate official of any of the several States, and

(B) a foreign antitrust law administered or enforced by the foreign antitrust authority shall be considered to be a State criminal law.

(3) Antitrust evidence that is specifically authorized under criteria established by Executive Order 12356, or any successor to such order, to be kept secret in the interest of national defense or foreign policy, and—

(A) that is classified pursuant to such order or such successor, or

(B) with respect to which a determination of classification is pending under such order or such successor.

(4) Antitrust evidence that is classified under section 2162 of title 42.

(Pub. L. 103–438, §5, Nov. 2, 1994, 108 Stat. 4599.)

EDITORIAL NOTES

REFERENCES IN TEXT

Rule 6(e)(3)(C)(iv) of the Federal Rules of Criminal Procedure, referred to in par. (2), is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

Executive Order 12356, referred to in par. (3), is Ex. Ord. No. 12356, Apr. 2, 1982, 47 F.R. 14874, 15557, which was formerly set out as a note under section 435 (now section 3161) of Title 50, War and National Defense, was revoked by Ex. Ord. No. 12958, §6.1(d), Apr. 17, 1995, 60 F.R. 19843.

§6205. Exception to certain disclosure restrictions

Section 1313 of this title, and sections 46(f) and 57b–2 of this title, shall not apply to prevent the Attorney General or the Commission from providing to a foreign antitrust authority antitrust evidence in accordance with an antitrust mutual assistance agreement in effect under this chapter and in accordance with the other requirements of this chapter.

(Pub. L. 103–438, §6, Nov. 2, 1994, 108 Stat. 4600.)

§6206. Publication requirements applicable to antitrust mutual assistance agreements

(a) Publication of proposed antitrust mutual assistance agreements

Not less than 45 days before an antitrust mutual assistance agreement is entered into, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

(1) the proposed text of such agreement and any modification to such proposed text, and

(2) a request for public comment with respect to such text or such modification, as the case may be.

(b) Publication of proposed amendments to antitrust mutual assistance agreements in effect

Not less than 45 days before an agreement is entered into that makes an amendment to an antitrust mutual assistance agreement, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

(1) the proposed text of such amendment, and

(2) a request for public comment with respect to such amendment.

(c) Publication of antitrust mutual assistance agreements, amendments, and terminations

Not later than 45 days after an antitrust mutual assistance agreement is entered into or terminated, or an agreement that makes an amendment to an antitrust mutual assistance agreement is entered into, the Attorney General, with the concurrence of the Commission, shall publish in the Federal Register—

(1) the text of the antitrust mutual assistance agreement or amendment, or the terms of the termination, as the case may be, and

(2) in the case of an agreement that makes an amendment to an antitrust mutual assistance agreement, a notice containing—

(A) citations to the locations in the Federal Register at which the text of the antitrust mutual assistance agreement that is so amended, and of any previous amendments to such agreement, are published, and

(B) a description of the manner in which a copy of the antitrust mutual assistance agreement, as so amended, may be obtained from the Attorney General and the Commission.

(d) Condition for validity

An antitrust mutual assistance agreement, or an agreement that makes an amendment to an antitrust mutual assistance agreement, with respect to which publication does not occur in accordance with subsections (a), (b), and (c) shall not be considered to be in effect under this chapter.

(Pub. L. 103–438, §7, Nov. 2, 1994, 108 Stat. 4600.)

§6207. Conditions on use of antitrust mutual assistance agreements

(a) Determinations

Neither the Attorney General nor the Commission may conduct an investigation under section 6202 of this title, apply for an order under section 6203 of this title, or provide antitrust evidence to a foreign antitrust authority under an antitrust mutual assistance agreement, unless the Attorney General or the Commission, as the case may be, determines in the particular instance in which the investigation, application, or antitrust evidence is requested that—

(1) the foreign antitrust authority—

(A) will satisfy the assurances, terms, and conditions described in subparagraphs (A), (B), and (E) of section 6211(2) of this title, and

(B) is capable of complying with and will comply with the confidentiality requirements applicable under such agreement to the requested antitrust evidence,

(2) providing the requested antitrust evidence will not violate section 6204 of this title, and

(3) conducting such investigation, applying for such order, or providing the requested antitrust evidence, as the case may be, is consistent with the public interest of the United States, taking into consideration, among other factors, whether the foreign state or regional economic integration organization represented by the foreign antitrust authority holds any proprietary interest that could benefit or otherwise be affected by such investigation, by the granting of such order, or by the provision of such antitrust evidence.

(b) Limitation on disclosure of certain antitrust evidence

Neither the Attorney General nor the Commission may disclose in violation of an antitrust mutual assistance agreement any antitrust evidence received under such agreement, except that such agreement may not prevent the disclosure of such antitrust evidence to a defendant in an action or proceeding brought by the Attorney General or the Commission for a violation of any of the Federal laws if such disclosure would otherwise be required by Federal law.

(c) Required disclosure of notice received

If the Attorney General or the Commission receives a notice described in section 6211(2)(H) of this title, the Attorney General or the Commission, as the case may be, shall transmit such notice to the person that provided the evidence with respect to which such notice is received.

(Pub. L. 103–438, §8, Nov. 2, 1994, 108 Stat. 4601.)

§6208. Limitations on judicial review

(a) Determinations

Determinations made under paragraphs (1) and (3) of section 6207(a) of this title shall not be subject to judicial review.

(b) Citations to and descriptions of confidentiality laws

Whether an antitrust mutual assistance agreement satisfies section 6211(2)(C) of this title shall not be subject to judicial review.

(c) Rules of construction

(1) Administrative Procedure Act

The requirements in section 6206 of this title with respect to publication and request for public comment shall not be construed to create any availability of judicial review under chapter 7 of title 5.

(2) Laws referenced in section 6204 of this title

Nothing in this section shall be construed to affect the availability of judicial review under laws referred to in section 6204 of this title.

(Pub. L. 103–438, §9, Nov. 2, 1994, 108 Stat. 4602.)

§6209. Preservation of existing authority

(a) In general

The authority provided by this chapter is in addition to, and not in lieu of, any other authority vested in the Attorney General, the Commission, or any other officer of the United States.

(b) Attorney General and Commission

This chapter shall not be construed to modify or affect the allocation of responsibility between the Attorney General and the Commission for the enforcement of the Federal antitrust laws.

(Pub. L. 103–438, §10, Nov. 2, 1994, 108 Stat. 4602.)

§6210. Report to Congress

In the 30-day period beginning 3 years after November 2, 1994, and with the concurrence of the Commission, the Attorney General shall submit, to the Speaker of the House of Representatives and the President pro tempore of the Senate, a report—

(1) describing how the operation of this chapter has affected the enforcement of the Federal antitrust laws,

(2) describing the extent to which foreign antitrust authorities have complied with the confidentiality requirements applicable under antitrust mutual assistance agreements in effect under this chapter,

(3) specifying separately the identities of the foreign states, regional economic integration organizations, and foreign antitrust authorities that have entered into such agreements and the identities of the foreign antitrust authorities with respect to which such foreign states and such organizations have entered into such agreements,

(4) specifying the identity of each foreign state, and each regional economic integration organization, that has in effect a law similar to this chapter,

(5) giving the approximate number of requests made by the Attorney General and the Commission under such agreements to foreign antitrust authorities for antitrust investigations and for antitrust evidence,

(6) giving the approximate number of requests made by foreign antitrust authorities under such agreements to the Attorney General and the Commission for investigations under section 6202 of this title, for orders under section 6203 of this title, and for antitrust evidence, and

(7) describing any significant problems or concerns of which the Attorney General is aware with respect to the operation of this chapter.

(Pub. L. 103–438, §11, Nov. 2, 1994, 108 Stat. 4602.)

§6211. Definitions

For purposes of this chapter:

(1) The term "antitrust evidence" means information, testimony, statements, documents, or other things that are obtained in anticipation of, or during the course of, an investigation or proceeding under any of the Federal antitrust laws or any of the foreign antitrust laws.

(2) The term "antitrust mutual assistance agreement" means a written agreement, or written memorandum of understanding, that is entered into by the United States and a foreign state or regional economic integration organization (with respect to the foreign antitrust authorities of such foreign state or such organization, and such other governmental entities of such foreign state or such organization as the Attorney General and the Commission jointly determine may be necessary in order to provide the assistance described in subparagraph (A)), or jointly by the

Attorney General and the Commission and a foreign antitrust authority, for the purpose of conducting investigations under section 6202 of this title, applying for orders under section 6203 of this title, or providing antitrust evidence, on a reciprocal basis and that includes the following:

(A) An assurance that the foreign antitrust authority will provide to the Attorney General and the Commission assistance that is comparable in scope to the assistance the Attorney General and the Commission provide under such agreement or such memorandum.

(B) An assurance that the foreign antitrust authority is subject to laws and procedures that are adequate to maintain securely the confidentiality of antitrust evidence that may be received under section 6201, 6202, or 6203 of this title and will give protection to antitrust evidence received under such section that is not less than the protection provided under the laws of the United States to such antitrust evidence.

(C) Citations to and brief descriptions of the laws of the United States, and the laws of the foreign state or regional economic integration organization represented by the foreign antitrust authority, that protect the confidentiality of antitrust evidence that may be provided under such agreement or such memorandum. Such citations and such descriptions shall include the enforcement mechanisms and penalties applicable under such laws and, with respect to a regional economic integration organization, the applicability of such laws, enforcement mechanisms, and penalties to the foreign states composing such organization.

(D) Citations to the Federal antitrust laws, and the foreign antitrust laws, with respect to which such agreement or such memorandum applies.

(E) Terms and conditions that specifically require using, disclosing, or permitting the use or disclosure of, antitrust evidence received under such agreement or such memorandum only—

(i) for the purpose of administering or enforcing the foreign antitrust laws involved, or

(ii) with respect to a specified disclosure or use requested by a foreign antitrust authority and essential to a significant law enforcement objective, in accordance with the prior written consent that the Attorney General or the Commission, as the case may be, gives after—

(I) determining that such antitrust evidence is not otherwise readily available with respect to such objective,

(II) making the determinations described in paragraphs (2) and (3) of section 6207(a) of this title, with respect to such disclosure or use, and

(III) making the determinations applicable to a foreign antitrust authority under section 6207(a)(1) of this title (other than the determination regarding the assurance described in subparagraph (A) of this paragraph), with respect to each additional governmental entity, if any, to be provided such antitrust evidence in the course of such disclosure or use, after having received adequate written assurances applicable to each such governmental entity.

(F) An assurance that antitrust evidence received under section 6201, 6202, or 6203 of this title from the Attorney General or the Commission, and all copies of such evidence, in the possession or control of the foreign antitrust authority will be returned to the Attorney General or the Commission, respectively, at the conclusion of the foreign investigation or proceeding with respect to which such evidence was so received.

(G) Terms and conditions that specifically provide that such agreement or such memorandum will be terminated if—

(i) the confidentiality required under such agreement or such memorandum is violated with respect to antitrust evidence, and

(ii) adequate action is not taken both to minimize any harm resulting from the violation and to ensure that the confidentiality required under such agreement or such memorandum is not violated again.

(H) Terms and conditions that specifically provide that if the confidentiality required under such agreement or such memorandum is violated with respect to antitrust evidence, notice of the violation will be given—

(i) by the foreign antitrust authority promptly to the Attorney General or the Commission

with respect to antitrust evidence provided by the Attorney General or the Commission, respectively, and

(ii) by the Attorney General or the Commission to the person (if any) that provided such evidence to the Attorney General or the Commission.

(3) The term "Attorney General" means the Attorney General of the United States.

(4) The term "Commission" means the Federal Trade Commission.

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

(6) The term "foreign antitrust authority" means a governmental entity of a foreign state or of a regional economic integration organization that is vested by such state or such organization with authority to enforce the foreign antitrust laws of such state or such organization.

(7) The term "foreign antitrust laws" means the laws of a foreign state, or of a regional economic integration organization, that are substantially similar to any of the Federal antitrust laws and that prohibit conduct similar to conduct prohibited under the Federal antitrust laws.

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

(9) The term "regional economic integration organization" means an organization that is constituted by, and composed of, foreign states, and on which such foreign states have conferred sovereign authority to make decisions that are binding on such foreign states, and that are directly applicable to and binding on persons within such foreign states, including the decisions with respect to—

(A) administering or enforcing the foreign antitrust laws of such organization, and

(B) prohibiting and regulating disclosure of information that is obtained by such organization in the course of administering or enforcing such laws.

(Pub. L. 103–438, §12, Nov. 2, 1994, 108 Stat. 4603.)

§6212. Authority to receive reimbursement

The Attorney General and the Commission are authorized to receive from a foreign antitrust authority, or from the foreign state or regional economic integration organization represented by such foreign antitrust authority, reimbursement for the costs incurred by the Attorney General or the Commission, respectively, in conducting an investigation under section 6202 of this title requested by such foreign antitrust authority, applying for an order under section 6203 of this title to assist such foreign antitrust authority, or providing antitrust evidence to such foreign antitrust authority under an antitrust mutual assistance agreement in effect under this chapter with respect to such foreign antitrust authority.

(Pub. L. 103–438, §13, Nov. 2, 1994, 108 Stat. 4605.)

CHAPTER 89—PROFESSIONAL BOXING SAFETY

Sec.

§6301. Definitions

For purposes of this chapter:

(1) Boxer

The term "boxer" means an individual who fights in a professional boxing match.

(2) Boxing commission

(A) [1] The term "boxing commission" means an entity authorized under State law to regulate professional boxing matches.

(3) Boxer registry

The term "boxer registry" means any entity certified by the Association of Boxing Commissions for the purposes of maintaining records and identification of boxers.

(4) Licensee

The term "licensee" means an individual who serves as a trainer, second, or cut man for a boxer.

(5) Manager

The term "manager" means a person who receives compensation for service as an agent or representative of a boxer.

(6) Matchmaker

The term "matchmaker" means a person that proposes, selects, and arranges the boxers to participate in a professional boxing match.

(7) Physician

The term "physician" means a doctor of medicine legally authorized to practice medicine by the State in which the physician performs such function or action.

(8) Professional boxing match

The term "professional boxing match" means a boxing contest held in the United States between individuals for financial compensation. Such term does not include a boxing contest that is regulated by an amateur sports organization.

(9) Promoter

The term "promoter" means the person primarily responsible for organizing, promoting, and producing a professional boxing match. The term "promoter" does not include a hotel, casino, resort, or other commercial establishment hosting or sponsoring a professional boxing match unless—

(A) the hotel, casino, resort, or other commercial establishment is primarily responsible for organizing, promoting, and producing the match; and

(B) there is no other person primarily responsible for organizing, promoting, and producing

the match.

(10) State

The term "State" means each of the 50 States, Puerto Rico, the District of Columbia, and any territory or possession of the United States, including the Virgin Islands.

(11) Effective date of the contract

The term "effective date of the contract" means the day upon which a boxer becomes legally bound by the contract.

(12) Boxing service provider

The term "boxing service provider" means a promoter, manager, sanctioning body, licensee, or matchmaker.

(13) Contract provision

The term "contract provision" means any legal obligation between a boxer and a boxing service provider.

(14) Sanctioning organization

The term "sanctioning organization" means an organization that sanctions professional boxing matches in the United States—

(A) between boxers who are residents of different States; or

(B) that are advertised, otherwise promoted, or broadcast (including closed circuit television) in interstate commerce.

(15) Suspension

The term "suspension" includes within its meaning the revocation of a boxing license.

(Pub. L. 104–272, §2, Oct. 9, 1996, 110 Stat. 3309; Pub. L. 106–210, §7(a), May 26, 2000, 114 Stat. 327.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 106–210, §7(a), which directed amendments to subsec. (a) of this section, was executed as if it directed amendments to this section rather than to subsec. (a) of this section to reflect the probable intent of Congress because this section does not contain a subsec. (a). See 2000 Amendment notes below.

AMENDMENTS

2000—Par. (9). Pub. L. 106–210, §7(a)(1), inserted last sentence. See Codification note above.

Par. (10). Pub. L. 106–210, §7(a)(2), inserted ", including the Virgin Islands" before the period at end. See Codification note above.

Pars. (11) to (15). Pub. L. 106–210, §7(a)(3), added pars. (11) to (15). See Codification note above.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 104–272, §23, formerly §15, Oct. 9, 1996, 110 Stat. 3314, as renumbered §23 by Pub. L. 106–210, §4(1), May 26, 2000, 114 Stat. 322, provided that: "The provisions of this Act [enacting this chapter] shall take effect on January 1, 1997, except as follows:

"(1) Section 9 [now section 17, enacting section 6308 of this title] shall not apply to an otherwise authorized boxing commission in the Commonwealth of Virginia until July 1, 1998.

"(2) Sections 5 through 9 [enacting sections 6304 to 6308 of this title] shall take effect on July 1, 1997."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–210, §1, May 26, 2000, 114 Stat. 321, provided that: "This Act [enacting sections 6307a to 6307h of this title, amending this section and sections 6303, 6305, 6306, and 6308 to 6313 of this title, and

enacting and amending provisions set out as notes under this section] may be cited as the 'Muhammad Ali Boxing Reform Act'."

SHORT TITLE

Pub. L. 104–272, §1, Oct. 9, 1996, 110 Stat. 3309, provided that: "This Act [enacting this chapter] may be cited as the 'Professional Boxing Safety Act of 1996'."

FINDINGS

Pub. L. 106–210, §2, May 26, 2000, 114 Stat. 321, provided that: "The Congress makes the following findings:

"(1) Professional boxing differs from other major, interstate professional sports industries in the United States in that it operates without any private sector association, league, or centralized industry organization to establish uniform and appropriate business practices and ethical standards. This has led to repeated occurrences of disreputable and coercive business practices in the boxing industry, to the detriment of professional boxers nationwide.

"(2) State officials are the proper regulators of professional boxing events, and must protect the welfare of professional boxers and serve the public interest by closely supervising boxing activity in their jurisdiction. State boxing commissions do not currently receive adequate information to determine whether boxers competing in their jurisdiction are being subjected to contract terms and business practices which may violate State regulations, or are onerous and confiscatory.

"(3) Promoters who engage in illegal, coercive, or unethical business practices can take advantage of the lack of equitable business standards in the sport by holding boxing events in States with weaker regulatory oversight.

"(4) The sanctioning organizations which have proliferated in the boxing industry have not established credible and objective criteria to rate professional boxers, and operate with virtually no industry or public oversight. Their ratings are susceptible to manipulation, have deprived boxers of fair opportunities for advancement, and have undermined public confidence in the integrity of the sport.

"(5) Open competition in the professional boxing industry has been significantly interfered with by restrictive and anticompetitive business practices of certain promoters and sanctioning bodies, to the detriment of the athletes and the ticket-buying public. Common practices of promoters and sanctioning organizations represent restraints of interstate trade in the United States.

"(6) It is necessary and appropriate to establish national contracting reforms to protect professional boxers and prevent exploitive business practices, and to require enhanced financial disclosures to State athletic commissions to improve the public oversight of the sport."

PURPOSES OF 2000 AMENDMENT

Pub. L. 106–210, §3, May 26, 2000, 114 Stat. 322, provided that: "The purposes of this Act [see Short Title of 2000 Amendment note above] are—

"(1) to protect the rights and welfare of professional boxers on an interstate basis by preventing certain exploitive, oppressive, and unethical business practices;

"(2) to assist State boxing commissions in their efforts to provide more effective public oversight of the sport; and

"(3) to promote honorable competition in professional boxing and enhance the overall integrity of the industry."

[1] *So in original. No subpar. (B) has been enacted.*

§6302. Purposes

The purposes of this chapter are—

(1) to improve and expand the system of safety precautions that protects the welfare of professional boxers; and

(2) to assist State boxing commissions to provide proper oversight for the professional boxing industry in the United States.

(Pub. L. 104–272, §3, Oct. 9, 1996, 110 Stat. 3310.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1997, see section 23 of Pub. L. 104–272, set out as a note under section 6301 of this title.

§6303. Boxing matches in States without boxing commissions

(a) No person may arrange, promote, organize, produce, or fight in a professional boxing match held in a State that does not have a boxing commission unless the match is supervised by a boxing commission from another State and subject to the most recent version of the recommended regulatory guidelines certified and published by the Association of Boxing Commissions as well as any additional relevant professional boxing regulations and requirements of such other State.

(b) For the purpose of this chapter, if no State commission is available to supervise a boxing match according to subsection (a), then—

(1) the match may not be held unless it is supervised by an association of boxing commissions to which at least a majority of the States belong; and

(2) any reporting or other requirement relating to a supervising commission allowed under this section shall be deemed to refer to the entity described in paragraph (1).

(Pub. L. 104–272, §4, Oct. 9, 1996, 110 Stat. 3310; Pub. L. 106–210, §7(e), May 26, 2000, 114 Stat. 328.)

EDITORIAL NOTES

AMENDMENTS

2000—Pub. L. 106–210 designated existing provisions as subsec. (a) and added subsec. (b).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1997, see section 23 of Pub. L. 104–272, set out as a note under section 6301 of this title.

§6304. Safety standards

No person may arrange, promote, organize, produce, or fight in a professional boxing match without meeting each of the following requirements or an alternative requirement in effect under regulations of a boxing commission that provides equivalent protection of the health and safety of boxers:

(1) A physical examination of each boxer by a physician certifying whether or not the boxer is physically fit to safely compete, copies of which must be provided to the boxing commission.

(2) Except as otherwise expressly provided under regulation of a boxing commission promulgated subsequent to October 9, 1996, an ambulance or medical personnel with appropriate resuscitation equipment continuously present on site.

(3) A physician continuously present at ringside.

(4) Health insurance for each boxer to provide medical coverage for any injuries sustained in the match.

(Pub. L. 104–272, §5, Oct. 9, 1996, 110 Stat. 3310.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective July 1, 1997, see section 23(2) of Pub. L. 104–272, set out as a note under section 6301 of this title.

§6305. Registration

(a) Requirements

Each boxer shall register with—

(1) the boxing commission of the State in which such boxer resides; or

(2) in the case of a boxer who is a resident of a foreign country, or a State in which there is no boxing commission, the boxing commission of any State that has such a commission.

(b) Identification card

(1) Issuance

A boxing commission shall issue to each professional boxer who registers in accordance with subsection (a), an identification card that contains each of the following:

(A) A recent photograph of the boxer.

(B) The social security number of the boxer (or, in the case of a foreign boxer, any similar citizen identification number or professional boxer number from the country of residence of the boxer).

(C) A personal identification number assigned to the boxer by a boxing registry.

(2) Renewal

Each professional boxer shall renew his or her identification card at least once every 4 years.

(3) Presentation

Each professional boxer shall present his or her identification card to the appropriate boxing commission not later than the time of the weigh-in for a professional boxing match.

(c) Health and safety disclosures

It is the sense of the Congress that a boxing commission should, upon issuing an identification card to a boxer under subsection (b)(1), make a health and safety disclosure to that boxer as that commission considers appropriate. The health and safety disclosure should include the health and safety risks associated with boxing, and, in particular, the risk and frequency of brain injury and the advisability that a boxer periodically undergo medical procedures designed to detect brain injury.

(Pub. L. 104–272, §6, Oct. 9, 1996, 110 Stat. 3310; Pub. L. 106–210, §7(c), (f), May 26, 2000, 114 Stat. 328.)

EDITORIAL NOTES

AMENDMENTS

2000—Subsec. (b)(2). Pub. L. 106–210, §7(c), substituted "4 years" for "2 years".
Subsec. (c). Pub. L. 106–210, §7(f), added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective July 1, 1997, see section 23(2) of Pub. L. 104–272, set out as a note under section 6301 of this title.

§6306. Review

(a) Procedures

Each boxing commission shall establish each of the following procedures:

(1) Procedures to evaluate the professional records and physician's certification of each boxer participating in a professional boxing match in the State, and to deny authorization for a boxer to fight where appropriate.

(2) Procedures to ensure that, except as provided in subsection (b), no boxer is permitted to box while under suspension from any boxing commission due to—

(A) a recent knockout or series of consecutive losses;

(B) an injury, requirement for a medical procedure, or physician denial of certification;

(C) failure of a drug test;

(D) the use of false aliases, or falsifying, or attempting to falsify, official identification cards or documents; or

(E) unsportsmanlike conduct or other inappropriate behavior inconsistent with generally accepted methods of competition in a professional boxing match.

(3) Procedures to review a suspension where appealed by a boxer, licensee, manager, matchmaker, promoter, or other boxing service provider, including an opportunity for a boxer to present contradictory evidence.

(4) Procedures to revoke a suspension where a boxer—

(A) was suspended under subparagraph (A) or (B) of paragraph (2) of this subsection, and has furnished further proof of a sufficiently improved medical or physical condition; or

(B) furnishes proof under subparagraph (C) or (D) of paragraph (2) that a suspension was not, or is no longer, merited by the facts.

(b) Suspension in another State

A boxing commission may allow a boxer who is under suspension in any State to participate in a professional boxing match—

(1) for any reason other than those listed in subsection (a) if such commission notifies in writing and consults with the designated official of the suspending State's boxing commission prior to the grant of approval for such individual to participate in that professional boxing match; or

(2) if the boxer appeals to the Association of Boxing Commissions, and the Association of Boxing Commissions determines that the suspension of such boxer was without sufficient grounds, for an improper purpose, or not related to the health and safety of the boxer or the purposes of this chapter.

(Pub. L. 104–272, §7, Oct. 9, 1996, 110 Stat. 3311; Pub. L. 106–210, §7(b), (d), May 26, 2000, 114 Stat. 328.)

EDITORIAL NOTES

AMENDMENTS

2000—Subsec. (a)(2)(E). Pub. L. 106–210, §7(b), added subpar. (E).

Subsec. (a)(3). Pub. L. 106–210, §7(d), substituted "boxer, licensee, manager, matchmaker, promoter, or other boxing service provider" for "boxer" the first place appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective July 1, 1997, see section 23(2) of Pub. L. 104–272, set out as a note under section 6301 of this title.

§6307. Reporting

Not later than 48 business hours after the conclusion of a professional boxing match, the supervising boxing commission shall report the results of such boxing match and any related

suspensions to each boxer registry.

(Pub. L. 104–272, §8, Oct. 9, 1996, 110 Stat. 3311.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective July 1, 1997, see section 23(2) of Pub. L. 104–272, set out as a note under section 6301 of this title.

§6307a. Contract requirements

Within 2 years after May 26, 2000, the Association of Boxing Commissions (ABC) shall develop and shall approve by a vote of no less than a majority of its member State boxing commissioners, guidelines for minimum contractual provisions that should be included in bout agreements and boxing contracts. It is the sense of the Congress that State boxing commissions should follow these ABC guidelines.

(Pub. L. 104–272, §9, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 322.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 9 of Pub. L. 104–272 was renumbered section 17 and is classified to section 6308 of this title.

§6307b. Protection from coercive contracts

(a) General rule

(1)(A) A contract provision shall be considered to be in restraint of trade, contrary to public policy, and unenforceable against any boxer to the extent that it—

(i) is a coercive provision described in subparagraph (B) and is for a period greater than 12 months; or

(ii) is a coercive provision described in subparagraph (B) and the other boxer under contract to the promoter came under that contract pursuant to a coercive provision described in subparagraph (B).

(B) A coercive provision described in this subparagraph is a contract provision that grants any rights between a boxer and a promoter, or between promoters with respect to a boxer, if the boxer is required to grant such rights, or a boxer's promoter is required to grant such rights with respect to a boxer to another promoter, as a condition precedent to the boxer's participation in a professional boxing match against another boxer who is under contract to the promoter.

(2) This subsection shall only apply to contracts entered into after May 26, 2000.

(3) No subsequent contract provision extending any rights or compensation covered in paragraph (1) shall be enforceable against a boxer if the effective date of the contract containing such provision is earlier than 3 months before the expiration of the relevant time period set forth in paragraph (1).

(b) Promotional rights under mandatory bout contracts

No boxing service provider may require a boxer to grant any future promotional rights as a requirement of competing in a professional boxing match that is a mandatory bout under the rules of a sanctioning organization.

(c) Protection from coercive contracts with broadcasters

Subsection (a) of this section applies to any contract between a commercial broadcaster and a

boxer, or granting any rights with respect to that boxer, involving a broadcast in or affecting interstate commerce, regardless of the broadcast medium. For the purpose of this subsection, any reference in subsection (a)(1)(B) to "promoter" shall be considered a reference to "commercial broadcaster".

(Pub. L. 104–272, §10, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 322.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 10 of Pub. L. 104–272 was renumbered section 18 and is classified to section 6309 of this title.

§6307c. Sanctioning organizations

(a) Objective criteria

Within 2 years after May 26, 2000, the Association of Boxing Commissions shall develop and shall approve by a vote of no less than a majority of its member State boxing commissioners, guidelines for objective and consistent written criteria for the ratings of professional boxers. It is the sense of the Congress that sanctioning bodies and State boxing commissions should follow these ABC guidelines.

(b) Appeals process

A sanctioning organization shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match, until it provides the boxers with notice that the sanctioning organization shall, within 7 days after receiving a request from a boxer questioning that organization's rating of the boxer—

(1) provide to the boxer a written explanation of the organization's criteria, its rating of the boxer, and the rationale or basis for its rating (including a response to any specific questions submitted by the boxer); and

(2) submit a copy of its explanation to the Association of Boxing Commissions.

(c) Notification of change in rating

A sanctioning organization shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match, until, with respect to a change in the rating of a boxer previously rated by such organization in the top 10 boxers, the organization—

(1) posts a copy, within 7 days of such change, on its Internet website or home page, if any, including an explanation of such change, for a period of not less than 30 days; and

(2) provides a copy of the rating change and explanation to an association to which at least a majority of the State boxing commissions belong.

(d) Public disclosure

(1) Federal Trade Commission filing

A sanctioning organization shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match unless, not later than January 31 of each year, it submits to the Federal Trade Commission and to the ABC—

(A) a complete description of the organization's ratings criteria, policies, and general sanctioning fee schedule;

(B) the bylaws of the organization;

(C) the appeals procedure of the organization for a boxer's rating; and

(D) a list and business address of the organization's officials who vote on the ratings of boxers.

(2) Format; updates

A sanctioning organization shall—

(A) provide the information required under paragraph (1) in writing, and, for any document greater than 2 pages in length, also in electronic form; and

(B) promptly notify the Federal Trade Commission of any material change in the information submitted.

(3) Federal Trade Commission to make information available to public

The Federal Trade Commission shall make information received under this subsection available to the public. The Commission may assess sanctioning organizations a fee to offset the costs it incurs in processing the information and making it available to the public.

(4) Internet alternative

In lieu of submitting the information required by paragraph (1) to the Federal Trade Commission, a sanctioning organization may provide the information to the public by maintaining a website on the Internet that—

(A) is readily accessible by the general public using generally available search engines and does not require a password or payment of a fee for full access to all the information;

(B) contains all the information required to be submitted to the Federal Trade Commission by paragraph (1) in an easy to search and use format; and

(C) is updated whenever there is a material change in the information.

(Pub. L. 104–272, §11, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 323.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 11 of Pub. L. 104–272 was renumbered section 19 and is classified to section 6310 of this title.

§6307d. Required disclosures to State boxing commissions by sanctioning organizations

A sanctioning organization shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of—

(1) all charges, fees, and costs the organization will assess any boxer participating in that match;

(2) all payments, benefits, complimentary benefits, and fees the organization will receive for its affiliation with the event, from the promoter, host of the event, and all other sources; and

(3) such additional information as the commission may require.

(Pub. L. 104–272, §12, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 324.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 12 of Pub. L. 104–272 was renumbered section 20 and is classified to section 6311 of this title.

§6307e. Required disclosures for promoters

(a) Disclosures to the boxing commissions

A promoter shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of—

(1) a copy of any agreement in writing to which the promoter is a party with any boxer participating in the match;

(2) a statement made under penalty of perjury that there are no other agreements, written or oral, between the promoter and the boxer with respect to that match; and

(3)(A) all fees, charges, and expenses that will be assessed by or through the promoter on the boxer pertaining to the event, including any portion of the boxer's purse that the promoter will receive, and training expenses;

(B) all payments, gifts, or benefits the promoter is providing to any sanctioning organization affiliated with the event; and

(C) any reduction in a boxer's purse contrary to a previous agreement between the promoter and the boxer or a purse bid held for the event.

(b) Disclosures to the boxer

A promoter shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxer it promotes—

(1) the amounts of any compensation or consideration that a promoter has contracted to receive from such match;

(2) all fees, charges, and expenses that will be assessed by or through the promoter on the boxer pertaining to the event, including any portion of the boxer's purse that the promoter will receive, and training expenses; and

(3) any reduction in a boxer's purse contrary to a previous agreement between the promoter and the boxer or a purse bid held for the event.

(c) Information to be available to State Attorney General

A promoter shall make information required to be disclosed under this section available to the chief law enforcement officer of the State in which the match is to be held upon request of such officer.

(Pub. L. 104–272, §13, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 324.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 13 of Pub. L. 104–272 was renumbered section 21 and is classified to section 6312 of this title.

§6307f. Required disclosures for judges and referees

A judge or referee shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of all consideration, including reimbursement for expenses, that will be received from any source for participation in the match.

(Pub. L. 104–272, §14, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 325.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 14 of Pub. L. 104–272 was renumbered section 22 and is classified to section 6313 of this title.

§6307g. Confidentiality

(a) In general

Neither a boxing commission or [1] an Attorney General may disclose to the public any matter furnished by a promoter under section 6307e of this title except to the extent required in a legal, administrative, or judicial proceeding.

(b) Effect of contrary State law

If a State law governing a boxing commission requires that information that would be furnished by a promoter under section 6307e of this title shall be made public, then a promoter is not required to file such information with such State if the promoter files such information with the ABC.

(Pub. L. 104–272, §15, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 325.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 15 of Pub. L. 104–272 was renumbered section 23 and is set out as a note under section 6301 of this title.

[1] So in original. Probably should be "nor".

§6307h. Judges and referees

No person may arrange, promote, organize, produce, or fight in a professional boxing match unless all referees and judges participating in the match have been certified and approved by the boxing commission responsible for regulating the match in the State where the match is held.

(Pub. L. 104–272, §16, as added Pub. L. 106–210, §4(2), May 26, 2000, 114 Stat. 325.)

§6308. Conflicts of interest

(a) Regulatory personnel

No member or employee of a boxing commission, no person who administers or enforces State boxing laws, and no member of the Association of Boxing Commissions may belong to, contract with, or receive any compensation from, any person who sanctions, arranges, or promotes professional boxing matches or who otherwise has a financial interest in an active boxer currently registered with a boxer registry. For purposes of this section, the term "compensation" does not include funds held in escrow for payment to another person in connection with a professional boxing match. The prohibition set forth in this section shall not apply to any contract entered into, or any reasonable compensation received, by a boxing commission to supervise a professional boxing match in another State as described in section 6303 of this title.

(b) Firewall between promoters and managers

(1) In general

It is unlawful for—

(A) a promoter to have a direct or indirect financial interest in the management of a boxer; or

(B) a manager—

(i) to have a direct or indirect financial interest in the promotion of a boxer; or

(ii) to be employed by or receive compensation or other benefits from a promoter, except for amounts received as consideration under the manager's contract with the boxer.

(2) Exceptions

Paragraph (1)—

(A) does not prohibit a boxer from acting as his own promoter or manager; and

(B) only applies to boxers participating in a boxing match of 10 rounds or more.

(c) Sanctioning organizations

(1) Prohibition on receipts

Except as provided in paragraph (2), no officer or employee of a sanctioning organization may receive any compensation, gift, or benefit, directly or indirectly, from a promoter, boxer, or manager.

(2) Exceptions

Paragraph (1) does not apply to—

(A) the receipt of payment by a promoter, boxer, or manager of a sanctioning organization's published fee for sanctioning a professional boxing match or reasonable expenses in connection therewith if the payment is reported to the responsible boxing commission; or

(B) the receipt of a gift or benefit of de minimis value.

(Pub. L. 104–272, §17, formerly §9, Oct. 9, 1996, 110 Stat. 3311; renumbered §17 and amended Pub. L. 106–210, §§4(1), 5, May 26, 2000, 114 Stat. 322, 325.)

EDITORIAL NOTES

AMENDMENTS

2000—Pub. L. 106–210, §5, designated existing provisions as subsec. (a), inserted subsec. heading, and added subsecs. (b) and (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective July 1, 1997, and not applicable to an otherwise authorized boxing commission in the Commonwealth of Virginia until July 1, 1998, see section 23(1), (2) of Pub. L. 104–272, set out as a note under section 6301 of this title.

§6309. Enforcement

(a) Injunctions

Whenever the Attorney General of the United States has reasonable cause to believe that a person is engaged in a violation of this chapter, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order, against the person, as the Attorney General determines to be necessary to restrain the person from continuing to engage in, sanction, promote, or otherwise participate in a professional boxing match in violation of this chapter.

(b) Criminal penalties

(1) Managers, promoters, matchmakers, and licensees

Any manager, promoter, matchmaker, and licensee who knowingly violates, or coerces or causes any other person to violate, any provision of this chapter, other than section 6307a(b),[1] 6307b, 6307c, 6307d, 6307e, 6307f, or 6307h of this title, shall, upon conviction, be imprisoned for not more than 1 year or fined not more than $20,000, or both.

(2) Violation of antiexploitation, sanctioning organization, or disclosure provisions

Any person who knowingly violates any provision of section 6307a(b),[1] 6307b, 6307c, 6307d, 6307e, 6307f, or 6307h of this title shall, upon conviction, be imprisoned for not more than 1 year or fined not more than—

(A) $100,000; and

(B) if a violation occurs in connection with a professional boxing match the gross revenues for which exceed $2,000,000, an additional amount which bears the same ratio to $100,000 as

the amount of such revenues compared to $2,000,000, or both.

(3) Conflict of interest

Any member or employee of a boxing commission, any person who administers or enforces State boxing laws, and any member of the Association of Boxing Commissions who knowingly violates section 6308(a) of this title shall, upon conviction, be imprisoned for not more than 1 year or fined not more than $20,000, or both.

(4) Boxers

Any boxer who knowingly violates any provision of this chapter shall, upon conviction, be fined not more than $1,000.

(c) Actions by States

Whenever the chief law enforcement officer of any State has reason to believe that a person or organization is engaging in practices which violate any requirement of this chapter, the State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States—

(1) to enjoin the holding of any professional boxing match which the practice involves;
(2) to enforce compliance with this chapter;
(3) to obtain the fines provided under subsection (b) or appropriate restitution; or
(4) to obtain such other relief as the court may deem appropriate.

(d) Private right of action

Any boxer who suffers economic injury as a result of a violation of any provision of this chapter may bring an action in the appropriate Federal or State court and recover the damages suffered, court costs, and reasonable attorneys fees and expenses.

(e) Enforcement against Federal Trade Commission, State Attorneys General, etc.

Nothing in this chapter authorizes the enforcement of—

(1) any provision of this chapter against the Federal Trade Commission, the United States Attorney General, or the chief legal officer of any State for acting or failing to act in an official capacity;

(2) subsection (d) of this section against a State or political subdivision of a State, or any agency or instrumentality thereof; or

(3) section 6307b of this title against a boxer acting in his capacity as a boxer.

(Pub. L. 104–272, §18, formerly §10, Oct. 9, 1996, 110 Stat. 3312; renumbered §18 and amended Pub. L. 106–210, §§4(1), 6, May 26, 2000, 114 Stat. 322, 326.)

EDITORIAL NOTES

AMENDMENTS

2000—Subsec. (b)(1). Pub. L. 106–210, §6(1), inserted ", other than section 6307a(b), 6307b, 6307c, 6307d, 6307e, 6307f, or 6307h of this title," after "this chapter".

Subsec. (b)(2). Pub. L. 106–210, §6(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3), (4). Pub. L. 106–210, §6(2), (4), redesignated pars. (2) and (3) as (3) and (4), respectively, and in par. (3) substituted "section 6308(a)" for "section 6308".

Subsecs. (c) to (e). Pub. L. 106–210, §6(5), added subsecs. (c) to (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1997, see section 23 of Pub. L. 104–272, set out as a note under section 6301 of this title.

[1] *So in original. Section 6307a does not contain a subsec. (b).*

§6310. Notification of supervising boxing commission

Each promoter who intends to hold a professional boxing match in a State that does not have a boxing commission shall, not later than 14 days before the intended date of that match, provide written notification to the supervising boxing commission designated under section 6303 of this title. Such notification shall contain each of the following:

(1) Assurances that, with respect to that professional boxing match, all applicable requirements of this chapter will be met.

(2) The name of any person who, at the time of the submission of the notification—

(A) is under suspension from a boxing commission; and

(B) will be involved in organizing or participating in the event.

(3) For any individual listed under paragraph (2), the identity of the boxing commission that issued the suspension described in paragraph (2)(A).

(Pub. L. 104–272, §19, formerly §11, Oct. 9, 1996, 110 Stat. 3312; renumbered §19, Pub. L. 106–210, §4(1), May 26, 2000, 114 Stat. 322.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1997, see section 23 of Pub. L. 104–272, set out as a note under section 6301 of this title.

§6311. Studies

(a) Pension

The Secretary of Labor shall conduct a study on the feasibility and cost of a national pension system for boxers, including potential funding sources.

(b) Health, safety, and equipment

The Secretary of Health and Human Services shall conduct a study to develop recommendations for health, safety, and equipment standards for boxers and for professional boxing matches.

(c) Reports

Not later than one year after October 9, 1996, the Secretary of Labor shall submit a report to the Congress on the findings of the study conducted pursuant to subsection (a). Not later than 180 days after October 9, 1996, the Secretary of Health and Human Services shall submit a report to the Congress on the findings of the study conducted pursuant to subsection (b).

(Pub. L. 104–272, §20, formerly §12, Oct. 9, 1996, 110 Stat. 3313; renumbered §20, Pub. L. 106–210, §4(1), May 26, 2000, 114 Stat. 322.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1997, see section 23 of Pub. L. 104–272, set out as a note under section 6301 of this title.

§6312. Professional boxing matches conducted on Indian reservations

(a) Definitions

For purposes of this section, the following definitions shall apply:

(1) Indian tribe

The term "Indian tribe" has the same meaning as in section 5304(e) of title 25.

(2) Reservation

The term "reservation" means the geographically defined area over which a tribal organization exercises governmental jurisdiction.

(3) Tribal organization

The term "tribal organization" has the same meaning as in section 5304(l) of title 25.

(b) Requirements

(1) In general

Notwithstanding any other provision of law, a tribal organization of an Indian tribe may, upon the initiative of the tribal organization—

(A) regulate professional boxing matches held within the reservation under the jurisdiction of that tribal organization; and

(B) carry out that regulation or enter into a contract with a boxing commission to carry out that regulation.

(2) Standards and licensing

If a tribal organization regulates professional boxing matches pursuant to paragraph (1), the tribal organization shall, by tribal ordinance or resolution, establish and provide for the implementation of health and safety standards, licensing requirements, and other requirements relating to the conduct of professional boxing matches that are at least as restrictive as—

(A) the otherwise applicable standards and requirements of a State in which the reservation is located; or

(B) the most recently published version of the recommended regulatory guidelines certified and published by the Association of Boxing Commissions.

(Pub. L. 104–272, §21, formerly §13, Oct. 9, 1996, 110 Stat. 3313; renumbered §21, Pub. L. 106–210, §4(1), May 26, 2000, 114 Stat. 322.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1997, see section 23 of Pub. L. 104–272, set out as a note under section 6301 of this title.

§6313. Relationship with State law

Nothing in this chapter shall prohibit a State from adopting or enforcing supplemental or more stringent laws or regulations not inconsistent with this chapter, or criminal, civil, or administrative fines for violations of such laws or regulations.

(Pub. L. 104–272, §22, formerly §14, Oct. 9, 1996, 110 Stat. 3313; renumbered §22, Pub. L. 106–210, §4(1), May 26, 2000, 114 Stat. 322.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 1997, see section 23 of Pub. L. 104–272, set out as a note under section 6301 of this title.

CHAPTER 90—PROPANE EDUCATION AND RESEARCH

Sec.

§6401. Findings

The Congress finds that—

(1) propane gas, or liquefied petroleum gas, is an essential energy commodity providing heat, hot water, cooking fuel, and motor fuel among its many uses to millions of Americans;

(2) the use of propane is especially important to rural citizens and farmers, offering an efficient and economical source of gas energy;

(3) propane has been recognized as a clean fuel and can contribute in many ways to reducing the pollution in our cities and towns; and

(4) propane is primarily domestically produced and its use provides energy security and jobs for Americans.

(Pub. L. 104–284, §2, Oct. 11, 1996, 110 Stat. 3370.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2014 AMENDMENT

Pub. L. 113–269, §1, Dec. 18, 2014, 128 Stat. 2947, provided that: "This Act [amending sections 6404 and 6408 of this title] may be cited as the 'Propane Education and Research Enhancement Act of 2014'."

SHORT TITLE

Pub. L. 104–284, §1, Oct. 11, 1996, 110 Stat. 3370, provided that: "This Act [enacting this chapter] may be cited as the 'Propane Education and Research Act of 1996'."

§6402. Definitions

For the purposes of this chapter—

(1) the term "Council" means a Propane Education and Research Council created pursuant to section 6403 of this title;

(2) the term "industry" means those persons involved in the production, transportation, and sale of propane, and in the manufacture and distribution of propane utilization equipment, in the United States;

(3) the term "industry trade association" means an organization exempt from tax, under section 501(c)(3) or (6) of title 26, representing the propane industry;

(4) the term "odorized propane" means propane which has had odorant added to it;

(5) the term "producer" means the owner of propane at the time it is recovered at a gas processing plant or refinery;

(6) the term "propane" means a hydrocarbon whose chemical composition is predominantly $C^{3}H^{8}$, whether recovered from natural gas or crude oil, and includes liquefied petroleum gases and

mixtures thereof;

(7) the term "public member" means a member of the Council, other than a representative of producers or retail marketers, representing significant users of propane, public safety officials, academia, the propane research community, or other groups knowledgeable about propane;

(8) the term "qualified industry organization" means the National Propane Gas Association, the Gas Processors Association, a successor association of such associations, or a group of retail marketers or producers who collectively represent at least 25 percent of the volume of propane sold or produced in the United States;

(9) the term "retail marketer" means a person engaged primarily in the sale of odorized propane to the ultimate consumer or to retail propane dispensers;

(10) the term "retail propane dispenser" means a person who sells odorized propane to the ultimate consumer but is not engaged primarily in the business of such sales; and

(11) the term "Secretary" means the Secretary of Energy.

(Pub. L. 104–284, §3, Oct. 11, 1996, 110 Stat. 3370.)

§6403. Referenda

(a) Creation of program

The qualified industry organizations may conduct, at their own expense, a referendum among producers and retail marketers for the creation of a Propane Education and Research Council. The Council, if established, shall reimburse the qualified industry organizations for the cost of the referendum accounting and documentation. Such referendum shall be conducted by an independent auditing firm agreed to by the qualified industry organizations. Voting rights in such referendum shall be based on the volume of propane produced or odorized propane sold in the previous calendar year or other representative period. Upon approval of those persons representing two-thirds of the total volume of propane voted in the retail marketer class and two-thirds of all propane voted in the producer class, the Council shall be established, and shall be authorized to levy an assessment on odorized propane in accordance with section 6405 of this title. All persons voting in the referendum shall certify to the independent auditing firm the volume of propane represented by their vote.

(b) Termination

On the Council's own initiative, or on petition to the Council by producers and retail marketers representing 35 percent of the volume of propane in each class, the Council shall, at its own expense, hold a referendum, to be conducted by an independent auditing firm selected by the Council, to determine whether the industry favors termination or suspension of the Council. Termination or suspension shall not take effect unless it is approved by persons representing more than one-half of the total volume of odorized propane in the retail marketer class and more than one-half of the total volume of propane in the producer class, or is approved by persons representing more than two-thirds of the total volume of propane in either such class.

(Pub. L. 104–284, §4, Oct. 11, 1996, 110 Stat. 3371.)

§6404. Propane Education and Research Council

(a) Selection of members

The qualified industry organizations shall select all retail marketer, public, and producer members of the Council. The producer organizations shall select the producer members of the Council, the retail marketer organizations shall select retail marketer members, and all qualified industry organizations shall jointly select the public members. Vacancies in unfinished terms of Council members shall be filled in the same manner as were the original appointments.

(b) Representation

In selecting members of the Council, the qualified industry organizations shall give due regard to

selecting a Council that is representative of the industry, including representation of—

(1) gas processors and oil refiners among producers;

(2) interstate and intrastate operators among retail marketers;

(3) large and small companies among producers and retail marketers, including agricultural cooperatives; and

(4) diverse geographic regions of the country.

(c) Membership

The Council shall consist of 21 members, with 9 members representing retail marketers, 9 members representing producers, and 3 public members. Other than the public members, Council members shall be full-time employees or owners of businesses in the industry or representatives of agricultural cooperatives. No employee of a qualified industry organization or other industry trade association shall serve as a member of the Council, and no member of the Council may serve concurrently as an officer of the Board of Directors of a qualified industry organization or other industry trade association. Only one person at a time from any company or its affiliate may serve on the Council.

(d) Compensation

Council members shall receive no compensation for their services, nor shall Council members be reimbursed for expenses relating to their service, except that public members, upon request, may be reimbursed for reasonable expenses directly related to their participation in Council meetings.

(e) Terms

Council members shall serve terms of 3 years and may serve not more than 2 full consecutive terms. Members filling unexpired terms may serve not more than a total of 7 consecutive years. Former members of the Council may be returned to the Council if they have not been members for a period of 2 years. Initial appointments to the Council shall be for terms of 1, 2, and 3 years, staggered to provide for the selection of 7 members each year.

(f) Functions

The Council shall develop programs and projects and enter into contracts or agreements for implementing this chapter, including programs to enhance consumer and employee safety and training, to train propane distributors and consumers in strategies to mitigate negative effects of future propane price spikes, to provide for research and development of clean and efficient propane utilization equipment, to inform and educate the public about safety and other issues associated with the use of propane, and to provide for the payment of the costs thereof with funds collected pursuant to this chapter. The Council shall coordinate its activities with industry trade association and others as appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities.

(g) Use of funds

Not less than 5 percent of the funds collected through assessments pursuant to this chapter shall be used for programs and projects intended to benefit the agriculture industry in the United States. The Council shall coordinate its activities in this regard with agriculture industry trade associations and other organizations representing the agriculture industry. The percentage of funds collected through assessments pursuant to this chapter to be used for projects relating to the use of propane as an over-the-road motor fuel shall not exceed the percentage of the total market for odorized propane that is used as a motor vehicle fuel, based on the historical average of such use over the previous 3-year period.

(h) Priorities

Issues related to research and development, safety, education, and training shall be given priority by the Council in the development of its programs and projects.

(i) Administration

The Council shall select from among its members a Chairman and other officers as necessary, may

establish committees and subcommittees of the Council, and shall adopt rules and bylaws for the conduct of business and the implementation of this chapter. The Council shall establish procedures for the solicitation of industry comment and recommendations on any significant plans, programs, and projects to be funded by the Council. The Council may establish advisory committees of persons other than Council members.

(j) Administrative expenses

(1) The administrative expenses of operating the Council (not including costs incurred in the collection of the assessment pursuant to section 6406 of this title) plus amounts paid under paragraph (2) shall not exceed 10 percent of the funds collected in any fiscal year.

(2) The Council shall annually reimburse the Secretary for costs incurred by the Federal Government relating to the Council, except that such reimbursement for any fiscal year shall not exceed the amount that the Secretary determines is the average annual salary of two employees of the Department of Energy.

(k) Budget

Before August 1 each year, the Council shall publish for public review and comment a budget plan for the next calendar year, including the probable costs of all programs, projects, and contracts and a recommended rate of assessment sufficient to cover such costs. Following this review and comment, the Council shall submit the proposed budget to the Secretary and to the Congress. The Secretary may recommend programs and activities the Secretary considers appropriate.

(l) Records; audits

The Council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the Council and make public such information. The books of the Council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the Council may designate. Copies of such audit shall be provided to all members of the Council, all qualified industry organizations, and to other members of the industry upon request. The Secretary shall receive notice of meetings and may require reports on the activities of the Council, as well as reports on compliance, violations, and complaints regarding the implementation of this chapter.

(m) Public access to Council proceedings

(1) All meetings of the Council shall be open to the public after at least 30 days advance public notice.

(2) The minutes of all meetings of the Council shall be made available to and readily accessible by the public.

(n) Annual report

Each year the Council shall prepare and make publicly available a report which includes an identification and description of all programs and projects undertaken by the Council during the previous year as well as those planned for the coming year. Such report shall also detail the allocation or planned allocation of Council resources for each such program and project.

(Pub. L. 104–284, §5, Oct. 11, 1996, 110 Stat. 3371; Pub. L. 113–269, §2(a), Dec. 18, 2014, 128 Stat. 2947.)

EDITORIAL NOTES

AMENDMENTS

2014—Subsec. (f). Pub. L. 113–269 inserted "to train propane distributors and consumers in strategies to mitigate negative effects of future propane price spikes," after "to enhance consumer and employee safety and training,".

§6405. Assessments

(a) Amount

The Council shall set the initial assessment at no greater than one tenth of 1 cent per gallon of odorized propane. Thereafter, annual assessments shall be sufficient to cover the costs of the plans and programs developed by the Council. The assessment shall not be greater than one-half cent per gallon of odorized propane, unless approved by a majority of those voting in a referendum in both the producer and the retail marketer class. In no case may the assessment be raised by more than one tenth of 1 cent per gallon of odorized propane annually.

(b) Ownership

The owner of odorized propane at the time of odorization, or the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold and placed into commerce. Assessments collected are payable to the Council on a monthly basis by the 25th of the month following the month of such collection. Propane exported from the United States to another country is not subject to the assessment.

(c) Alternative collection rules

The Council may establish an alternative means of collecting the assessment if another means is found to be more efficient and effective. The Council may establish a late payment charge and rate of interest to be imposed on any person who fails to remit or pay to the Council any amount due under this chapter.

(d) Investment of funds

Pending disbursement pursuant to a program, plan, or project, the Council may invest funds collected through assessments, and any other funds received by the Council, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

(e) State programs

The Council shall establish a program coordinating the operation of the Council with those of any State propane education and research council created by State law or regulation, or similar entity. Such coordination shall include a joint or coordinated assessment collection process, a reduced assessment, or an assessment rebate. A reduced assessment or rebate shall be 20 percent of the regular assessment collected in that State under this section. Assessment rebates shall be paid only to—

(1) a State propane education and research council created by State law or regulation that meets requirements established by the Council for specific programs approved by the Council; or

(2) a similar entity, such as a foundation established by the retail propane gas industry in that State, that meets requirements established by the Council for specific programs approved by the Council.

(Pub. L. 104–284, §6, Oct. 11, 1996, 110 Stat. 3374.)

§6406. Compliance

The Council may bring suit in Federal court to compel compliance with an assessment levied by the Council under this chapter. A successful action for compliance under this section may also require payment by the defendant of the costs incurred by the Council in bringing such action.

(Pub. L. 104–284, §7, Oct. 11, 1996, 110 Stat. 3374.)

§6407. Lobbying restrictions

No funds collected by the Council shall be used in any manner for influencing legislation or

elections, except that the Council may recommend to the Secretary changes in this chapter or other statutes that would further the purposes of this chapter.

(Pub. L. 104–284, §8, Oct. 11, 1996, 110 Stat. 3375.)

§6408. Market survey and consumer protection

(a) Price analysis

Beginning 2 years after establishment of the Council and annually thereafter, the Secretary of Commerce, using the refiner price to end users of consumer grade propane, as published by the Energy Information Administration and other public sources, shall prepare and make available to the Council, the Secretary of Energy, and the public an analysis of changes in the price of propane relative to other energy sources. The propane price analysis shall compare indexed changes in the price of consumer grade propane to a composite of indexed changes in the price of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil on an annual national average basis. For purposes of indexing changes in consumer grade propane, residential electricity, residential natural gas, and end user No. 2 fuel oil prices, the Secretary of Commerce shall use a 5-year rolling average price beginning with the year 4 years prior to the establishment of the Council.

(b) Authority to restrict activities

If in any year the 5-year average rolling price index of consumer grade propane exceeds the 5-year rolling average price composite index of residential electricity, residential natural gas, and refiner price to end users of No. 2 fuel oil in an amount greater than 10.1 percent, the activities of the Council shall be restricted to research and development, training, and safety matters. The Council shall inform the Secretary of Energy and the Congress of any restriction of activities under this subsection. Upon expiration of 180 days after the beginning of any such restriction of activities, the Secretary of Commerce shall again conduct the propane price analysis described in subsection (a). Activities of the Council shall continue to be restricted under this subsection until the price index excess is 10.1 percent or less.

(Pub. L. 104–284, §9, Oct. 11, 1996, 110 Stat. 3375; Pub. L. 113–269, §2(b), Dec. 18, 2014, 128 Stat. 2947.)

EDITORIAL NOTES

AMENDMENTS

2014—Subsec. (a). Pub. L. 113–269 substituted "the refiner price to end users of consumer grade propane, as published by the Energy Information Administration" for "only data provided by the Energy Information Administration".

§6409. Pricing

In all cases, the price of propane shall be determined by market forces. Consistent with the antitrust laws, the Council may take no action, nor may any provision of this chapter be interpreted as establishing an agreement to pass along to consumers the cost of the assessment provided for in section 6405 of this title.

(Pub. L. 104–284, §10, Oct. 11, 1996, 110 Stat. 3375.)

§6410. Relation to other programs

Nothing in this chapter may be construed to preempt or supersede any other program relating to propane education and research organized and operated under the laws of the United States or any

State.

(Pub. L. 104–284, §11, Oct. 11, 1996, 110 Stat. 3375.)

§6411. Reports

Within 2 years after October 11, 1996, and at least once every 2 years thereafter, the Secretary of Commerce shall prepare and submit to the Congress and the Secretary a report examining whether operation of the Council, in conjunction with the cumulative effects of market changes and Federal programs, has had an effect on propane consumers, including residential, agriculture, process, and nonfuel users of propane. The Secretary of Commerce shall consider and, to the extent practicable, shall include in the report submissions by propane consumers, and shall consider whether there have been long-term and short-term effects on propane prices as a result of Council activities and Federal programs, and whether there have been changes in the proportion of propane demand attributable to various market segments. To the extent that the report demonstrates that there has been an adverse effect, the Secretary of Commerce shall include recommendations for correcting the situation. Upon petition by affected parties or upon request by the Secretary of Energy, the Secretary of Commerce may prepare and submit the report required by this section at less than 2-year intervals.

(Pub. L. 104–284, §12, Oct. 11, 1996, 110 Stat. 3375.)

CHAPTER 91—CHILDREN'S ONLINE PRIVACY PROTECTION

Sec.

§6501. Definitions

In this chapter:

(1) Child

The term "child" means an individual under the age of 13.

(2) Operator

The term "operator"—

(A) means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, where such website or online service is operated for commercial purposes, including any person offering products or services for sale through that website or online service, involving commerce—

(i) among the several States or with 1 or more foreign nations;

(ii) in any territory of the United States or in the District of Columbia, or between any such territory and—

(I) another such territory; or

(II) any State or foreign nation; or

(iii) between the District of Columbia and any State, territory, or foreign nation; but

(B) does not include any nonprofit entity that would otherwise be exempt from coverage under section 45 of this title.

(3) Commission

The term "Commission" means the Federal Trade Commission.

(4) Disclosure

The term "disclosure" means, with respect to personal information—

(A) the release of personal information collected from a child in identifiable form by an operator for any purpose, except where such information is provided to a person other than the operator who provides support for the internal operations of the website and does not disclose or use that information for any other purpose; and

(B) making personal information collected from a child by a website or online service directed to children or with actual knowledge that such information was collected from a child, publicly available in identifiable form, by any means including by a public posting, through the Internet, or through—

(i) a home page of a website;

(ii) a pen pal service;

(iii) an electronic mail service;

(iv) a message board; or

(v) a chat room.

(5) Federal agency

The term "Federal agency" means an agency, as that term is defined in section 551(1) of title 5.

(6) Internet

The term "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(7) Parent

The term "parent" includes a legal guardian.

(8) Personal information

The term "personal information" means individually identifiable information about an individual collected online, including—

(A) a first and last name;

(B) a home or other physical address including street name and name of a city or town;

(C) an e-mail address;

(D) a telephone number;

(E) a Social Security number;

(F) any other identifier that the Commission determines permits the physical or online contacting of a specific individual; or

(G) information concerning the child or the parents of that child that the website collects online from the child and combines with an identifier described in this paragraph.

(9) Verifiable parental consent

The term "verifiable parental consent" means any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure described in the notice, to ensure that a parent of a child receives notice of the operator's personal information collection, use, and disclosure practices, and authorizes the collection, use, and disclosure, as applicable, of personal information and the subsequent use of that information before that information is collected from that child.

(10) Website or online service directed to children

(A) In general

The term "website or online service directed to children" means—

(i) a commercial website or online service that is targeted to children; or

(ii) that portion of a commercial website or online service that is targeted to children.

(B) Limitation

A commercial website or online service, or a portion of a commercial website or online service, shall not be deemed directed to children solely for referring or linking to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

(11) Person

The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(12) Online contact information

The term "online contact information" means an e-mail address or another substantially similar identifier that permits direct contact with a person online.

(Pub. L. 105–277, div. C, title XIII, §1302, Oct. 21, 1998, 112 Stat. 2681–728.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 105–277, div. C, title XIII, §1308, Oct. 21, 1998, 112 Stat. 2681–735, provided that: "Sections 1303(a), 1305, and 1306 of this title [enacting sections 6502(a), 6504, and 6505 of this title] take effect on the later of—

"(1) the date that is 18 months after the date of enactment of this Act [Oct. 21, 1998]; or

"(2) the date on which the Commission rules on the first application filed for safe harbor treatment under section 1304 [enacting section 6503 of this title] if the Commission does not rule on the first such application within one year after the date of enactment of this Act, but in no case later than the date that is 30 months after the date of enactment of this Act."

SHORT TITLE

Pub. L. 105–277, div. C, title XIII, §1301, Oct. 21, 1998, 112 Stat. 2681–728, provided that: "This title [enacting this chapter] may be cited as the 'Children's Online Privacy Protection Act of 1998'."

§6502. Regulation of unfair and deceptive acts and practices in connection with collection and use of personal information from and about children on the Internet

(a) Acts prohibited

(1) In general

It is unlawful for an operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under subsection (b).

(2) Disclosure to parent protected

Notwithstanding paragraph (1), neither an operator of such a website or online service nor the operator's agent shall be held to be liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under subsection (b)(1)(B)(iii) to the parent of a child.

(b) Regulations

(1) In general

Not later than 1 year after October 21, 1998, the Commission shall promulgate under section 553 of title 5 regulations that—

(A) require the operator of any website or online service directed to children that collects personal information from children or the operator of a website or online service that has actual knowledge that it is collecting personal information from a child—

(i) to provide notice on the website of what information is collected from children by the operator, how the operator uses such information, and the operator's disclosure practices for such information; and

(ii) to obtain verifiable parental consent for the collection, use, or disclosure of personal information from children;

(B) require the operator to provide, upon request of a parent under this subparagraph whose child has provided personal information to that website or online service, upon proper identification of that parent, to such parent—

(i) a description of the specific types of personal information collected from the child by that operator;

(ii) the opportunity at any time to refuse to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child; and

(iii) notwithstanding any other provision of law, a means that is reasonable under the circumstances for the parent to obtain any personal information collected from that child;

(C) prohibit conditioning a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and

(D) require the operator of such a website or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

(2) When consent not required

The regulations shall provide that verifiable parental consent under paragraph (1)(A)(ii) is not required in the case of—

(A) online contact information collected from a child that is used only to respond directly on a one-time basis to a specific request from the child and is not used to recontact the child and is not maintained in retrievable form by the operator;

(B) a request for the name or online contact information of a parent or child that is used for the sole purpose of obtaining parental consent or providing notice under this section and where such information is not maintained in retrievable form by the operator if parental consent is not obtained after a reasonable time;

(C) online contact information collected from a child that is used only to respond more than once directly to a specific request from the child and is not used to recontact the child beyond the scope of that request—

(i) if, before any additional response after the initial response to the child, the operator uses reasonable efforts to provide a parent notice of the online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(ii) without notice to the parent in such circumstances as the Commission may determine are appropriate, taking into consideration the benefits to the child of access to information and services, and risks to the security and privacy of the child, in regulations promulgated under this subsection;

(D) the name of the child and online contact information (to the extent reasonably necessary to protect the safety of a child participant on the site)—

(i) used only for the purpose of protecting such safety;

(ii) not used to recontact the child or for any other purpose; and

(iii) not disclosed on the site,

if the operator uses reasonable efforts to provide a parent notice of the name and online contact information collected from the child, the purposes for which it is to be used, and an opportunity for the parent to request that the operator make no further use of the information and that it not be maintained in retrievable form; or

(E) the collection, use, or dissemination of such information by the operator of such a website or online service necessary—

(i) to protect the security or integrity of its website;

(ii) to take precautions against liability;

(iii) to respond to judicial process; or

(iv) to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety.

(3) Termination of service

The regulations shall permit the operator of a website or an online service to terminate service provided to a child whose parent has refused, under the regulations prescribed under paragraph (1)(B)(ii), to permit the operator's further use or maintenance in retrievable form, or future online collection, of personal information from that child.

(c) Enforcement

Subject to sections 6503 and 6505 of this title, a violation of a regulation prescribed under subsection (a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 57a(a)(1)(B) of this title.

(d) Inconsistent State law

No State or local government may impose any liability for commercial activities or actions by operators in interstate or foreign commerce in connection with an activity or action described in this chapter that is inconsistent with the treatment of those activities or actions under this section.

(Pub. L. 105–277, div. C, title XIII, §1303, Oct. 21, 1998, 112 Stat. 2681–730.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

For effective date of subsec. (a) of this section, see section 1308 of Pub. L. 105–277, set out as a note under section 6501 of this title.

§6503. Safe harbors

(a) Guidelines

An operator may satisfy the requirements of regulations issued under section 6502(b) of this title by following a set of self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, approved under subsection (b).

(b) Incentives

(1) Self-regulatory incentives

In prescribing regulations under section 6502 of this title, the Commission shall provide incentives for self-regulation by operators to implement the protections afforded children under the regulatory requirements described in subsection (b) of that section.

(2) Deemed compliance

Such incentives shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations under section 6502 of this title if that person complies with guidelines that, after notice and comment, are approved by the Commission upon making a determination that the guidelines meet the requirements of the regulations issued under section 6502 of this title.

(3) Expedited response to requests

The Commission shall act upon requests for safe harbor treatment within 180 days of the filing of the request, and shall set forth in writing its conclusions with regard to such requests.

(c) Appeals

Final action by the Commission on a request for approval of guidelines, or the failure to act within 180 days on a request for approval of guidelines, submitted under subsection (b) may be appealed to a district court of the United States of appropriate jurisdiction as provided for in section 706 of title 5.

(Pub. L. 105–277, div. C, title XIII, §1304, Oct. 21, 1998, 112 Stat. 2681–732.)

§6504. Actions by States

(a) In general

(1) Civil actions

In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any person in a practice that violates any regulation of the Commission prescribed under section 6502(b) of this title, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with the regulation;

(C) obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) obtain such other relief as the court may consider to be appropriate.

(2) Notice

(A) In general

Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) Exemption

(i) In general

Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) Notification

In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) Intervention

(1) In general

On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in

the action that is the subject of the notice.

(2) Effect of intervention

If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(3) Amicus curiae

Upon application to the court, a person whose self-regulatory guidelines have been approved by the Commission and are relied upon as a defense by any defendant to a proceeding under this section may file amicus curiae in that proceeding.

(c) Construction

For purposes of bringing any civil action under subsection (a), nothing in this chapter shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) Actions by Commission

In any case in which an action is instituted by or on behalf of the Commission for violation of any regulation prescribed under section 6502 of this title, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that regulation.

(e) Venue; service of process

(1) Venue

Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(2) Service of process

In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

(Pub. L. 105–277, div. C, title XIII, §1305, Oct. 21, 1998, 112 Stat. 2681–733.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

For effective date of section, see section 1308 of Pub. L. 105–277, set out as a note under section 6501 of this title.

§6505. Administration and applicability

(a) In general

Except as otherwise provided, this chapter shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) Provisions

Compliance with the requirements imposed under this chapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the

Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) [1] of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et. seq.), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49 by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et. seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) Exercise of certain powers

For the purpose of the exercise by any agency referred to in subsection (a) [2] of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this chapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a),[2] each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on it by law.

(d) Actions by Commission

The Commission shall prevent any person from violating a rule of the Commission under section 6502 of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter. Any entity that violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this chapter.

(e) Effect on other laws

Nothing contained in this chapter shall be construed to limit the authority of the Commission under any other provisions of law.

(Pub. L. 105–277, div. C, title XIII, §1306, Oct. 21, 1998, 112 Stat. 2681–734.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

Section 25(a) of the Federal Reserve Act, referred to in subsec. (b)(1)(B), which is classified to subchapter

II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102–242, title I, §142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (b)(3), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(5), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified generally to chapter 9 (§181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in subsec. (b)(6), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

This chapter, referred to in subsec. (e), was in the original "Act" and "the Act", respectively, and was translated as reading "this title" to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

For effective date of section, see section 1308 of Pub. L. 105–277, set out as a note under section 6501 of this title.

[1] See References in Text note below.

[2] So in original. Probably should be subsection "(b)".

§6506. Review

Not later than 5 years after the effective date of the regulations initially issued under section 6502 of this title, the Commission shall—

(1) review the implementation of this chapter, including the effect of the implementation of this chapter on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and

(2) prepare and submit to Congress a report on the results of the review under paragraph (1).

(Pub. L. 105–277, div. C, title XIII, §1307, Oct. 21, 1998, 112 Stat. 2681–735.)

CHAPTER 91A—PROMOTING A SAFE INTERNET FOR CHILDREN

Sec.

§6551. Internet safety

For the purposes of this chapter, the issue of Internet safety includes issues regarding the use of the Internet in a manner that promotes safe online activity for children, protects children from cybercrimes, including crimes by online predators, and helps parents shield their children from material that is inappropriate for minors.

(Pub. L. 110–385, title II, §211, Oct. 10, 2008, 122 Stat. 4102.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 110–385, Oct. 10, 2008, 122 Stat. 4102, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 110–385, title II, §201(a), Oct. 10, 2008, 122 Stat. 4102, provided that: "This title [enacting this chapter and amending sections 254 and 503 of Title 47, Telecommunications] may be cited as the 'Protecting Children in the 21st Century Act'."

§6552. Public awareness campaign

The Federal Trade Commission shall carry out a nationwide program to increase public awareness and provide education regarding strategies to promote the safe use of the Internet by children. The program shall utilize existing resources and efforts of the Federal Government, State and local governments, nonprofit organizations, private technology and financial companies, Internet service providers, World Wide Web-based resources, and other appropriate entities, that includes—

(1) identifying, promoting, and encouraging best practices for Internet safety;

(2) establishing and carrying out a national outreach and education campaign regarding Internet safety utilizing various media and Internet-based resources;

(3) facilitating access to, and the exchange of, information regarding Internet safety to promote up-to-date knowledge regarding current issues; and

(4) facilitating access to Internet safety education and public awareness efforts the Commission considers appropriate by States, units of local government, schools, police departments, nonprofit organizations, and other appropriate entities.

(Pub. L. 110–385, title II, §212, Oct. 10, 2008, 122 Stat. 4103.)

§6553. Annual reports

The Commission shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives not later than March 31 of each year that describes the activities carried out under section 6552 [1] of this title by the Commission during the preceding calendar year.

(Pub. L. 110–385, title II, §213, Oct. 10, 2008, 122 Stat. 4103.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 6552 of this title, referred to in text, was in the original "section 103" and was translated as reading "section 212", meaning section 212 of Pub. L. 110–385, to reflect the probable intent of Congress. See sections 102 and 103 of S. 1965 (110th Cong., 2d Sess.) as passed by the Senate on May 22, 2008.

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

§6554. Online Safety and Technology working group

(a) Establishment

Within 90 days after October 10, 2008, the Assistant Secretary of Commerce for Communications and Information shall establish an Online Safety and Technology working group comprised of representatives of relevant sectors of the business community, public interest groups, and other appropriate groups and Federal agencies to review and evaluate—

(1) the status of industry efforts to promote online safety through educational efforts, parental control technology, blocking and filtering software, age-appropriate labels for content or other technologies or initiatives designed to promote a safe online environment for children;

(2) the status of industry efforts to promote online safety among providers of electronic communications services and remote computing services by reporting apparent child pornography under section 13032 [1] of title 42, including any obstacles to such reporting;

(3) the practices of electronic communications service providers and remote computing service providers related to record retention in connection with crimes against children; and

(4) the development of technologies to help parents shield their children from inappropriate material on the Internet.

(b) Report

Within 1 year after the working group is first convened, it shall submit a report to the Assistant Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Energy and Commerce of the House of Representatives that—

(1) describes in detail its findings, including any information related to the effectiveness of such strategies and technologies and any information about the prevalence within industry of educational campaigns, parental control technologies, blocking and filtering software, labeling, or other technologies to assist parents; and

(2) includes recommendations as to what types of incentives could be used or developed to increase the effectiveness and implementation of such strategies and technologies.

(c) Chapter 10 of title 5 not to apply to working group

Chapter 10 of title 5 shall not apply to the working group.

(Pub. L. 110–385, title II, §214, Oct. 10, 2008, 122 Stat. 4103; Pub. L. 117–286, §4(a)(76), Dec. 27, 2022, 136 Stat. 4314.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 13032 of title 42, referred to in the original in subsec. (a)(2), probably should have been a reference to section 227 of Pub. L. 101–647, which was classified to section 13032 of title 42, prior to repeal by Pub. L. 110–401, title V, §501(b)(1), Oct. 13, 2008, 122 Stat. 4251.

AMENDMENTS

2022—Subsec. (c). Pub. L. 117–286 substituted "Chapter 10 of title 5" for "FACA" in heading and "Chapter 10 of title 5" for "The Federal Advisory Committee Act (5 U.S.C. App.)" in text.

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

§6555. Definitions

In this chapter:

(1) Commission

The term "Commission" means the Federal Trade Commission.

(2) Internet

The term "Internet" means collectively the myriad of computer and telecommunications

facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor successor [1] protocols to such protocol, to communicate information of all kinds by wire or radio.

(Pub. L. 110–385, title II, §216, Oct. 10, 2008, 122 Stat. 4104.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title II of Pub. L. 110–385, Oct. 10, 2008, 122 Stat. 4102, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 6551 of this title and Tables.

[1] So in original. Probably should be preceded by "or".

CHAPTER 92—YEAR 2000 COMPUTER DATE CHANGE

Sec.

§6601. Findings and purposes

(a) Findings

The Congress finds the following:

(1)(A) Many information technology systems, devices, and programs are not capable of recognizing certain dates in 1999 and after December 31, 1999, and will read dates in the year 2000 and thereafter as if those dates represent the year 1900 or thereafter or will fail to process dates after December 31, 1999.

(B) If not corrected, the problem described in subparagraph (A) and resulting failures could incapacitate systems that are essential to the functioning of markets, commerce, consumer products, utilities, Government, and safety and defense systems, in the United States and throughout the world.

(2) It is in the national interest that producers and users of technology products concentrate their attention and resources in the time remaining before January 1, 2000, on assessing, fixing, testing, and developing contingency plans to address any and all outstanding year 2000 computer

date-change problems, so as to minimize possible disruptions associated with computer failures.

(3)(A) Because year 2000 computer date-change problems may affect virtually all businesses and other users of technology products to some degree, there is a substantial likelihood that actual or potential year 2000 failures will prompt a significant volume of litigation, much of it insubstantial.

(B) The litigation described in subparagraph (A) would have a range of undesirable effects, including the following:

(i) It would threaten to waste technical and financial resources that are better devoted to curing year 2000 computer date-change problems and ensuring that systems remain or become operational.

(ii) It could threaten the network of valued and trusted business and customer relationships that are important to the effective functioning of the national economy.

(iii) It would strain the Nation's legal system, causing particular problems for the small businesses and individuals who already find that system inaccessible because of its complexity and expense.

(iv) The delays, expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation of business disputes could exacerbate the difficulties associated with the date change and work against the successful resolution of those difficulties.

(4) It is appropriate for the Congress to enact legislation to assure that the year 2000 problems described in this section do not unnecessarily disrupt interstate commerce or create unnecessary caseloads in Federal courts and to provide initiatives to help businesses prepare and be in a position to withstand the potentially devastating economic impact of such problems.

(5) Resorting to the legal system for resolution of year 2000 problems described in this section is not feasible for many businesses and individuals who already find the legal system inaccessible, particularly small businesses and individuals who already find the legal system inaccessible, because of its complexity and expense.

(6) Concern about the potential for liability—in particular, concern about the substantial litigation expense associated with defending against even the most insubstantial lawsuits—is prompting many persons and businesses with technical expertise to avoid projects aimed at curing year 2000 computer date-change problems.

(7) A proliferation of frivolous lawsuits relating to year 2000 computer date-change problems by opportunistic parties may further limit access to courts by straining the resources of the legal system and depriving deserving parties of their legitimate rights to relief.

(8) Congress encourages businesses to approach their disputes relating to year 2000 computer date-change problems responsibly, and to avoid unnecessary, time-consuming, and costly litigation about Y2K failures, particularly those that are not material. Congress supports good faith negotiations between parties when there is such a dispute, and, if necessary, urges the parties to enter into voluntary, nonbinding mediation rather than litigation.

(b) Purposes

Based upon the power of the Congress under Article I, Section 8, Clause 3 of the Constitution of the United States, the purposes of this chapter are—

(1) to establish uniform legal standards that give all businesses and users of technology products reasonable incentives to solve year 2000 computer date-change problems before they develop;

(2) to encourage continued remediation and testing efforts to solve such problems by providers, suppliers, customers, and other contracting partners;

(3) to encourage private and public parties alike to resolve disputes relating to year 2000 computer date-change problems by alternative dispute mechanisms in order to avoid costly and time-consuming litigation, to initiate those mechanisms as early as possible, and to encourage the prompt identification and correction of such problems; and

(4) to lessen the burdens on interstate commerce by discouraging insubstantial lawsuits while preserving the ability of individuals and businesses that have suffered real injury to obtain complete relief.

(Pub. L. 106–37, §2, July 20, 1999, 113 Stat. 185.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 106–37, §1(a), July 20, 1999, 113 Stat. 185, provided that: "This Act [enacting this chapter] may be cited as the 'Y2K Act'."

§6602. Definitions

In this chapter:

(1) Y2K action

The term "Y2K action"—

(A) means a civil action commenced in any Federal or State court, or an agency board of contract appeal proceeding, in which the plaintiff's alleged harm or injury arises from or is related to an actual or potential Y2K failure, or a claim or defense arises from or is related to an actual or potential Y2K failure;

(B) includes a civil action commenced in any Federal or State court by a government entity when acting in a commercial or contracting capacity; but

(C) does not include an action brought by a government entity acting in a regulatory, supervisory, or enforcement capacity.

(2) Y2K failure

The term "Y2K failure" means failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection of processing instructions to process, to calculate, to compare, to sequence, to display, to store, to transmit, or to receive year-2000 date-related data, including failures—

(A) to deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(B) to recognize or accurately to process any specific date in 1999, 2000, or 2001; or

(C) accurately to account for the year 2000's status as a leap year, including recognition and processing of the correct date on February 29, 2000.

(3) Government entity

The term "government entity" means an agency, instrumentality, or other entity of Federal, State, or local government (including multijurisdictional agencies, instrumentalities, and entities).

(4) Material defect

The term "material defect" means a defect in any item, whether tangible or intangible, or in the provision of a service, that substantially prevents the item or service from operating or functioning as designed or according to its specifications. The term "material defect" does not include a defect that—

(A) has an insignificant or de minimis effect on the operation or functioning of an item or computer program;

(B) affects only a component of an item or program that, as a whole, substantially operates or functions as designed; or

(C) has an insignificant or de minimis effect on the efficacy of the service provided.

(5) Personal injury

The term "personal injury" means physical injury to a natural person, including—

(A) death as a result of a physical injury; and

(B) mental suffering, emotional distress, or similar injuries suffered by that person in connection with a physical injury.

(6) State

The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States, and any political subdivision thereof.

(7) Contract

The term "contract" means a contract, tariff, license, or warranty.

(8) Alternative dispute resolution

The term "alternative dispute resolution" means any process or proceeding, other than adjudication by a court or in an administrative proceeding, to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration.

(Pub. L. 106–37, §3, July 20, 1999, 113 Stat. 187.)

§6603. Application of chapter

(a) General rule

This chapter applies to any Y2K action brought after January 1, 1999, for a Y2K failure occurring before January 1, 2003, or for a potential Y2K failure that could occur or has allegedly caused harm or injury before January 1, 2003, including any appeal, remand, stay, or other judicial, administrative, or alternative dispute resolution proceeding in such an action.

(b) No new cause of action created

Nothing in this chapter creates a new cause of action, and, except as otherwise explicitly provided in this chapter, nothing in this chapter expands any liability otherwise imposed or limits any defense otherwise available under Federal or State law.

(c) Claims for personal injury or wrongful death excluded

This chapter does not apply to a claim for personal injury or for wrongful death.

(d) Warranty and contract preservation

(1) In general

Subject to paragraph (2), in any Y2K action any written contractual term, including a limitation or an exclusion of liability, or a disclaimer of warranty, shall be strictly enforced unless the enforcement of that term would manifestly and directly contravene applicable State law embodied in any statute in effect on January 1, 1999, specifically addressing that term.

(2) Interpretation of contract

In any Y2K action in which a contract to which paragraph (1) applies is silent as to a particular issue, the interpretation of the contract as to that issue shall be determined by applicable law in effect at the time the contract was executed.

(3) Unconscionability

Nothing in paragraph (1) shall prevent enforcement of State law doctrines of unconscionability, including adhesion, recognized as of January 1, 1999, in controlling judicial precedent by the courts of the State whose law applies to the Y2K action.

(e) Preemption of State law

This chapter supersedes State law to the extent that it establishes a rule of law applicable to a Y2K action that is inconsistent with State law, but nothing in this chapter implicates, alters, or diminishes the ability of a State to defend itself against any claim on the basis of sovereign immunity.

(f) Application with Year 2000 Information and Readiness Disclosure Act

Nothing in this chapter supersedes any provision of the Year 2000 Information and Readiness Disclosure Act.

(g) Application to actions brought by a government entity

(1) In general

To the extent provided in this subsection, this chapter shall apply to an action brought by a government entity described in section 6602(1)(C) of this title.

(2) Definitions

In this subsection:

(A) Defendant

(i) In general

The term "defendant" includes a State or local government.

(ii) State

The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(iii) Local government

The term "local government" means—

(I) any county, city, town, township, parish, village, or other general purpose political subdivision of a State; and

(II) any combination of political subdivisions described in subclause (I) recognized by the Secretary of Housing and Urban Development.

(B) Y2K upset

The term "Y2K upset"—

(i) means an exceptional temporary noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements directly related to a Y2K failure that are beyond the reasonable control of the defendant charged with compliance; and

(ii) does not include—

(I) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements that constitutes or would create an imminent threat to public health, safety, or the environment;

(II) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements that provide for the safety and soundness of the banking or monetary system, or for the integrity of the national securities markets, including the protection of depositors and investors;

(III) noncompliance with applicable federally enforceable measurement, monitoring, or reporting requirements to the extent caused by operational error or negligence;

(IV) lack of reasonable preventative maintenance;

(V) lack of preparedness for a Y2K failure; or

(VI) noncompliance with the underlying federally enforceable requirements to which the applicable federally enforceable measurement, monitoring, or reporting requirement relates.

(3) Conditions necessary for a demonstration of a Y2K upset

A defendant who wishes to establish the affirmative defense of Y2K upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that—

(A) the defendant previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure;

(B) a Y2K upset occurred as a result of a Y2K failure or other emergency directly related to a Y2K failure;

(C) noncompliance with the applicable federally enforceable measurement, monitoring, or reporting requirement was unavoidable in the face of an emergency directly related to a Y2K failure and was necessary to prevent the disruption of critical functions or services that could result in harm to life or property;

(D) upon identification of noncompliance the defendant invoking the defense began immediate actions to correct any violation of federally enforceable measurement, monitoring, or reporting requirements; and

(E) the defendant submitted notice to the appropriate Federal regulatory authority of a Y2K upset within 72 hours from the time that the defendant became aware of the upset.

(4) Grant of a Y2K upset defense

Subject to the other provisions of this subsection, the Y2K upset defense shall be a complete defense to the imposition of a penalty in any action brought as a result of noncompliance with federally enforceable measurement, monitoring, or reporting requirements for any defendant who establishes by a preponderance of the evidence that the conditions set forth in paragraph (3) are met.

(5) Length of Y2K upset

The maximum allowable length of the Y2K upset shall be not more than 15 days beginning on the date of the upset unless specific relief by the appropriate regulatory authority is granted.

(6) Fraudulent invocation of Y2K upset defense

Fraudulent use of the Y2K upset defense provided for in this subsection shall be subject to the sanctions provided in section 1001 of title 18.

(7) Expiration of defense

The Y2K upset defense may not be asserted for a Y2K upset occurring after June 30, 2000.

(8) Preservation of authority

Nothing in this subsection shall affect the authority of a government entity to seek injunctive relief or require a defendant to correct a violation of a federally enforceable measurement, monitoring, or reporting requirement.

(h) Consumer protection from Y2K failures

(1) In general

No person who transacts business on matters directly or indirectly affecting residential mortgages shall cause or permit a foreclosure on any such mortgage against a consumer as a result of an actual Y2K failure that results in an inability to accurately or timely process any mortgage payment transaction.

(2) Notice

A consumer who is affected by an inability described in paragraph (1) shall notify the servicer for the mortgage, in writing and within 7 business days from the time that the consumer becomes aware of the Y2K failure and the consumer's inability to accurately or timely fulfill his or her obligation to pay, of such failure and inability and shall provide to the servicer any available documentation with respect to the failure.

(3) Actions may resume after grace period

Notwithstanding paragraph (1), an action prohibited under paragraph (1) may be resumed, if the consumer's mortgage obligation has not been paid and the servicer of the mortgage has not expressly and in writing granted the consumer an extension of time during which to pay the consumer's mortgage obligation, but only after the later of—

(A) four weeks after January 1, 2000; or

(B) four weeks after notification is made as required under paragraph (2), except that any notification made on or after March 15, 2000, shall not be effective for purposes of this subsection.

(4) Applicability

This subsection does not apply to transactions upon which a default has occurred before December 15, 1999, or with respect to which an imminent default was foreseeable before December 15, 1999.

(5) Enforcement of obligations merely tolled

This subsection delays but does not prevent the enforcement of financial obligations, and does not otherwise affect or extinguish the obligation to pay.

(6) Definition

In this subsection—

(A) The term "consumer" means a natural person.

(B) The term "residential mortgage" has the meaning given the term "federally related mortgage loan" under section 2602 of title 12.

(C) The term "servicer" means the person, including any successor, responsible for receiving any scheduled periodic payments from a consumer pursuant to the terms of a residential mortgage, including amounts for any escrow account, and for making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage. Such term includes the person, including any successor, who makes or holds a loan if such person also services the loan.

(i) Applicability to securities litigation

In any Y2K action in which the underlying claim arises under the securities laws (as defined in section 78c(a) of this title), the provisions of this chapter, other than section 6612(b) of this title, shall not apply.

(Pub. L. 106–37, §4, July 20, 1999, 113 Stat. 188.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Year 2000 Information and Readiness Disclosure Act, referred to in subsec. (f), is Pub. L. 105–271, Oct. 19, 1998, 112 Stat. 2386, which was formerly set out as a note under section 1 of this title.

§6604. Punitive damages limitations

(a) In general

In any Y2K action in which punitive damages are permitted by applicable law, the defendant shall not be liable for punitive damages unless the plaintiff proves by clear and convincing evidence that the applicable standard for awarding damages has been met.

(b) Caps on punitive damages

(1) In general

Subject to the evidentiary standard established by subsection (a), punitive damages permitted under applicable law against a defendant described in paragraph (2) in a Y2K action may not exceed the lesser of—

(A) three times the amount awarded for compensatory damages; or

(B) $250,000.

(2) Defendant described

A defendant described in this paragraph is a defendant—

(A) who—

(i) is sued in his or her capacity as an individual; and

(ii) whose net worth does not exceed $500,000; or

(B) that is an unincorporated business, a partnership, corporation, association, or organization, with fewer than 50 full-time employees.

(3) No cap if injury specifically intended

Paragraph (1) does not apply if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to injure the plaintiff.

(c) Government entities

Punitive damages in a Y2K action may not be awarded against a government entity.

(d) Institutions of higher education

(1) In general

Subject to paragraph (2), punitive damages in a Y2K action may not be awarded against an instituion [1] of higher education as defined in section 1001(a) of title 20.

(2) Exception

Paragraph (1) shall not apply to an institution of higher education if the Y2K failure in the Y2K action occurred in a computer-based student financial aid system of that institution of higher education, and the institution—

(A) has passed Y2K data exchange testing with the Department of Education; or

(B) is not or was not in the process of performing data exchange testing with the Department of Education at the time the Department terminates such testing.

(Pub. L. 106–37, §5, July 20, 1999, 113 Stat. 192; Pub. L. 106–113, div. B, §1000(a)(4) [title III, §311], Nov. 29, 1999, 113 Stat. 1535, 1501A–265.)

EDITORIAL NOTES

AMENDMENTS

1999—Subsec. (d). Pub. L. 106–113 added subsec. (d).

[1] *So in original. Probably should be "institution".*

§6605. Proportionate liability

(a) In general

Except in a Y2K action that is a contract action, and except as provided in subsections (b) through (g), a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportionate responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

(b) Proportionate liability

(1) Determination of responsibility

In any Y2K action that is not a contract action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant (other than a defendant who has entered into a settlement agreement with the plaintiff)—

(i) acted with specific intent to injure the plaintiff; or
(ii) knowingly committed fraud.

(2) Contents of special interrogatories or findings

The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

(3) Factors for consideration

In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff.

(c) Joint liability for specific intent or fraud

(1) In general

Notwithstanding subsection (a), the liability of a defendant in a Y2K action that is not a contract action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or
(B) knowingly committed fraud.

(2) Fraud; recklessness

(A) Knowing commission of fraud described

For purposes of subsection (b)(1)(B)(ii) and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

(B) Recklessness

For purposes of subsection (b)(1)(B) and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

(3) Right to contribution not affected

Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B), or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

(d) Special rules

(1) Uncollectible share

(A) In general

Notwithstanding subsection (a), if, upon motion made not later than 6 months after a final judgment is entered in any Y2K action that is not a contract action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

(i) Percentage of net worth

The other defendants are jointly and severally liable for the uncollectible share if the

plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than $200,000.

(ii) Other plaintiffs

For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant.

(iii) Additional liability

For a plaintiff not described in clause (i), in addition to the share identified in clause (ii), the defendant is liable for an additional portion of the uncollectible share in an amount equal to 50 percent of the amount determined under clause (ii) if the plaintiff demonstrates by a preponderance of the evidence that the defendant acted with reckless disregard for the likelihood that its acts would cause injury of the sort suffered by the plaintiff.

(B) Overall limit

The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

(C) Subject to contribution

A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

(D) Suits by consumers

(i) Notwithstanding subparagraph (A), the other defendants are jointly and severally liable for the uncollectible share if—

(I) the plaintiff is a consumer whose suit alleges or arises out of a defect in a consumer product; and

(II) the plaintiff is suing as an individual and not as part of a class action.

(ii) In this subparagraph:

(I) The term "class action" means—

(aa) a single lawsuit in which: (1) damages are sought on behalf of more than 10 persons or prospective class members; or (2) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; or

(bb) any group of lawsuits filed in or pending in the same court in which: (1) damages are sought on behalf of more than 10 persons; and (2) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

(II) The term "consumer" means an individual who acquires a consumer product for purposes other than resale.

(III) The term "consumer product" means any personal property or service which is normally used for personal, family, or household purposes.

(2) Special right of contribution

To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant's proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

(3) Nondisclosure to jury

The standard for allocation of damages under subsection (a) and subsection (b)(1), and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

(e) Settlement discharge

(1) In general

A defendant who settles a Y2K action that is not a contract action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter an order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

(2) Reduction

If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

(f) General right of contribution

(1) In general

A defendant who is jointly and severally liable for damages in any Y2K action that is not a contract action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

(2) Statute of limitations for contribution

An action for contribution in connection with a Y2K action that is not a contract action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except that an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) may be brought not later than 6 months after the date on which such payment was made.

(g) More protective State law not preempted

Nothing in this section preempts or supersedes any provision of State law that—

(1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or

(2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

(Pub. L. 106–37, §6, July 20, 1999, 113 Stat. 192.)

§6606. Prelitigation notice

(a) In general

Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff in a Y2K action shall send a written notice by certified mail (with either return receipt requested or other means of verification that the notice was sent) to each prospective defendant in that action. The notice shall provide specific and detailed information about—

(1) the manifestations of any material defect alleged to have caused harm or loss;

(2) the harm or loss allegedly suffered by the prospective plaintiff;

(3) how the prospective plaintiff would like the prospective defendant to remedy the problem;

(4) the basis upon which the prospective plaintiff seeks that remedy; and

(5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

(b) Person to whom notice to be sent

The notice required by subsection (a) shall be sent—

(1) to the registered agent of the prospective defendant for service of legal process;

(2) if the prospective defendant does not have a registered agent, then to the chief executive officer if the prospective defendant is a corporation, to the managing partner if the prospective defendant is a partnership, to the proprietor if the prospective defendant is a sole proprietorship, or to a similarly-situated person if the prospective defendant is any other enterprise; or

(3) if the prospective defendant has designated a person to receive prelitigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

(c) Response to notice

(1) In general

Within 30 days after receipt of the notice specified in subsection (a), each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

(2) Willingness to engage in ADR

The written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

(3) Inadmissibility

A written statement required by this subsection is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

(4) Presumptive time of receipt

For purposes of paragraph (1), a notice under subsection (a) is presumed to be received 7 days after it was sent.

(5) Priority

A prospective defendant receiving more than one notice under this section may give priority to notices with respect to a product or service that involves a health or safety related Y2K failure.

(d) Failure to respond

If a prospective defendant—

(1) fails to respond to a notice provided pursuant to subsection (a) within the 30 days specified in subsection (c)(1); or

(2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence a legal action against that prospective defendant.

(e) Remediation period

(1) In general

If the prospective defendant responds and proposes remedial action it will take, or offers to

engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action or alternative dispute resolution before commencing a legal action against that prospective defendant.

(2) Extension by agreement

The prospective plaintiff and prospective defendant may change the length of the 60-day remediation period by written agreement.

(3) Multiple extensions not allowed

Except as provided in paragraph (2), a defendant in a Y2K action is entitled to no more than one 30-day period and one 60-day remediation period under paragraph (1).

(4) Statutes of limitation, etc., tolled

Any applicable statute of limitations or doctrine of laches in a Y2K action to which paragraph (1) applies shall be tolled during the notice and remediation period under that paragraph.

(f) Failure to provide notice

If a defendant determines that a plaintiff has filed a Y2K action without providing the notice specified in subsection (a) or without awaiting the expiration of the appropriate waiting period specified in subsection (c), the defendant may treat the plaintiff's complaint as such a notice by so informing the court and the plaintiff in its initial response to the plaintiff. If any defendant elects to treat the complaint as such a notice—

(1) the court shall stay all discovery and all other proceedings in the action for the appropriate period after filing of the complaint; and

(2) the time for filing answers and all other pleadings shall be tolled during the appropriate period.

(g) Effect of contractual or statutory waiting periods

In cases in which a contract, or a statute enacted before January 1, 1999, requires notice of nonperformance and provides for a period of delay prior to the initiation of suit for breach or repudiation of contract, the period of delay provided by contract or the statute is controlling over the waiting period specified in subsections (c) and (d).

(h) State law controls alternative methods

Nothing in this section supersedes or otherwise preempts any State law or rule of civil procedure with respect to the use of alternative dispute resolution for Y2K actions.

(i) Provisional remedies unaffected

Nothing in this section interferes with the right of a litigant to provisional remedies otherwise available under Rule 65 of the Federal Rules of Civil Procedure or any State rule of civil procedure providing extraordinary or provisional remedies in any civil action in which the underlying complaint seeks both injunctive and monetary relief.

(j) Special rule for class actions

For the purpose of applying this section to a Y2K action that is maintained as a class action in Federal or State court, the requirements of the preceding subsections of this section apply only to named plaintiffs in the class action.

(Pub. L. 106–37, §7, July 20, 1999, 113 Stat. 196.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3(7) of the Year 2000 Information and Readiness Disclosure Act, referred to in subsec. (b)(3), is section 3(7) of Pub. L. 105–271, which was formerly set out in a note under section 1 of this title.

The Federal Rules of Evidence, referred to in subsec. (c)(3), are set out in the Appendix to Title 28,

Judiciary and Judicial Procedure.

The Federal Rules of Civil Procedure, referred to in subsec. (i), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§6607. Pleading requirements

(a) Application with rules of civil procedure

This section applies exclusively to Y2K actions and, except to the extent that this section requires additional information to be contained in or attached to pleadings, nothing in this section is intended to amend or otherwise supersede applicable rules of Federal or State civil procedure.

(b) Nature and amount of damages

In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

(c) Material defects

In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

(d) Required state of mind

In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

(Pub. L. 106–37, §8, July 20, 1999, 113 Stat. 198.)

EDITORIAL NOTES

REFERENCES IN TEXT

Rules of Federal civil procedure, referred to in subsec. (a), are contained in the Federal Rules of Civil Procedure which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§6608. Duty to mitigate

(a) In general

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure involved in the action.

(b) Preservation of existing law

The duty imposed by this section is in addition to any duty to mitigate imposed by State law.

(c) Exception for intentional fraud

Subsection (a) does not apply to damages suffered by reason of the plaintiff's justifiable reliance upon an affirmative material misrepresentation by the defendant, made by the defendant with actual knowledge of its falsity, concerning the potential for Y2K failure of the device or system used or sold by the defendant that experienced the Y2K failure alleged to have caused the plaintiff's harm.

(Pub. L. 106–37, §9, July 20, 1999, 113 Stat. 198.)

§6609. Application of existing impossibility or commercial impracticability doctrines

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this chapter shall be construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

(Pub. L. 106–37, §10, July 20, 1999, 113 Stat. 199.)

§6610. Damages limitation by contract

In any Y2K action for breach or repudiation of contract, no party may claim, or be awarded, any category of damages unless such damages are allowed—

(1) by the express terms of the contract; or

(2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

(Pub. L. 106–37, §11, July 20, 1999, 113 Stat. 199.)

§6611. Damages in tort claims

(a) In general

A party to a Y2K action making a tort claim, other than a claim of intentional tort arising independent of a contract, may not recover damages for economic loss unless—

(1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or

(2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure involved in the action (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable Federal or State law.

(b) Economic loss

For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term "economic loss" means amounts awarded to compensate an injured party for any loss, and includes amounts awarded for damages such as—

(1) lost profits or sales;

(2) business interruption;

(3) losses indirectly suffered as a result of the defendant's wrongful act or omission;

(4) losses that arise because of the claims of third parties;

(5) losses that must be pled as special damages; and

(6) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

(c) Certain other actions

A person liable for damages, whether by settlement or judgment, in a civil action to which this chapter does not apply because of section 6603(c) of this title whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this chapter, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.

(Pub. L. 106–37, §12, July 20, 1999, 113 Stat. 199.)

§6612. State of mind; bystander liability; control

(a) Defendant's state of mind

In a Y2K action other than a claim for breach or repudiation of contract, and in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that element of the claim by the standard of evidence under applicable State law in effect on the day before January 1, 1999.

(b) Limitation on bystander liability for Y2K failures

(1) In general

With respect to any Y2K action for money damages in which—

(A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at issue;

(B) the plaintiff is not in substantial privity with the defendant; and

(C) the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other requisite elements of the claim, proves, by the standard of evidence under applicable State law in effect on the day before January 1, 1999, that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

(2) Substantial privity

For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant's performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

(3) Certain claims excluded

For purposes of paragraph (1)(C), claims in which the defendant's actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

(c) Control not determinative of liability

The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

(d) Protections of the Year 2000 Information and Readiness Disclosure Act apply

The protections for the exchanges of information provided by section 4 of the Year 2000 Information and Readiness Disclosure Act (Public Law 105–271) shall apply to any Y2K action.

(Pub. L. 106–37, §13, July 20, 1999, 113 Stat. 200.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 4 of the Year 2000 Information and Readiness Disclosure Act, referred to in subsec. (d), is section 4

of Pub. L. 105–271, which was formerly set out in a note under section 1 of this title.

§6613. Appointment of special masters or magistrate judges for Y2K actions

Any district court of the United States in which a Y2K action is pending may appoint a special master or a magistrate judge to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

(Pub. L. 106–37, §14, July 20, 1999, 113 Stat. 201.)

EDITORIAL NOTES

REFERENCES IN TEXT

Rule 53 of the Federal Rules of Civil Procedure, referred to in text, is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§6614. Y2K actions as class actions

(a) Material defect requirement

A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) Notification

In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including an estimate of the total amount that would be paid if the requested damages were to be granted.

(c) Forum for Y2K class actions

(1) Jurisdiction

Except as provided in paragraph (2), the district courts of the United States shall have original jurisdiction of any Y2K action that is brought as a class action.

(2) Exceptions

The district courts of the United States shall not have original jurisdiction over a Y2K action brought as a class action if—

(A)(i) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(ii) the primary defendants are citizens of that State; and

(iii) the claims asserted will be governed primarily by the laws of that State;

(B) the primary defendants are States, State officials, or other governmental entities against whom the district courts of the United States may be foreclosed from ordering relief;

(C) the plaintiff class does not seek an award of punitive damages, and the amount in controversy is less than the sum of $10,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action; or

(D) there are less than 100 members of the proposed plaintiff class.

A party urging that any exception described in subparagraph (A), (B), (C), or (D) applies to an action shall bear the full burden of demonstrating the applicability of the exception.

(3) Procedure if requirements not met

(A) Dismissal or remand

A United States district court shall dismiss, or, if after removal, strike the class allegations and remand, any Y2K action brought or removed under this subsection as a class action if—

(i) the action is subject to the jurisdiction of the court solely under this subsection; and

(ii) the court determines the action may not proceed as a class action based on a failure to satisfy the conditions of Rule 23 of the Federal Rules of Civil Procedure.

(B) Amendment; removal

Nothing in paragraph (A) shall prohibit plaintiffs from filing an amended class action in Federal or State court. A defendant shall have the right to remove such an amended class action to a United States district court under this subsection.

(C) Period of limitations tolled

Upon dismissal or remand, the period of limitations for any claim that was asserted in an action on behalf of any named or unnamed member of any proposed class shall be deemed tolled to the full extent provided under Federal law.

(D) Dismissal without prejudice

The dismissal of a Y2K action under subparagraph (A) shall be without prejudice.

(d) Effect on rules of civil procedure

Except as otherwise provided in this section, nothing in this section supersedes any rule of Federal or State civil procedure applicable to class actions.

(Pub. L. 106–37, §15, July 20, 1999, 113 Stat. 201.)

EDITORIAL NOTES

REFERENCES IN TEXT

Rules of Federal civil procedure, referred to in subsecs. (a)(1), (c)(3)(A)(ii), and (d), are contained in the Federal Rules of Civil Procedure which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§6615. Applicability of State law

Nothing in this chapter shall be construed to affect the applicability of any State law that provides stricter limits on damages and liabilities, affording greater protection to defendants in Y2K actions, than are provided in this chapter.

(Pub. L. 106–37, §16, July 20, 1999, 113 Stat. 202.)

§6616. Admissible evidence ultimate issue in State courts

Any party to a Y2K action in a State court in a State that has not adopted a rule of evidence substantially similar to Rule 704 of the Federal Rules of Evidence may introduce in such action evidence that would be admissible if Rule 704 applied in that jurisdiction.

(Pub. L. 106–37, §17, July 20, 1999, 113 Stat. 202.)

EDITORIAL NOTES

REFERENCES IN TEXT

Rule 704 of the Federal Rules of Evidence, referred to in text, is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§6617. Suspension of penalties for certain year 2000 failures by small business concerns

(a) Definitions

In this section—

(1) the term "agency" means any executive agency, as defined in section 105 of title 5, that has the authority to impose civil penalties on small business concerns;

(2) the term "first-time violation" means a violation by a small business concern of a federally enforceable rule or regulation (other than a Federal rule or regulation that relates to the safety and soundness of the banking or monetary system or for the integrity of the National Securities markets, including protection of depositors and investors) caused by a Y2K failure if that Federal rule or regulation had not been violated by that small business concern within the preceding 3 years; and

(3) the term "small business concern" has the same meaning as a defendant described in section 6604(b)(2)(B) of this title.

(b) Establishment of liaisons

Not later than 30 days after July 20, 1999, each agency shall—

(1) establish a point of contact within the agency to act as a liaison between the agency and small business concerns with respect to problems arising out of Y2K failures and compliance with Federal rules or regulations; and

(2) publish the name and phone number of the point of contact for the agency in the Federal Register.

(c) General rule

Subject to subsections (d) and (e), no agency shall impose any civil money penalty on a small business concern for a first-time violation.

(d) Standards for waiver

An agency shall provide a waiver of civil money penalties for a first-time violation, provided that a small business concern demonstrates, and the agency determines, that—

(1) the small business concern previously made a reasonable good faith effort to anticipate, prevent, and effectively remediate a potential Y2K failure;

(2) a first-time violation occurred as a result of the Y2K failure of the small business concern or other entity, which significantly affected the small business concern's ability to comply with a Federal rule or regulation;

(3) the first-time violation was unavoidable in the face of a Y2K failure or occurred as a result of efforts to prevent the disruption of critical functions or services that could result in harm to life or property;

(4) upon identification of a first-time violation, the small business concern initiated reasonable and prompt measures to correct the violation; and

(5) the small business concern submitted notice to the appropriate agency of the first-time violation within a reasonable time not to exceed 5 business days from the time that the small business concern became aware that the first-time violation had occurred.

(e) Exceptions

An agency may impose civil money penalties authorized under Federal law on a small business concern for a first-time violation if—

(1) the small business concern's failure to comply with Federal rules or regulations resulted in

actual harm, or constitutes or creates an imminent threat to public health, safety, or the environment; or

(2) the small business concern fails to correct the violation not later than 1 month after initial notification to the agency.

(f) Expiration

This section shall not apply to first-time violations caused by a Y2K failure occurring after December 31, 2000.

(Pub. L. 106–37, §18, July 20, 1999, 113 Stat. 202.)

CHAPTER 93—INSURANCE

Sec.

§6701. Operation of State law

(a) State regulation of the business of insurance

The Act entitled "An Act to express the intent of Congress with reference to the regulation of the

business of insurance" and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the "McCarran-Ferguson Act") remains the law of the United States.

(b) Mandatory insurance licensing requirements

No person shall engage in the business of insurance in a State as principal or agent unless such person is licensed as required by the appropriate insurance regulator of such State in accordance with the relevant State insurance law, subject to subsections (c), (d), and (e).

(c) Affiliations

(1) In general

Except as provided in paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution, or an affiliate thereof, from being affiliated directly or indirectly or associated with any person, as authorized or permitted by this Act or any other provision of Federal law.

(2) Insurance

With respect to affiliations between depository institutions, or any affiliate thereof, and any insurer, paragraph (1) does not prohibit—

(A) any State from—

(i) collecting, reviewing, and taking actions (including approval and disapproval) on applications and other documents or reports concerning any proposed acquisition of, or a change or continuation of control of, an insurer domiciled in that State; and

(ii) exercising authority granted under applicable State law to collect information concerning any proposed acquisition of, or a change or continuation of control of, an insurer engaged in the business of insurance in, and regulated as an insurer by, such State;

during the 60-day period preceding the effective date of the acquisition or change or continuation of control, so long as the collecting, reviewing, taking actions, or exercising authority by the State does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution;

(B) any State from requiring any person that is acquiring control of an insurer domiciled in that State to maintain or restore the capital requirements of that insurer to the level required under the capital regulations of general applicability in that State to avoid the requirement of preparing and filing with the insurance regulatory authority of that State a plan to increase the capital of the insurer, except that any determination by the State insurance regulatory authority with respect to such requirement shall be made not later than 60 days after the date of notification under subparagraph (A); or

(C) any State from restricting a change in the ownership of stock in an insurer, or a company formed for the purpose of controlling such insurer, after the conversion of the insurer from mutual to stock form so long as such restriction does not have the effect of discriminating, intentionally or unintentionally, against a depository institution or an affiliate thereof, or against any other person based upon an association of such person with a depository institution.

(d) Activities

(1) In general

Except as provided in paragraph (3), and except with respect to insurance sales, solicitation, and cross marketing activities, which shall be governed by paragraph (2), no State may, by statute, regulation, order, interpretation, or other action, prevent or restrict a depository institution or an affiliate thereof from engaging directly or indirectly, either by itself or in conjunction with an affiliate, or any other person, in any activity authorized or permitted under this Act and the amendments made by this Act.

(2) Insurance sales

(A) In general

In accordance with the legal standards for preemption set forth in the decision of the Supreme Court of the United States in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996), no State may, by statute, regulation, order, interpretation, or other action, prevent or significantly interfere with the ability of a depository institution, or an affiliate thereof, to engage, directly or indirectly, either by itself or in conjunction with an affiliate or any other person, in any insurance sales, solicitation, or crossmarketing activity.

(B) Certain State laws preserved

Notwithstanding subparagraph (A), a State may impose any of the following restrictions, or restrictions that are substantially the same as but no more burdensome or restrictive than those in each of the following clauses:

(i) Restrictions prohibiting the rejection of an insurance policy by a depository institution or an affiliate of a depository institution, solely because the policy has been issued or underwritten by any person who is not associated with such depository institution or affiliate when the insurance is required in connection with a loan or extension of credit.

(ii) Restrictions prohibiting a requirement for any debtor, insurer, or insurance agent or broker to pay a separate charge in connection with the handling of insurance that is required in connection with a loan or other extension of credit or the provision of another traditional banking product by a depository institution, or any affiliate of a depository institution, unless such charge would be required when the depository institution or affiliate is the licensed insurance agent or broker providing the insurance.

(iii) Restrictions prohibiting the use of any advertisement or other insurance promotional material by a depository institution or any affiliate of a depository institution that would cause a reasonable person to believe mistakenly that—

(I) the Federal Government or a State is responsible for the insurance sales activities of, or stands behind the credit of, the institution or affiliate; or

(II) a State, or the Federal Government guarantees any returns on insurance products, or is a source of payment on any insurance obligation of or sold by the institution or affiliate;

(iv) Restrictions prohibiting the payment or receipt of any commission or brokerage fee or other valuable consideration for services as an insurance agent or broker to or by any person, unless such person holds a valid State license regarding the applicable class of insurance at the time at which the services are performed, except that, in this clause, the term "services as an insurance agent or broker" does not include a referral by an unlicensed person of a customer or potential customer to a licensed insurance agent or broker that does not include a discussion of specific insurance policy terms and conditions.

(v) Restrictions prohibiting any compensation paid to or received by any individual who is not licensed to sell insurance, for the referral of a customer that seeks to purchase, or seeks an opinion or advice on, any insurance product to a person that sells or provides opinions or advice on such product, based on the purchase of insurance by the customer.

(vi) Restrictions prohibiting the release of the insurance information of a customer (defined as information concerning the premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and insurance claims of a customer contained in the records of the depository institution or an affiliate thereof) to any person other than an officer, director, employee, agent, or affiliate of a depository institution, for the purpose of soliciting or selling insurance, without the express consent of the customer, other than a provision that prohibits—

(I) a transfer of insurance information to an unaffiliated insurer in connection with transferring insurance in force on existing insureds of the depository institution or an affiliate thereof, or in connection with a merger with or acquisition of an unaffiliated insurer; or

(II) the release of information as otherwise authorized by State or Federal law.

(vii) Restrictions prohibiting the use of health information obtained from the insurance records of a customer for any purpose, other than for its activities as a licensed agent or broker, without the express consent of the customer.

(viii) Restrictions prohibiting the extension of credit or any product or service that is equivalent to an extension of credit, lease or sale of property of any kind, or furnishing of any services or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer, agent, or broker, other than a prohibition that would prevent any such depository institution or affiliate—

(I) from engaging in any activity described in this clause that would not violate section 106 of the Bank Holding Company Act Amendments of 1970 [12 U.S.C. 1971 et seq.], as interpreted by the Board of Governors of the Federal Reserve System; or

(II) from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the depository institution or an affiliate of the depository institution.

(ix) Restrictions requiring, when an application by a consumer for a loan or other extension of credit from a depository institution is pending, and insurance is offered or sold to the consumer or is required in connection with the loan or extension of credit by the depository institution or any affiliate thereof, that a written disclosure be provided to the consumer or prospective customer indicating that the customer's choice of an insurance provider will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and scope of coverage chosen.

(x) Restrictions requiring clear and conspicuous disclosure, in writing, where practicable, to the customer prior to the sale of any insurance policy that such policy—

(I) is not a deposit;

(II) is not insured by the Federal Deposit Insurance Corporation;

(III) is not guaranteed by any depository institution or, if appropriate, an affiliate of any such institution or any person soliciting the purchase of or selling insurance on the premises thereof; and

(IV) where appropriate, involves investment risk, including potential loss of principal.

(xi) Restrictions requiring that, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution, or any affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, the credit and insurance transactions be completed through separate documents.

(xii) Restrictions prohibiting, when a customer obtains insurance (other than credit insurance or flood insurance) and credit from a depository institution or an affiliate of such institution, or any person soliciting the purchase of or selling insurance on the premises thereof, inclusion of the expense of insurance premiums in the primary credit transaction without the express written consent of the customer.

(xiii) Restrictions requiring maintenance of separate and distinct books and records relating to insurance transactions, including all files relating to and reflecting consumer complaints, and requiring that such insurance books and records be made available to the appropriate State insurance regulator for inspection upon reasonable notice.

(C) Limitations

(i) OCC deference

Section 6714(e) of this title does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing

activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(ii) Nondiscrimination

Subsection (e) does not apply with respect to any State statute, regulation, order, interpretation, or other action regarding insurance sales, solicitation, or cross marketing activities described in subparagraph (A) that was issued, adopted, or enacted before September 3, 1998, and that is not described in subparagraph (B).

(iii) Construction

Nothing in this paragraph shall be construed—

(I) to limit the applicability of the decision of the Supreme Court in Barnett Bank of Marion County N.A. v. Nelson, 517 U.S. 25 (1996) with respect to any State statute, regulation, order, interpretation, or other action that is not referred to or described in subparagraph (B); or

(II) to create any inference with respect to any State statute, regulation, order, interpretation, or other action that is not described in this paragraph.

(3) Insurance activities other than sales

State statutes, regulations, interpretations, orders, and other actions shall not be preempted under paragraph (1) to the extent that they—

(A) relate to, or are issued, adopted, or enacted for the purpose of regulating the business of insurance in accordance with the Act entitled "An Act to express the intent of Congress with reference to the regulation of the business of insurance" and approved March 9, 1945 (15 U.S.C. 1011 et seq.) (commonly referred to as the "McCarran-Ferguson Act");

(B) apply only to persons that are not depository institutions, but that are directly engaged in the business of insurance (except that they may apply to depository institutions engaged in providing savings bank life insurance as principal to the extent of regulating such insurance);

(C) do not relate to or directly or indirectly regulate insurance sales, solicitations, or cross marketing activities; and

(D) are not prohibited under subsection (e).

(4) Financial activities other than insurance

No State statute, regulation, order, interpretation, or other action shall be preempted under paragraph (1) to the extent that—

(A) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, insurance sales, solicitations, or cross marketing activities covered under paragraph (2);

(B) it does not relate to, and is not issued and adopted, or enacted for the purpose of regulating, directly or indirectly, the business of insurance activities other than sales, solicitations, or cross marketing activities, covered under paragraph (3);

(C) it does not relate to securities investigations or enforcement actions referred to in subsection (f); and

(D) it—

(i) does not distinguish by its terms between depository institutions, and affiliates thereof, engaged in the activity at issue and other persons engaged in the same activity in a manner that is in any way adverse with respect to the conduct of the activity by any such depository institution or affiliate engaged in the activity at issue;

(ii) as interpreted or applied, does not have, and will not have, an impact on depository institutions, or affiliates thereof, engaged in the activity at issue, or any person who has an association with any such depository institution or affiliate, that is substantially more adverse than its impact on other persons engaged in the same activity that are not depository institutions or affiliates thereof, or persons who do not have an association with any such depository institution or affiliate;

(iii) does not effectively prevent a depository institution or affiliate thereof from engaging

in activities authorized or permitted by this Act or any other provision of Federal law; and

(iv) does not conflict with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law.

(e) Nondiscrimination

Except as provided in any restrictions described in subsection (d)(2)(B), no State may, by statute, regulation, order, interpretation, or other action, regulate the insurance activities authorized or permitted under this Act or any other provision of Federal law of a depository institution, or affiliate thereof, to the extent that such statute, regulation, order, interpretation, or other action—

(1) distinguishes by its terms between depository institutions, or affiliates thereof, and other persons engaged in such activities, in a manner that is in any way adverse to any such depository institution, or affiliate thereof;

(2) as interpreted or applied, has or will have an impact on depository institutions, or affiliates thereof, that is substantially more adverse than its impact on other persons providing the same products or services or engaged in the same activities that are not depository institutions, or affiliates thereof, or persons or entities affiliated therewith;

(3) effectively prevents a depository institution, or affiliate thereof, from engaging in insurance activities authorized or permitted by this Act or any other provision of Federal law; or

(4) conflicts with the intent of this Act generally to permit affiliations that are authorized or permitted by Federal law between depository institutions, or affiliates thereof, and persons engaged in the business of insurance.

(f) Limitation

Subsections (c) and (d) shall not be construed to affect—

(1) the jurisdiction of the securities commission (or any agency or office performing like functions) of any State, under the laws of such State—

(A) to investigate and bring enforcement actions, consistent with section 77r(c) of this title, with respect to fraud or deceit or unlawful conduct by any person, in connection with securities or securities transactions; or

(B) to require the registration of securities or the licensure or registration of brokers, dealers, or investment advisers (consistent with section 80b–3a of this title), or the associated persons of a broker, dealer, or investment adviser (consistent with such section 80b–3a of this title); or

(2) State laws, regulations, orders, interpretations, or other actions of general applicability relating to the governance of corporations, partnerships, limited liability companies, or other business associations incorporated or formed under the laws of that State or domiciled in that State, or the applicability of the antitrust laws of any State or any State law that is similar to the antitrust laws if such laws, regulations, orders, interpretations, or other actions are not inconsistent with the purposes of this Act to authorize or permit certain affiliations and to remove barriers to such affiliations.

(g) Definitions

For purposes of this section, the following definitions shall apply:

(1) Affiliate

The term "affiliate" means any company that controls, is controlled by, or is under common control with another company.

(2) Antitrust laws

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

(3) Depository institution

The term "depository institution"—

(A) has the meaning given the term in section 1813 of title 12; and

(B) includes any foreign bank that maintains a branch, agency, or commercial lending company in the United States.

(4) Insurer

The term "insurer" means any person engaged in the business of insurance.

(5) State

The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Pub. L. 106–102, title I, §104, Nov. 12, 1999, 113 Stat. 1352.)

EDITORIAL NOTES

REFERENCES IN TEXT

The McCarran-Ferguson Act, referred to in subsecs. (a) and (d)(3)(A), is act Mar. 9, 1945, ch. 20, 59 Stat. 33, which is classified generally to chapter 20 (§1011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1011 of this title and Tables.

This Act, referred to in subsecs. (c)(1), (d)(1), (4)(D)(iii), (iv), (e), and (f)(2), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

Section 106 of the Bank Holding Company Act Amendments of 1970, referred to in subsec. (d)(2)(B)(viii)(I), is Pub. L. 91–607, title I, §106, Dec. 31, 1970, 84 Stat. 1766, which is classified generally to chapter 22 (§1971 et seq.) of Title 12, Banks and Banking.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2019 AMENDMENT

Pub. L. 116–94, div. I, title V, §501, Dec. 20, 2019, 133 Stat. 3026, provided that: "This title [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Program Reauthorization Act of 2019'."

SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–1, §1(a), Jan. 12, 2015, 129 Stat. 3, provided that: "This Act [enacting subchapter III of this chapter, amending section 78o–10 of this title, section 6s of Title 7, Agriculture, and section 241 of Title 12, Banks and Banking, enacting provisions set out as notes under this section, sections 1 and 6s of Title 7, and section 241 of Title 12, and amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Program Reauthorization Act of 2015'."

Pub. L. 114–1, title II, §201, Jan. 12, 2015, 129 Stat. 12, provided that: "This title [enacting subchapter III of this chapter] may be cited as the 'National Association of Registered Agents and Brokers Reform Act of 2015'."

SHORT TITLE OF 2007 AMENDMENT

Pub. L. 110–160, §1(a), Dec. 26, 2007, 121 Stat. 1839, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Program Reauthorization Act of 2007'."

SHORT TITLE OF 2005 AMENDMENT

Pub. L. 109–144, §1, Dec. 22, 2005, 119 Stat. 2660, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Terrorism Risk Insurance Extension Act of 2005'."

SHORT TITLE OF 2002 AMENDMENT

Pub. L. 107–297, §1(a), Nov. 26, 2002, 116 Stat. 2322, provided that: "This Act [amending section 248 of Title 12, Banks and Banking, and sections 1606 and 1610 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as notes under this section and section 1610 of Title 28, and amending provisions set out as a note under section 1610 of Title 28] may be cited as the 'Terrorism Risk Insurance Act of 2002'."

ADVISORY COMMITTEE ON RISK-SHARING MECHANISMS

Pub. L. 114–1, title I, §110, Jan. 12, 2015, 129 Stat. 9, provided that:

"(a) FINDING; RULE OF CONSTRUCTION.—

"(1) FINDING.—Congress finds that it is desirable to encourage the growth of nongovernmental, private market reinsurance capacity for protection against losses arising from acts of terrorism.

"(2) RULE OF CONSTRUCTION.—Nothing in this Act [see section 1(a) of Pub. L. 114–1, set out as a Short Title of 2015 Amendment note above], any amendment made by this Act, or the Terrorism Risk Insurance Act of 2002 (15 U.S.C. 6701 note) [see Short Title of 2002 Amendment note above] shall prohibit insurers from developing risk-sharing mechanisms to voluntarily reinsure terrorism losses between and among themselves.

"(b) ADVISORY COMMITTEE ON RISK-SHARING MECHANISMS.—

"(1) ESTABLISHMENT.—The Secretary of the Treasury shall establish and appoint an advisory committee to be known as the 'Advisory Committee on Risk-Sharing Mechanisms' (referred to in this subsection as the 'Advisory Committee').

"(2) DUTIES.—The Advisory Committee shall provide advice, recommendations, and encouragement with respect to the creation and development of the nongovernmental risk-sharing mechanisms described under subsection (a).

"(3) MEMBERSHIP.—The Advisory Committee shall be composed of 9 members who are directors, officers, or other employees of insurers, reinsurers, or capital market participants that are participating or that desire to participate in the nongovernmental risk-sharing mechanisms described under subsection (a), and who are representative of the affected sectors of the insurance industry, including commercial property insurance, commercial casualty insurance, reinsurance, and alternative risk transfer industries."

TERRORISM INSURANCE PROGRAM

Pub. L. 107–297, title I, Nov. 26, 2002, 116 Stat. 2322, as amended by Pub. L. 109–144, §§2–8, Dec. 22, 2005, 119 Stat. 2660–2662; Pub. L. 110–160, §§2–5, Dec. 26, 2007, 121 Stat. 1839–1841, Pub. L. 114–1, title I, §§101–106, 107(e), 111, 112, Jan. 12, 2015, 129 Stat. 3–5, 8, 10, 12; Pub. L. 116–94, div. I, title V, §502(a)–(c), Dec. 20, 2019, 133 Stat. 3026, 3027, provided that:

"SEC. 101. CONGRESSIONAL FINDINGS AND PURPOSE.

"(a) FINDINGS.—The Congress finds that—

"(1) the ability of businesses and individuals to obtain property and casualty insurance at reasonable and predictable prices, in order to spread the risk of both routine and catastrophic loss, is critical to economic growth, urban development, and the construction and maintenance of public and private housing, as well as to the promotion of United States exports and foreign trade in an increasingly interconnected world;

"(2) property and casualty insurance firms are important financial institutions, the products of which allow mutualization of risk and the efficient use of financial resources and enhance the ability of the economy to maintain stability, while responding to a variety of economic, political, environmental, and other risks with a minimum of disruption;

"(3) the ability of the insurance industry to cover the unprecedented financial risks presented by potential acts of terrorism in the United States can be a major factor in the recovery from terrorist attacks, while maintaining the stability of the economy;

"(4) widespread financial market uncertainties have arisen following the terrorist attacks of September 11, 2001, including the absence of information from which financial institutions can make statistically valid estimates of the probability and cost of future terrorist events, and therefore the size, funding, and allocation of the risk of loss caused by such acts of terrorism;

"(5) a decision by property and casualty insurers to deal with such uncertainties, either by terminating property and casualty coverage for losses arising from terrorist events, or by radically escalating premium coverage to compensate for risks of loss that are not readily predictable, could seriously hamper ongoing and planned construction, property acquisition, and other business projects, generate a dramatic increase in rents, and otherwise suppress economic activity; and

"(6) the United States Government should provide temporary financial compensation to insured parties, contributing to the stabilization of the United States economy in a time of national crisis, while the financial services industry develops the systems, mechanisms, products, and programs necessary to create a viable financial services market for private terrorism risk insurance.

"(b) PURPOSE.—The purpose of this title is to establish a temporary Federal program that provides for a transparent system of shared public and private compensation for insured losses resulting from acts of terrorism, in order to—

"(1) protect consumers by addressing market disruptions and ensure the continued widespread availability and affordability of property and casualty insurance for terrorism risk; and

"(2) allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses, while preserving State insurance regulation and consumer protections.

"SEC. 102. DEFINITIONS.

"In this title, the following definitions shall apply:

"(1) ACT OF TERRORISM.—

"(A) CERTIFICATION.—The term 'act of terrorism' means any act that is certified by the Secretary, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States—

"(i) to be an act of terrorism;

"(ii) to be a violent act or an act that is dangerous to—

"(I) human life;

"(II) property; or

"(III) infrastructure;

"(iii) to have resulted in damage within the United States, or outside of the United States in the case of—

"(I) an air carrier or vessel described in paragraph (5)(B); or

"(II) the premises of a United States mission; and

"(iv) to have been committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"(B) LIMITATION.—No act shall be certified by the Secretary as an act of terrorism if—

"(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or

"(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

"(C) DETERMINATIONS FINAL.—Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

"(D) TIMING OF CERTIFICATION.—Not later than 9 months after the report required under section 107 of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [see section 107 of Pub. L. 114–1; 129 Stat. 7] is submitted to the appropriate committees of Congress, the Secretary shall issue final rules governing the certification process, including establishing a timeline for which an act is eligible for certification by the Secretary on whether an act is an act of terrorism under this paragraph.

"(E) NONDELEGATION.—The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

"(2) AFFILIATE.—The term 'affiliate' means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer.

"(3) CONTROL.—

"(A) IN GENERAL.—An entity has 'control' over another entity, if—

"(i) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other entity;

"(ii) the entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

"(iii) the Secretary determines, after notice and opportunity for hearing, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

"(B) RULE OF CONSTRUCTION.—An entity, including any affiliate thereof, does not have 'control' over another entity, if, as of the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [Jan. 12, 2015], the entity is acting as an attorney-in-fact, as defined by the Secretary, for the other entity and such other entity is a reciprocal insurer, provided that the entity is not, for reasons other than the attorney-in-fact relationship, defined as having 'control' under subparagraph (A).

"(4) DIRECT EARNED PREMIUM.—The term 'direct earned premium' means a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring at the locations described in subparagraphs (A) and (B) of paragraph (5).

"(5) INSURED LOSS.—The term 'insured loss' means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—

"(A) occurs within the United States; or

"(B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.

"(6) INSURER.—The term 'insurer' means any entity, including any affiliate thereof—

"(A) that is—

"(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State;

"(ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto;

"(iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity;

"(iv) a State residual market insurance entity or State workers' compensation fund; or

"(v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f);

"(B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in sections 103(d) and 103(f); and

"(C) that meets any other criteria that the Secretary may reasonably prescribe.

"(7) INSURER DEDUCTIBLE.—The term 'insurer deductible' means—

"(A) the value of an insurer's direct earned premiums during the immediately preceding calendar year, multiplied by 20 percent; and

"(B) notwithstanding subparagraph (A), for any calendar year, if an insurer has not had a full year of operations during the calendar year immediately preceding such calendar year, such portion of the direct earned premiums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums.

"(8) NAIC.—The term 'NAIC' means the National Association of Insurance Commissioners.

"(9) PERSON.—The term 'person' means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

"(10) PROGRAM.—The term 'Program' means the Terrorism Insurance Program established by this title.

"(11) PROPERTY AND CASUALTY INSURANCE.—The term 'property and casualty insurance'—

"(A) means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and directors and officers liability insurance; and

"(B) does not include—

"(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;

"(ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance;

"(iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;

"(iv) insurance for medical malpractice;

"(v) health or life insurance, including group life insurance;

"(vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.);

"(vii) reinsurance or retrocessional reinsurance;

"(viii) commercial automobile insurance;

"(ix) burglary and theft insurance;

"(x) surety insurance;

"(xi) professional liability insurance; or

"(xii) farm owners multiple peril insurance.

"(12) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(13) STATE.—The term 'State' means any State of the United States, the District of Columbia, the

Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

"(14) UNITED STATES.—The term 'United States' means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280, 2281).

"(15) RULE OF CONSTRUCTION FOR DATES.—With respect to any reference to a date in this title, such day shall be construed—

"(A) to begin at 12:01 a.m. on that date; and

"(B) to end at midnight on that date.

"SEC. 103. TERRORISM INSURANCE PROGRAM.

"(a) ESTABLISHMENT OF PROGRAM.—

"(1) IN GENERAL.—There is established in the Department of the Treasury the Terrorism Insurance Program.

"(2) AUTHORITY OF THE SECRETARY.—Notwithstanding any other provision of State or Federal law, the Secretary shall administer the Program, and shall pay the Federal share of compensation for insured losses in accordance with subsection (e).

"(3) MANDATORY PARTICIPATION.—Each entity that meets the definition of an insurer under this title shall participate in the Program.

"(b) CONDITIONS FOR FEDERAL PAYMENTS.—No payment may be made by the Secretary under this section with respect to an insured loss that is covered by an insurer, unless—

"(1) the person that suffers the insured loss, or a person acting on behalf of that person, files a claim with the insurer;

"(2) the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program—

"(A) in the case of any policy that is issued before the date of enactment of this Act [Nov. 26, 2002], not later than 90 days after that date of enactment;

"(B) in the case of any policy that is issued within 90 days of the date of enactment of this Act, at the time of offer and renewal of the policy; and

"(C) in the case of any policy that is issued more than 90 days after the date of enactment of this Act, on a separate line item in the policy, at the time of offer and renewal of the policy;

"(3) in the case of any policy that is issued after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the insurer provides clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under subsection (e)(2), at the time of offer, purchase, and renewal of the policy;

"(4) the insurer processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe; and

"(5) the insurer submits to the Secretary, in accordance with such reasonable procedures as the Secretary may establish—

"(A) a claim for payment of the Federal share of compensation for insured losses under the Program;

"(B) written certification—

"(i) of the underlying claim; and

"(ii) of all payments made for insured losses; and

"(C) certification of its compliance with the provisions of this subsection.

"(c) MANDATORY AVAILABILITY.—During each calendar year, each entity that meets the definition of an insurer under section 102—

"(1) shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

"(2) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

"(d) STATE RESIDUAL MARKET INSURANCE ENTITIES.—

"(1) IN GENERAL.—The Secretary shall issue regulations, as soon as practicable after the date of enactment of this Act [Nov. 26, 2002], that apply the provisions of this title to State residual market insurance entities and State workers' compensation funds.

"(2) TREATMENT OF CERTAIN ENTITIES.—For purposes of the regulations issued pursuant to paragraph (1)—

"(A) a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer; and

"(B) a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.

"(3) TREATMENT OF PARTICIPATION IN CERTAIN ENTITIES.—Any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity.

"(e) INSURED LOSS SHARED COMPENSATION.—

"(1) FEDERAL SHARE.—

"(A) IN GENERAL.—The Federal share of compensation under the Program to be paid by the Secretary for insured losses of an insurer during each calendar year shall be equal to 85 percent and beginning on January 1, 2016, shall decrease by 1 percentage point per calendar year until equal to 80 percent of that portion of the amount of such insured losses that exceeds the applicable insurer deductible required to be paid during such calendar year.

"(B) PROGRAM TRIGGER.—In the case of certified acts of terrorism occurring after March 31, 2006, no compensation shall be paid by the Secretary under subsection (a), unless the aggregate industry insured losses resulting from such certified acts of terrorism exceed—

"(i) $100,000,000, with respect to such insured losses occurring in calendar year 2015;

"(ii) $120,000,000, with respect to such insured losses occurring in calendar year 2016;

"(iii) $140,000,000, with respect to such insured losses occurring in calendar year 2017;

"(iv) $160,000,000, with respect to such insured losses occurring in calendar year 2018;

"(v) $180,000,000, with respect to such insured losses occurring in calendar year 2019; and

"(vi) $200,000,000, with respect to such insured losses occurring in calendar year 2020 and any calendar year thereafter.

"(C) PROHIBITION ON DUPLICATIVE COMPENSATION.—The Federal share of compensation for insured losses under the Program shall be reduced by the amount of compensation provided by the Federal Government to any person under any other Federal program for those insured losses.

"(2) CAP ON ANNUAL LIABILITY.—

"(A) IN GENERAL.—Notwithstanding paragraph (1) or any other provision of Federal or State law, if the aggregate insured losses exceed $100,000,000,000, during a calendar year—

"(i) the Secretary shall not make any payment under this title for any portion of the amount of such losses that exceeds $100,000,000,000; and

"(ii) no insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000.

"(B) INSURER SHARE.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the Secretary shall determine the pro rata share of insured losses to be paid by each insurer that incurs insured losses under the Program, except that, notwithstanding paragraph (1) or any other provision of Federal or State law, no insurer may be required to make any payment for insured losses in excess of its deductible under section 102(7) combined with its share of insured losses under paragraph (1)(A) of this subsection.

"(ii) REGULATIONS.—Not later than 240 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Secretary shall issue final regulations for determining the pro rata share of insured losses under the Program when insured losses exceed $100,000,000,000, in accordance with clause (i).

"(iii) REPORT TO CONGRESS.—Not later than 120 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007, the Secretary shall provide a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the process to be used by the Secretary for determining the allocation of pro rata payments for insured losses under the Program when such losses exceed $100,000,000,000.

"(3) NOTICE TO CONGRESS.—The Secretary shall notify the Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during any calendar year. The Secretary shall provide an initial notice to Congress not later than 15 days after the date of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100,000,000,000.

"(4) FINAL NETTING.—The Secretary shall have sole discretion to determine the time at which

claims relating to any insured loss or act of terrorism shall become final.

"(5) DETERMINATIONS FINAL.—Any determination of the Secretary under this subsection shall be final, unless expressly provided, and shall not be subject to judicial review.

"(6) INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.—

"(A) IN GENERAL.—For purposes of paragraph (7), the insurance marketplace aggregate retention amount shall be the lesser of—

"(i) $27,500,000,000, as such amount is revised pursuant to this paragraph; and

"(ii) the aggregate amount, for all insurers, of insured losses during such calendar year.

"(B) REVISION OF INSURANCE MARKETPLACE AGGREGATE RETENTION AMOUNT.—

"(i) PHASE-IN.—Beginning in the calendar year of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [2015], the amount set forth under subparagraph (A)(i) shall increase by $2,000,000,000 per calendar year until equal to $37,500,000,000.

"(ii) FURTHER REVISION.—Beginning in the calendar year that follows the calendar year in which the amount set forth under subparagraph (A)(i) is equal to $37,500,000,000, the amount under subparagraph (A)(i) shall be revised to be the amount equal to the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior 3 calendar years, as such sum is determined by the Secretary under subparagraph (C).

"(C) RULEMAKING.—Not later than 3 years after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015 [Jan. 12, 2015], the Secretary shall—

"(i) issue final rules for determining the amount of the sum described under subparagraph (B)(ii); and

"(ii) provide a timeline for public notification of such determination.

"(7) RECOUPMENT OF FEDERAL SHARE.—

"(A) MANDATORY RECOUPMENT AMOUNT.—For purposes of this paragraph, the mandatory recoupment amount shall be the difference between—

"(i) the insurance marketplace aggregate retention amount under paragraph (6); and

"(ii) the aggregate amount, for all insurers, of insured losses during such period that are not compensated by the Federal Government because such losses—

"(I) are within the insurer deductible for the insurer subject to the losses; or

"(II) are within the portion of losses of the insurer that exceed the insurer deductible, but are not compensated pursuant to paragraph (1).

"(B) [Reserved.]

"(C) MANDATORY ESTABLISHMENT OF SURCHARGES TO RECOUP MANDATORY RECOUPMENT AMOUNT.—The Secretary shall collect, for repayment of the Federal financial assistance provided in connection with all acts of terrorism (or acts of war, in the case of workers compensation), terrorism loss risk-spreading premiums in an amount equal to 140 percent of any mandatory recoupment amount as calculated under subparagraph (A) for such period.

"(D) DISCRETIONARY RECOUPMENT OF REMAINDER OF FINANCIAL ASSISTANCE .—To the extent that the amount of Federal financial assistance provided exceeds any mandatory recoupment amount, the Secretary may recoup, through terrorism loss risk-spreading premiums, such additional amounts that the Secretary believes can be recouped, based on—

"(i) the ultimate costs to taxpayers of no additional recoupment;

"(ii) the economic conditions in the commercial marketplace, including the capitalization, profitability, and investment returns of the insurance industry and the current cycle of the insurance markets;

"(iii) the affordability of commercial insurance for small- and medium-sized businesses; and

"(iv) such other factors as the Secretary considers appropriate.

"(E) TIMING OF MANDATORY RECOUPMENT.—

"(i) IN GENERAL.—If the Secretary is required to collect terrorism loss risk-spreading premiums under subparagraph (C)—

"(I) for any act of terrorism that occurs on or before December 31, 2022, the Secretary shall collect all required premiums by September 30, 2024;

"(II) for any act of terrorism that occurs between January 1 and December 31, 2023, the Secretary shall collect 35 percent of any required premiums by September 30, 2024, and the remainder by September 30, 2029; and

"(III) for any act of terrorism that occurs on or after January 1, 2024, the Secretary shall collect all required premiums by September 30, 2029.

"(ii) REGULATIONS REQUIRED.—Not later than 180 days after the date of enactment of this subparagraph [Dec. 26, 2007], the Secretary shall issue regulations describing the procedures to be used for collecting the required premiums in the time periods referred to in clause (i).

"(F) NOTICE OF ESTIMATED LOSSES.—Not later than 90 days after the date of an act of terrorism, the Secretary shall publish an estimate of aggregate insured losses, which shall be used as the basis for determining whether mandatory recoupment will be required under this paragraph. Such estimate shall be updated as appropriate, and at least annually.

"(8) POLICY SURCHARGE FOR TERRORISM LOSS RISK-SPREADING PREMIUMS.—

"(A) POLICYHOLDER PREMIUM.—Any amount established by the Secretary as a terrorism loss risk-spreading premium shall—

"(i) be imposed as a policyholder premium surcharge on property and casualty insurance policies in force after the date of such establishment;

"(ii) begin with such period of coverage during the year as the Secretary determines appropriate; and

"(iii) be based on a percentage of the premium amount charged for property and casualty insurance coverage under the policy.

"(B) COLLECTION.—The Secretary shall provide for insurers to collect terrorism loss risk-spreading premiums and remit such amounts collected to the Secretary.

"(C) PERCENTAGE LIMITATION.—A terrorism loss risk-spreading premium collected on a discretionary basis pursuant to paragraph (7)(D) may not exceed, on an annual basis, the amount equal to 3 percent of the premium charged for property and casualty insurance coverage under the policy.

"(D) Adjustment for urban and smaller commercial and rural areas and different lines of insurance.—

"(i) ADJUSTMENTS.—In determining the method and manner of imposing terrorism loss risk-spreading premiums, including the amount of such premiums, the Secretary shall take into consideration—

"(I) the economic impact on commercial centers of urban areas, including the effect on commercial rents and commercial insurance premiums, particularly rents and premiums charged to small businesses, and the availability of lease space and commercial insurance within urban areas;

"(II) the risk factors related to rural areas and smaller commercial centers, including the potential exposure to loss and the likely magnitude of such loss, as well as any resulting cross-subsidization that might result; and

"(III) the various exposures to terrorism risk for different lines of insurance.

"(ii) RECOUPMENT OF ADJUSTMENTS.—Any mandatory recoupment amounts not collected by the Secretary because of adjustments under this subparagraph shall be recouped through additional terrorism loss risk-spreading premiums, in accordance with the timing requirements of paragraph (7)(E).

"(E) TIMING OF PREMIUMS.—The Secretary may adjust the timing of terrorism loss risk-spreading premiums to provide for equivalent application of the provisions of this title to policies that are not based on a calendar year, or to apply such provisions on a daily, monthly, or quarterly basis, as appropriate.

"(f) CAPTIVE INSURERS AND OTHER SELF-INSURANCE ARRANGEMENTS.—The Secretary may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities (such as workers' compensation self-insurance programs and State workers' compensation reinsurance pools), but only if such application is determined before the occurrence of an act of terrorism in which such an entity incurs an insured loss and all of the provisions of this title are applied comparably to such entities.

"(g) REINSURANCE TO COVER EXPOSURE.—

"(1) OBTAINING COVERAGE.—This title may not be construed to limit or prevent insurers from obtaining reinsurance coverage for insurer deductibles or insured losses retained by insurers pursuant to this section, nor shall the obtaining of such coverage affect the calculation of such deductibles or retentions.

"(2) LIMITATION ON FINANCIAL ASSISTANCE.—The amount of financial assistance provided pursuant to this section shall not be reduced by reinsurance paid or payable to an insurer from other sources, except that recoveries from such other sources, taken together with financial assistance for the calendar year provided pursuant to this section, may not exceed the aggregate amount of the insurer's insured losses for the calendar year. If such recoveries and financial assistance for the calendar year exceed such aggregate amount of insured losses for the calendar year and there is no agreement between the insurer and any

reinsurer to the contrary, an amount in excess of such aggregate insured losses shall be returned to the Secretary.

"(h) GROUP LIFE INSURANCE STUDY.—

"(1) STUDY.—The Secretary shall study, on an expedited basis, whether adequate and affordable catastrophe reinsurance for acts of terrorism is available to life insurers in the United States that issue group life insurance, and the extent to which the threat of terrorism is reducing the availability of group life insurance coverage for consumers in the United States.

"(2) CONDITIONAL COVERAGE.—To the extent that the Secretary determines that such coverage is not or will not be reasonably available to both such insurers and consumers, the Secretary shall, in consultation with the NAIC—

"(A) apply the provisions of this title, as appropriate, to providers of group life insurance; and

"(B) provide such restrictions, limitations, or conditions with respect to any financial assistance provided that the Secretary deems appropriate, based on the study under paragraph (1).

"(i) STUDY AND REPORT.—

"(1) STUDY.—The Secretary, after consultation with the NAIC, representatives of the insurance industry, and other experts in the insurance field, shall conduct a study of the potential effects of acts of terrorism on the availability of life insurance and other lines of insurance coverage, including personal lines.

"(2) REPORT.—Not later than 9 months after the date of enactment of this Act [Nov. 26, 2002], the Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1).

"SEC. 104. GENERAL AUTHORITY AND ADMINISTRATION OF CLAIMS.

"(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to carry out the Program, including authority—

"(1) to investigate and audit all claims under the Program; and

"(2) to prescribe regulations and procedures to effectively administer and implement the Program, and to ensure that all insurers and self-insured entities that participate in the Program are treated comparably under the Program.

"(b) INTERIM RULES AND PROCEDURES.—The Secretary may issue interim final rules or procedures specifying the manner in which—

"(1) insurers may file and certify claims under the Program;

"(2) the Federal share of compensation for insured losses will be paid under the Program, including payments based on estimates of or actual insured losses;

"(3) the Secretary may, at any time, seek repayment from or reimburse any insurer, based on estimates of insured losses under the Program, to effectuate the insured loss sharing provisions in section 103; and

"(4) the Secretary will determine any final netting of payments under the Program, including payments owed to the Federal Government from any insurer and any Federal share of compensation for insured losses owed to any insurer, to effectuate the insured loss sharing provisions in section 103.

"(c) CONSULTATION.—The Secretary shall consult with the NAIC, as the Secretary determines appropriate, concerning the Program.

"(d) CONTRACTS FOR SERVICES.—The Secretary may employ persons or contract for services as may be necessary to implement the Program.

"(e) CIVIL PENALTIES.—

"(1) IN GENERAL.—The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (2) against any insurer that the Secretary determines, on the record after opportunity for a hearing—

"(A) has failed to charge, collect, or remit terrorism loss risk-spreading premiums under section 103(e) in accordance with the requirements of, or regulations issued under, this title;

"(B) has intentionally provided to the Secretary erroneous information regarding premium or loss amounts;

"(C) submits to the Secretary fraudulent claims under the Program for insured losses;

"(D) has failed to provide the disclosures required under subsection (f); or

"(E) has otherwise failed to comply with the provisions of, or the regulations issued under, this title.

"(2) AMOUNT.—The amount under this paragraph is the greater of $1,000,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations issued under this title, such amount in dispute.

"(3) RECOVERY OF AMOUNT IN DISPUTE.—A penalty under this subsection for any failure to pay, charge, collect, or remit amounts in accordance with this title or the regulations under this title shall be

in addition to any such amounts recovered by the Secretary.

"(f) SUBMISSION OF PREMIUM INFORMATION.—

"(1) IN GENERAL.—The Secretary shall annually compile information on the terrorism risk insurance premium rates of insurers for the preceding year.

"(2) ACCESS TO INFORMATION.—To the extent that such information is not otherwise available to the Secretary, the Secretary may require each insurer to submit to the NAIC terrorism risk insurance premium rates, as necessary to carry out paragraph (1), and the NAIC shall make such information available to the Secretary.

"(3) AVAILABILITY TO CONGRESS.—The Secretary shall make information compiled under this subsection available to the Congress, upon request.

"(g) FUNDING.—

"(1) FEDERAL PAYMENTS.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay the Federal share of compensation for insured losses under the Program.

"(2) ADMINISTRATIVE EXPENSES.—There are hereby appropriated, out of funds in the Treasury not otherwise appropriated, such sums as may be necessary to pay reasonable costs of administering the Program.

"(h) REPORTING OF TERRORISM INSURANCE DATA.—

"(1) AUTHORITY.—During the calendar year beginning on January 1, 2016, and in each calendar year thereafter, the Secretary shall require insurers participating in the Program to submit to the Secretary such information regarding insurance coverage for terrorism losses of such insurers as the Secretary considers appropriate to analyze the effectiveness of the Program, which shall include information regarding—

"(A) lines of insurance with exposure to such losses;

"(B) premiums earned on such coverage;

"(C) geographical location of exposures;

"(D) pricing of such coverage;

"(E) the take-up rate for such coverage;

"(F) the amount of private reinsurance for acts of terrorism purchased; and

"(G) such other matters as the Secretary considers appropriate.

"(2) REPORTS.—Not later than June 30, 2016, and every other June 30 thereafter, the Secretary shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that includes—

"(A) an analysis of the overall effectiveness of the Program;

"(B) an evaluation of the availability and affordability of terrorism risk insurance, which shall include an analysis of such availability and affordability specifically for places of worship;

"(C) an evaluation of any changes or trends in the data collected under paragraph (1);

"(D) an evaluation of whether any aspects of the Program have the effect of discouraging or impeding insurers from providing commercial property casualty insurance coverage or coverage for acts of terrorism;

"(E) an evaluation of the impact of the Program on workers' compensation insurers; and

"(F) in the case of the data reported in paragraph (1)(B), an updated estimate of the total amount earned since January 1, 2003.

"(3) PROTECTION OF DATA.—To the extent possible, the Secretary shall contract with an insurance statistical aggregator to collect the information described in paragraph (1), which shall keep any nonpublic information confidential and provide it to the Secretary in an aggregate form or in such other form or manner that does not permit identification of the insurer submitting such information.

"(4) ADVANCE COORDINATION.—Before collecting any data or information under paragraph (1) from an insurer, or affiliate of an insurer, the Secretary shall coordinate with the appropriate State insurance regulatory authorities and any relevant government agency or publicly available sources to determine if the information to be collected is available from, and may be obtained in a timely manner by, individually or collectively, such entities. If the Secretary determines that such data or information is available, and may be obtained in a timely matter, from such entities, the Secretary shall obtain the data or information from such entities. If the Secretary determines that such data or information is not so available, the Secretary may collect such data or information from an insurer and affiliates.

"(5) CONFIDENTIALITY.—

"(A) RETENTION OF PRIVILEGE.—The submission of any non-publicly available data and information to the Secretary and the sharing of any non-publicly available data with or by the Secretary

among other Federal agencies, the State insurance regulatory authorities, or any other entities under this subsection shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

"(B) CONTINUED APPLICATION OF PRIOR CONFIDENTIALITY AGREEMENTS.—Any requirement under Federal or State law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the Secretary, regarding the privacy or confidentiality of any data or information in the possession of the source to the Secretary, shall continue to apply to such data or information after the data or information has been provided pursuant to this subsection.

"(C) INFORMATION-SHARING AGREEMENT.—Any data or information obtained by the Secretary under this subsection may be made available to State insurance regulatory authorities, individually or collectively through an information-sharing agreement that—

"(i) shall comply with applicable Federal law; and

"(ii) shall not constitute a waiver of, or otherwise affect, any privilege under Federal or State law (including any privilege referred to in subparagraph (A) and the rules of any Federal or State court) to which the data or information is otherwise subject.

"(D) AGENCY DISCLOSURE REQUIREMENTS.—Section 552 of title 5, United States Code, including any exceptions thereunder, shall apply to any data or information submitted under this subsection to the Secretary by an insurer or affiliate of an insurer.

"SEC. 105. PREEMPTION AND NULLIFICATION OF PRE-EXISTING TERRORISM EXCLUSIONS.

"(a) GENERAL NULLIFICATION.—Any terrorism exclusion in a contract for property and casualty insurance that is in force on the date of enactment of this Act [Nov. 26, 2002] shall be void to the extent that it excludes losses that would otherwise be insured losses.

"(b) GENERAL PREEMPTION.—Any State approval of any terrorism exclusion from a contract for property and casualty insurance that is in force on the date of enactment of this Act, shall be void to the extent that it excludes losses that would otherwise be insured losses.

"(c) REINSTATEMENT OF TERRORISM EXCLUSIONS.—Notwithstanding subsections (a) and (b) or any provision of State law, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that is in force on the date of enactment of this Act [Nov. 26, 2002] and that excludes coverage for an act of terrorism only—

"(1) if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

"(2) if—

"(A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage; and

"(B) the insurer provided notice, at least 30 days before any such reinstatement, of—

"(i) the increased premium for such terrorism coverage; and

"(ii) the rights of the insured with respect to such coverage, including any date upon which the exclusion would be reinstated if no payment is received.

"SEC. 106. PRESERVATION PROVISIONS.

"(a) STATE LAW.—Nothing in this title shall affect the jurisdiction or regulatory authority of the insurance commissioner (or any agency or office performing like functions) of any State over any insurer or other person—

"(1) except as specifically provided in this title; and

"(2) except that—

"(A) the definition of the term 'act of terrorism' in section 102 shall be the exclusive definition of that term for purposes of compensation for insured losses under this title, and shall preempt any provision of State law that is inconsistent with that definition, to the extent that such provision of law would otherwise apply to any type of insurance covered by this title;

"(B) during the period beginning on the date of enactment of this Act [Nov. 26, 2002] and ending on December 31, 2003, rates and forms for terrorism risk insurance covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable, except that nothing in this title affects the ability of any State to invalidate a rate as excessive, inadequate, or unfairly discriminatory, and, with respect to forms, where a State has prior approval authority, it shall apply to allow subsequent review of such forms; and

"(C) during the period beginning on the date of enactment of this Act and for so long as the Program is in effect, as provided in section 108, including authority in subsection 108(b), books and records of any insurer that are relevant to the Program shall be provided, or caused to be provided, to the Secretary, upon request by the Secretary, notwithstanding any provision of the laws of any State prohibiting or limiting such access.

"(b) EXISTING REINSURANCE AGREEMENTS.—Nothing in this title shall be construed to alter, amend, or expand the terms of coverage under any reinsurance agreement in effect on the date of enactment of this Act [Nov. 26, 2002]. The terms and conditions of such an agreement shall be determined by the language of that agreement.

"SEC. 107. LITIGATION MANAGEMENT.

"(a) PROCEDURES AND DAMAGES.—

"(1) IN GENERAL.—If the Secretary makes a determination pursuant to section 102 that an act of terrorism has occurred, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in subsection (b).

"(2) PREEMPTION OF STATE ACTIONS.—All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under State law are hereby preempted, except as provided in subsection (b).

"(3) SUBSTANTIVE LAW.—The substantive law for decision in any such action described in paragraph (1) shall be derived from the law, including choice of law principles, of the State in which such act of terrorism occurred, unless such law is otherwise inconsistent with or preempted by Federal law.

"(4) JURISDICTION.—For each determination described in paragraph (1), not later than 90 days after the occurrence of an act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate 1 district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism subject to this section. The Judicial Panel on Multidistrict Litigation shall select and assign the district court or courts based on the convenience of the parties and the just and efficient conduct of the proceedings. For purposes of personal jurisdiction, the district court or courts designated by the Judicial Panel on Multidistrict Litigation shall be deemed to sit in all judicial districts in the United States.

"(5) PUNITIVE DAMAGES.—Any amounts awarded in an action under paragraph (1) that are attributable to punitive damages shall not count as insured losses for purposes of this title.

"(6) AUTHORITY OF THE SECRETARY.—Procedures and requirements established by the Secretary under section 50.82 of part 50 of title 31 of the Code of Federal Regulations (as in effect on the date of issuance of that section in final form) shall apply to any cause of action described in paragraph (1) of this subsection.

"(b) EXCLUSION.—Nothing in this section shall in any way limit the liability of any government, an organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism with respect to which a determination described in subsection (a)(1) was made.

"(c) RIGHT OF SUBROGATION.—The United States shall have the right of subrogation with respect to any payment or claim paid by the United States under this title.

"(d) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to affect—

"(1) any party's contractual right to arbitrate a dispute; or

"(2) any provision of the Air Transportation Safety and System Stabilization Act (Public Law 107–42; 49 U.S.C. 40101 note.).

"(e) EFFECTIVE PERIOD.—This section shall apply only to actions described in subsection (a)(1) that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program.

"SEC. 108. TERMINATION OF PROGRAM.

"(a) TERMINATION OF PROGRAM.—The Program shall terminate on December 31, 2027.

"(b) CONTINUING AUTHORITY TO PAY OR ADJUST COMPENSATION.—Following the termination of the Program, the Secretary may take such actions as may be necessary to ensure payment, recoupment, reimbursement, or adjustment of compensation for insured losses arising out of any act of terrorism occurring during the period in which the Program was in effect under this title, in accordance with the provisions of section 103 and regulations promulgated thereunder.

"(c) REPEAL; SAVINGS CLAUSE.—This title is repealed on the final termination date of the Program under subsection (a), except that such repeal shall not be construed—

"(1) to prevent the Secretary from taking, or causing to be taken, such actions under subsection (b) of this section, paragraph (4), (5), (6), (7), or (8) of section 103(e), or subsection (a)(1), (c), (d), or (e) of section 104, as in effect on the day before the date of such repeal, or applicable regulations promulgated thereunder, during any period in which the authority of the Secretary under subsection (b) of this section is in effect; or

"(2) to prevent the availability of funding under section 104(g) during any period in which the authority of the Secretary under subsection (b) of this section is in effect.

"(d) STUDY AND REPORT ON THE PROGRAM.—

"(1) STUDY.—The Secretary, in consultation with the NAIC, representatives of the insurance industry and of policy holders, other experts in the insurance field, and other experts as needed, shall assess the effectiveness of the Program and the likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program, and the availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit.

"(2) REPORT.—The Secretary shall submit a report to the Congress on the results of the study conducted under paragraph (1) not later than June 30, 2005.

"(e) ANALYSIS OF MARKET CONDITIONS FOR TERRORISM RISK INSURANCE.—

"(1) IN GENERAL.—The President's Working Group on Financial Markets, in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders, shall perform an ongoing analysis regarding the long-term availability and affordability of insurance for terrorism risk.

"(2) REPORT.—Not later than September 30, 2006, and thereafter in 2010 and 2013, the President's Working Group on Financial Markets shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on its findings pursuant to the analysis conducted under paragraph (1).

"(f) INSURANCE FOR NUCLEAR, BIOLOGICAL, CHEMICAL, AND RADIOLOGICAL TERRORIST EVENTS.—

"(1) STUDY.—The Comptroller General of the United States shall examine—

"(A) the availability and affordability of insurance coverage for losses caused by terrorist attacks involving nuclear, biological, chemical, or radiological materials;

"(B) the outlook for such coverage in the future; and

"(C) the capacity of private insurers and State workers compensation funds to manage risk associated with nuclear, biological, chemical, and radiological terrorist events.

"(2) REPORT.—Not later than 1 year after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Comptroller General shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report containing a detailed statement of the findings under paragraph (1), and recommendations for any legislative, regulatory, administrative, or other actions at the Federal, State, or local levels that the Comptroller General considers appropriate to expand the availability and affordability of insurance for nuclear, biological, chemical, or radiological terrorist events.

"(g) AVAILABILITY AND AFFORDABILITY OF TERRORISM INSURANCE IN SPECIFIC MARKETS.—

"(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine whether there are specific markets in the United States where there are unique capacity constraints on the amount of terrorism risk insurance available.

"(2) ELEMENTS OF STUDY.—The study required by paragraph (1) shall contain—

"(A) an analysis of both insurance and reinsurance capacity in specific markets, including pricing and coverage limits in existing policies;

"(B) an assessment of the factors contributing to any capacity constraints that are identified; and

"(C) recommendations for addressing those capacity constraints.

"(3) REPORT.—Not later than 180 days after the date of enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 [Dec. 26, 2007], the Comptroller General shall submit a report on the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

"(h) STUDY OF SMALL INSURER MARKET COMPETITIVENESS.—

"(1) IN GENERAL.—Not later than June 30, 2017, and every other June 30 thereafter, the Secretary shall conduct a study of small insurers (as such term is defined by regulation by the Secretary) participating in the Program, and identify any competitive challenges small insurers face in the terrorism risk insurance marketplace, including—

"(A) changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers;

"(B) how the property and casualty insurance market for terrorism risk differs between small and large insurers, and whether such a difference exists within other perils;

"(C) the impact of the Program's mandatory availability requirement under section 103(c) on small insurers;

"(D) the effect of increasing the trigger amount for the Program under section 103(e)(1)(B) on small insurers;

"(E) the availability and cost of private reinsurance for small insurers; and

"(F) the impact that State workers compensation laws have on small insurers and workers compensation carriers in the terrorism risk insurance marketplace.

"(2) REPORT.—The Secretary shall submit a report to the Congress setting forth the findings and conclusions of each study required under paragraph (1)."

[Pub. L. 114–1, title I, §§103, 105, 111, 112, Jan. 12, 2015, 129 Stat. 4, 5, 10, 12, which directed amendment of "subparagraph (B) of section 103(e)(1)", "paragraph (1)(A) of section 102", "section 104", and "section 108", respectively, without specifying the name of the Act being amended, were executed to those sections of the Terrorism Risk Insurance Act of 2002 (title I of Pub. L. 107–297, set out above), to reflect the probable intent of Congress.]

[Pub. L. 110–160, §4(b)(2), Dec. 26, 2007, 121 Stat. 1840, which directed amendment of section 103(e)(3) of Pub. L. 107–297, set out above, by substituting period for " 'and the Congress shall' and all that follows through the end of the paragraph", was executed by substituting period for "and the Congress shall" and all that followed through end of first sentence, to reflect the probable intent of Congress, in light of insertion of last sentence of par. (3) by Pub. L. 110–160, §4(b)(1).]

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER I—STATE REGULATION OF INSURANCE

§6711. Functional regulation of insurance

The insurance activities of any person (including a national bank exercising its power to act as agent under section 92 of title 12) shall be functionally regulated by the States, subject to section 6701 of this title.

(Pub. L. 106–102, title III, §301, Nov. 12, 1999, 113 Stat. 1407.)

§6712. Insurance underwriting in national banks

(a) In general

Except as provided in section 6713 of this title, a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) Authorized products

For the purposes of this section, a product is authorized if—

(1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;

(2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the

Comptroller of the Currency that national banks may provide such product as principal; and

(3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of title 26.

(c) Definition

For purposes of this section, the term "insurance" means—

(1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;

(2) any product first offered after January 1, 1999, which—

(A) a State insurance regulator determines shall be regulated as insurance in the State in which the product is provided because the product insures, guarantees, or indemnifies against liability, loss of life, loss of health, or loss through damage to or destruction of property, including, but not limited to, surety bonds, life insurance, health insurance, title insurance, and property and casualty insurance (such as private passenger or commercial automobile, homeowners, mortgage, commercial multiperil, general liability, professional liability, workers' compensation, fire and allied lines, farm owners multiperil, aircraft, fidelity, surety, medical malpractice, ocean marine, inland marine, and boiler and machinery insurance); and

(B) is not a product or service of a bank that is—

(i) a deposit product;

(ii) a loan, discount, letter of credit, or other extension of credit;

(iii) a trust or other fiduciary service;

(iv) a qualified financial contract (as defined in or determined pursuant to section 1821(e)(8)(D)(i) of title 12); or

(v) a financial guaranty, except that this subparagraph (B) shall not apply to a product that includes an insurance component such that if the product is offered or proposed to be offered by the bank as principal—

(I) it would be treated as a life insurance contract under section 7702 of title 26; or

(II) in the event that the product is not a letter of credit or other similar extension of credit, a qualified financial contract, or a financial guaranty, it would qualify for treatment for losses incurred with respect to such product under section 832(b)(5) of title 26, if the bank were subject to tax as an insurance company under section 831 of that title; or

(3) any annuity contract, the income on which is subject to tax treatment under section 72 of title 26.

(d) Rule of construction

For purposes of this section, providing insurance (including reinsurance) outside the United States that insures, guarantees, or indemnifies insurance products provided in a State, or that indemnifies an insurance company with regard to insurance products provided in a State, shall be considered to be providing insurance as principal in that State.

(Pub. L. 106–102, title III, §302, Nov. 12, 1999, 113 Stat. 1407.)

§6713. Title insurance activities of national banks and their affiliates

(a) General prohibition

No national bank may engage in any activity involving the underwriting or sale of title insurance.

(b) Nondiscrimination parity exception

(1) In general

Notwithstanding any other provision of law (including section 6701 of this title), in the case of any State in which banks organized under the laws of such State are authorized to sell title

insurance as agent, a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions as such State banks are authorized to sell title insurance as agent in such State.

(2) Coordination with "wildcard" provision

A State law which authorizes State banks to engage in any activities in such State in which a national bank may engage shall not be treated as a statute which authorizes State banks to sell title insurance as agent, for purposes of paragraph (1).

(c) Grandfathering with consistent regulation

(1) In general

Except as provided in paragraphs (2) and (3) and notwithstanding subsections (a) and (b), a national bank, and a subsidiary of a national bank, may conduct title insurance activities which such national bank or subsidiary was actively and lawfully conducting before November 12, 1999.

(2) Insurance affiliate

In the case of a national bank which has an affiliate which provides insurance as principal and is not a subsidiary of the bank, the national bank and any subsidiary of the national bank may not engage in the underwriting of title insurance pursuant to paragraph (1).

(3) Insurance subsidiary

In the case of a national bank which has a subsidiary which provides insurance as principal and has no affiliate other than a subsidiary which provides insurance as principal, the national bank may not directly engage in any activity involving the underwriting of title insurance.

(d) "Affiliate" and "subsidiary" defined

For purposes of this section, the terms "affiliate" and "subsidiary" have the same meanings as in section 1841 of title 12.

(e) Rule of construction

No provision of this Act or any other Federal law shall be construed as superseding or affecting a State law which was in effect before November 12, 1999, and which prohibits title insurance from being offered, provided, or sold in such State, or from being underwritten with respect to real property in such State, by any person whatsoever.

(Pub. L. 106–102, title III, §303, Nov. 12, 1999, 113 Stat. 1408.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (e), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338, known as the Gramm-Leach-Bliley Act. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of Title 12, Banks and Banking, and Tables.

§6714. Expedited and equalized dispute resolution for Federal regulators

(a) Filing in Court of Appeals

In the case of a regulatory conflict between a State insurance regulator and a Federal regulator regarding insurance issues, including whether a State law, rule, regulation, order, or interpretation regarding any insurance sales or solicitation activity is properly treated as preempted under Federal law, the Federal or State regulator may seek expedited judicial review of such determination by the United States Court of Appeals for the circuit in which the State is located or in the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in such court.

(b) Expedited review

The United States Court of Appeals in which a petition for review is filed in accordance with

subsection (a) shall complete all action on such petition, including rendering a judgment, before the end of the 60-day period beginning on the date on which such petition is filed, unless all parties to such proceeding agree to any extension of such period.

(c) Supreme Court review

Any request for certiorari to the Supreme Court of the United States of any judgment of a United States Court of Appeals with respect to a petition for review under this section shall be filed with the Supreme Court of the United States as soon as practicable after such judgment is issued.

(d) Statute of limitation

No petition may be filed under this section challenging an order, ruling, determination, or other action of a Federal regulator or State insurance regulator after the later of—

(1) the end of the 12-month period beginning on the date on which the first public notice is made of such order, ruling, determination or other action in its final form; or

(2) the end of the 6-month period beginning on the date on which such order, ruling, determination, or other action takes effect.

(e) Standard of review

The court shall decide a petition filed under this section based on its review on the merits of all questions presented under State and Federal law, including the nature of the product or activity and the history and purpose of its regulation under State and Federal law, without unequal deference.

(Pub. L. 106–102, title III, §304, Nov. 12, 1999, 113 Stat. 1409.)

§6715. Certain State affiliation laws preempted for insurance companies and affiliates

Except as provided in section 6701(c)(2) of this title, no State may, by law, regulation, order, interpretation, or otherwise—

(1) prevent or significantly interfere with the ability of any insurer, or any affiliate of an insurer (whether such affiliate is organized as a stock company, mutual holding company, or otherwise), to become a financial holding company or to acquire control of a depository institution;

(2) limit the amount of an insurer's assets that may be invested in the voting securities of a depository institution (or any company which controls such institution), except that the laws of an insurer's State of domicile may limit the amount of such investment to an amount that is not less than 5 percent of the insurer's admitted assets; or

(3) prevent, significantly interfere with, or have the authority to review, approve, or disapprove a plan of reorganization by which an insurer proposes to reorganize from mutual form to become a stock insurer (whether as a direct or indirect subsidiary of a mutual holding company or otherwise) unless such State is the State of domicile of the insurer.

(Pub. L. 106–102, title III, §306, Nov. 12, 1999, 113 Stat. 1415.)

§6716. Interagency consultation

(a) Purpose

It is the intention of the Congress that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the State insurance regulators, as the functional regulators of companies engaged in insurance activities, coordinate efforts to supervise companies that control both a depository institution and a company engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the State insurance regulators should share, on a confidential basis, information relevant to the supervision of companies that control both a depository institution and a company engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding

transactions and relationships between insurance companies and affiliated depository institutions. The appropriate Federal banking agencies for depository institutions should also share, on a confidential basis, information with the relevant State insurance regulators regarding transactions and relationships between depository institutions and affiliated companies engaged in insurance activities. The purpose of this section is to encourage this coordination and confidential sharing of information, and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and companies engaged in insurance activities.

(b) Examination results and other information

(1) Information of the Board

Upon the request of the appropriate insurance regulator of any State, the Board may provide any information of the Board regarding the financial condition, risk management policies, and operations of any financial holding company that controls a company that is engaged in insurance activities and is regulated by such State insurance regulator, and regarding any transaction or relationship between such an insurance company and any affiliated depository institution. The Board may provide any other information to the appropriate State insurance regulator that the Board believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(2) Banking agency information

Upon the request of the appropriate insurance regulator of any State, the appropriate Federal banking agency may provide any information of the agency regarding any transaction or relationship between a depository institution supervised by such Federal banking agency and any affiliated company that is engaged in insurance activities regulated by such State insurance regulator. The appropriate Federal banking agency may provide any other information to the appropriate State insurance regulator that the agency believes is necessary or appropriate to permit the State insurance regulator to administer and enforce applicable State insurance laws.

(3) State insurance regulator information

Upon the request of the Board or the appropriate Federal banking agency, a State insurance regulator may provide any examination or other reports, records, or other information to which such insurance regulator may have access with respect to a company which—

(A) is engaged in insurance activities and regulated by such insurance regulator; and

(B) is an affiliate of a depository institution or financial holding company.

(c) Consultation

Before making any determination relating to the initial affiliation of, or the continuing affiliation of, a depository institution or financial holding company with a company engaged in insurance activities, the appropriate Federal banking agency shall consult with the appropriate State insurance regulator of such company and take the views of such insurance regulator into account in making such determination.

(d) Effect on other authority

Nothing in this section shall limit in any respect the authority of the appropriate Federal banking agency with respect to a depository institution or bank holding company or any affiliate thereof under any provision of law.

(e) Confidentiality and privilege

(1) Confidentiality

The appropriate Federal banking agency shall not provide any information or material that is entitled to confidential treatment under applicable Federal banking agency regulations, or other applicable law, to a State insurance regulator unless such regulator agrees to maintain the information or material in confidence and to take all reasonable steps to oppose any effort to secure disclosure of the information or material by the regulator. The appropriate Federal banking

agency shall treat as confidential any information or material obtained from a State insurance regulator that is entitled to confidential treatment under applicable State regulations, or other applicable law, and take all reasonable steps to oppose any effort to secure disclosure of the information or material by the Federal banking agency.

(2) Privilege

The provision pursuant to this section of information or material by a Federal banking agency or State insurance regulator shall not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.

(f) Definitions

For purposes of this section, the following definitions shall apply:

(1) Appropriate Federal banking agency; depository institution

The terms "appropriate Federal banking agency" and "depository institution" have the same meanings as in section 1813 of title 12.

(2) Board and financial holding company

The terms "Board" and "financial holding company" have the same meanings as in section 1841 of title 12.

(Pub. L. 106–102, title III, §307, Nov. 12, 1999, 113 Stat. 1415.)

§6717. Definition of State

For purposes of this subchapter, the term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(Pub. L. 106–102, title III, §308, Nov. 12, 1999, 113 Stat. 1417.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in original "this subtitle", meaning subtitle A (§301 et seq.) of title III of Pub. L. 106–102, which enacted this subchapter and section 1831x of Title 12, Banks and Banking. For complete classification of this subtitle to the Code, see Tables.

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER II—REDOMESTICATION OF MUTUAL INSURERS

§6731. General application

This subchapter shall only apply to a mutual insurance company in a State which has not enacted a law which expressly establishes reasonable terms and conditions for a mutual insurance company domiciled in such State to reorganize into a mutual holding company.

(Pub. L. 106–102, title III, §311, Nov. 12, 1999, 113 Stat. 1417.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 106–102, title III, §316, Nov. 12, 1999, 113 Stat. 1422, provided that: "This subtitle [subtitle B (§§311–316) of title III of Pub. L. 106–102, enacting this subchapter] shall take effect on the date of the enactment of this Act [Nov. 12, 1999]."

§6732. Redomestication of mutual insurers

(a) Redomestication

A mutual insurer organized under the laws of any State may transfer its domicile to a transferee domicile as a step in a reorganization in which, pursuant to the laws of the transferee domicile and consistent with the standards in subsection (f), the mutual insurer becomes a stock insurer that is a direct or indirect subsidiary of a mutual holding company.

(b) Resulting domicile

Upon complying with the applicable law of the transferee domicile governing transfers of domicile and completion of a transfer pursuant to this section, the mutual insurer shall cease to be a domestic insurer in the transferor domicile and, as a continuation of its corporate existence, shall be a domestic insurer of the transferee domicile.

(c) Licenses preserved

The certificate of authority, agents' appointments and licenses, rates, approvals and other items that a licensed State allows and that are in existence immediately prior to the date that a redomesticating insurer transfers its domicile pursuant to this subchapter shall continue in full force and effect upon transfer, if the insurer remains duly qualified to transact the business of insurance in such licensed State.

(d) Effectiveness of outstanding policies and contracts

(1) In general

All outstanding insurance policies and annuities contracts of a redomesticating insurer shall remain in full force and effect and need not be endorsed as to the new domicile of the insurer, unless so ordered by the State insurance regulator of a licensed State, and then only in the case of outstanding policies and contracts whose owners reside in such licensed State.

(2) Forms

(A) Applicable State law may require a redomesticating insurer to file new policy forms with the State insurance regulator of a licensed State on or before the effective date of the transfer.

(B) Notwithstanding subparagraph (A), a redomesticating insurer may use existing policy forms with appropriate endorsements to reflect the new domicile of the redomesticating insurer until the new policy forms are approved for use by the State insurance regulator of such licensed State.

(e) Notice

A redomesticating insurer shall give notice of the proposed transfer to the State insurance regulator of each licensed State and shall file promptly any resulting amendments to corporate documents required to be filed by a foreign licensed mutual insurer with the insurance regulator of each such licensed State.

(f) Procedural requirements

No mutual insurer may redomesticate to another State and reorganize into a mutual holding company pursuant to this section unless the State insurance regulator of the transferee domicile determines that the plan of reorganization of the insurer includes the following requirements:

(1) Approval by board of directors and policyholders

The reorganization is approved by at least a majority of the board of directors of the mutual

insurer and at least a majority of the policyholders who vote after notice, disclosure of the reorganization and the effects of the transaction on policyholder contractual rights, and reasonable opportunity to vote, in accordance with such notice, disclosure, and voting procedures as are approved by the State insurance regulator of the transferee domicile.

(2) Continued voting control by policyholders; review of public stock offering

After the consummation of a reorganization, the policyholders of the reorganized insurer shall have the same voting rights with respect to the mutual holding company as they had before the reorganization with respect to the mutual insurer. With respect to an initial public offering of stock, the offering shall be conducted in compliance with applicable securities laws and in a manner approved by the State insurance regulator of the transferee domicile.

(3) Award of stock or grant of options to officers and directors

During the applicable period provided for under the State law of the transferee domicile following completion of an initial public offering, or for a period of six months if no such applicable period is provided, neither a stock holding company nor the converted insurer shall award any stock options or stock grants to persons who are elected officers or directors of the mutual holding company, the stock holding company, or the converted insurer, except with respect to any such awards or options to which a person is entitled as a policyholder and as approved by the State insurance regulator of the transferee domicile.

(4) Policyholder rights

Upon reorganization into a mutual holding company, the contractual rights of the policyholders are preserved.

(5) Fair and equitable treatment of policyholders

The reorganization is approved as fair and equitable to the policyholders by the insurance regulator of the transferee domicile.

(Pub. L. 106–102, title III, §312, Nov. 12, 1999, 113 Stat. 1417.)

§6733. Effect on State laws restricting redomestication

(a) In general

Unless otherwise permitted by this subchapter, State laws of any transferor domicile that conflict with the purposes and intent of this subchapter are preempted, including but not limited to—

(1) any law that has the purpose or effect of impeding the activities of, taking any action against, or applying any provision of law or regulation to, any insurer or an affiliate of such insurer because that insurer or any affiliate plans to redomesticate, or has redomesticated, pursuant to this subchapter;

(2) any law that has the purpose or effect of impeding the activities of, taking action against, or applying any provision of law or regulation to, any insured or any insurance licensee or other intermediary because such person has procured insurance from or placed insurance with any insurer or affiliate of such insurer that plans to redomesticate, or has redomesticated, pursuant to this subchapter, but only to the extent that such law would treat such insured licensee or other intermediary differently than if the person procured insurance from, or placed insurance with, an insured licensee or other intermediary which had not redomesticated; and

(3) any law that has the purpose or effect of terminating, because of the redomestication of a mutual insurer pursuant to this subchapter, any certificate of authority, agent appointment or license, rate approval, or other approval, of any State insurance regulator or other State authority in existence immediately prior to the redomestication in any State other than the transferee domicile.

(b) Differential treatment prohibited

No State law, regulation, interpretation, or functional equivalent thereof, of a State other than a

transferee domicile may treat a redomesticating or redomesticated insurer or any affiliate thereof any differently than an insurer operating in that State that is not a redomesticating or redomesticated insurer.

(c) Laws prohibiting operations

If any licensed State fails to issue, delays the issuance of, or seeks to revoke an original or renewal certificate of authority of a redomesticated insurer promptly following redomestication, except on grounds and in a manner consistent with its past practices regarding the issuance of certificates of authority to foreign insurers that are not redomesticating, then the redomesticating insurer shall be exempt from any State law of the licensed State to the extent that such State law or the operation of such State law would make unlawful, or regulate, directly or indirectly, the operation of the redomesticated insurer, except that such licensed State may require the redomesticated insurer to—

(1) comply with the unfair claim settlement practices law of the licensed State;

(2) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on licensed insurers or policyholders under the laws of the licensed State;

(3) register with and designate the State insurance regulator as its agent solely for the purpose of receiving service of legal documents or process;

(4) submit to an examination by the State insurance regulator in any licensed State in which the redomesticated insurer is doing business to determine the insurer's financial condition, if—

(A) the State insurance regulator of the transferee domicile has not begun an examination of the redomesticated insurer and has not scheduled such an examination to begin before the end of the 1-year period beginning on the date of the redomestication; and

(B) any such examination is coordinated to avoid unjustified duplication and repetition;

(5) comply with a lawful order issued in—

(A) a delinquency proceeding commenced by the State insurance regulator of any licensed State if there has been a judicial finding of financial impairment under paragraph (7); or

(B) a voluntary dissolution proceeding;

(6) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the licensed State seeks an injunction regarding the conduct described in this paragraph, such injunction must be obtained from a court of competent jurisdiction as provided in section 6734(a) of this title;

(7) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance regulator alleging that the redomesticating insurer is in hazardous financial condition or is financially impaired;

(8) participate in any insurance insolvency guaranty association on the same basis as any other insurer licensed in the licensed State; and

(9) require a person acting, or offering to act, as an insurance licensee for a redomesticated insurer in the licensed State to obtain a license from that State, except that such State may not impose any qualification or requirement that discriminates against a nonresident insurance licensee.

(Pub. L. 106–102, title III, §313, Nov. 12, 1999, 113 Stat. 1419.)

§6734. Other provisions

(a) Judicial review

The appropriate United States district court shall have exclusive jurisdiction over litigation arising under this section [1] involving any redomesticating or redomesticated insurer.

(b) Severability

If any provision of this section,[1] or the application thereof to any person or circumstances, is held

invalid, the remainder of the section,[1] and the application of such provision to other persons or circumstances, shall not be affected thereby.

(Pub. L. 106–102, title III, §314, Nov. 12, 1999, 113 Stat. 1420.)

EDITORIAL NOTES

REFERENCES IN TEXT

This section, referred to in text, probably should be a reference to this subtitle, meaning subtitle B (§§311–316) of title III of Pub. L. 106–102, which is classified generally to this subchapter.

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

§6735. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Court of competent jurisdiction

The term "court of competent jurisdiction" means a court authorized pursuant to section 6734(a) of this title to adjudicate litigation arising under this subchapter.

(2) Domicile

The term "domicile" means the State in which an insurer is incorporated, chartered, or organized.

(3) Insurance licensee

The term "insurance licensee" means any person holding a license under State law to act as insurance agent, subagent, broker, or consultant.

(4) Institution

The term "institution" means a corporation, joint stock company, limited liability company, limited liability partnership, association, trust, partnership, or any similar entity.

(5) Licensed State

The term "licensed State" means any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands in which the redomesticating insurer has a certificate of authority in effect immediately prior to the redomestication.

(6) Mutual insurer

The term "mutual insurer" means a mutual insurer organized under the laws of any State.

(7) Person

The term "person" means an individual, institution, government or governmental agency, State or political subdivision of a State, public corporation, board, association, estate, trustee, or fiduciary, or other similar entity.

(8) Policyholder

The term "policyholder" means the owner of a policy issued by a mutual insurer, except that, with respect to voting rights, the term means a member of a mutual insurer or mutual holding company granted the right to vote, as determined under applicable State law.

(9) Redomesticated insurer

The term "redomesticated insurer" means a mutual insurer that has redomesticated pursuant to this subchapter.

(10) Redomesticating insurer

The term "redomesticating insurer" means a mutual insurer that is redomesticating pursuant to this subchapter.

(11) Redomestication or transfer

The term "redomestication" or "transfer" means the transfer of the domicile of a mutual insurer from one State to another State pursuant to this subchapter.

(12) State insurance regulator

The term "State insurance regulator" means the principal insurance regulatory authority of a State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(13) State law

The term "State law" means the statutes of any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands and any regulation, order, or requirement prescribed pursuant to any such statute.

(14) Transferee domicile

The term "transferee domicile" means the State to which a mutual insurer is redomesticating pursuant to this subchapter.

(15) Transferor domicile

The term "transferor domicile" means the State from which a mutual insurer is redomesticating pursuant to this subchapter.

(Pub. L. 106–102, title III, §315, Nov. 12, 1999, 113 Stat. 1420.)

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER III—NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS

EDITORIAL NOTES

CODIFICATION

Subtitle C of title III of the Gramm-Leach-Bliley Act, comprising this subchapter, was originally enacted by Pub. L. 106–102, title III, Nov. 12, 1999, 113 Stat. 1422. Such subtitle is shown herein, however, as having been added by Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 12, because of the extensive revision of subtitle C by Pub. L. 114–1.

§6751. National Association of Registered Agents and Brokers

(a) Establishment

There is established the National Association of Registered Agents and Brokers (referred to in this subchapter as the "Association").

(b) Status

The Association shall—

(1) be a nonprofit corporation;

(2) not be an agent or instrumentality of the Federal Government;

(3) be an independent organization that may not be merged with or into any other private or public entity; and

(4) except as otherwise provided in this subchapter, be subject to, and have all the powers conferred upon, a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29–301.01 et seq.) or any successor thereto.

(Pub. L. 106–102, title III, §321, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 13.)

EDITORIAL NOTES

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b)(4), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, which is not classified to the Code.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6752 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6751, Pub. L. 106–102, title III, §321, Nov. 12, 1999, 113 Stat. 1422, related to State flexibility in multistate licensing reforms, prior to the general amendment of this subchapter by Pub. L. 114–1.

§6752. Purpose

The purpose of the Association shall be to provide a mechanism through which licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multi-state basis without affecting the laws, rules, and regulations, and preserving the rights of a State, pertaining to—

(1) licensing, continuing education, and other qualification requirements of insurance producers that are not members of the Association;

(2) resident or nonresident insurance producer appointment requirements;

(3) supervising and disciplining resident and nonresident insurance producers;

(4) establishing licensing fees for resident and nonresident insurance producers so that there is no loss of insurance producer licensing revenue to the State; and

(5) prescribing and enforcing laws and regulations regulating the conduct of resident and nonresident insurance producers.

(Pub. L. 106–102, title III, §322, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 13.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6753 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6752, Pub. L. 106–102, title III, §322, Nov. 12, 1999, 113 Stat. 1424, related to National Association of Registered Agents and Brokers, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6751 of this title.

§6753. Membership

(a) Eligibility

(1) In general

Any insurance producer licensed in its home State shall, subject to paragraphs (2) and (4), be eligible to become a member of the Association.

(2) Ineligibility for suspension or revocation of license

Subject to paragraph (3), an insurance producer is not eligible to become a member of the Association if a State insurance regulator has suspended or revoked the insurance license of the insurance producer in that State.

(3) Resumption of eligibility

Paragraph (2) shall cease to apply to any insurance producer if—

(A) the State insurance regulator reissues or renews the license of the insurance producer in the State in which the license was suspended or revoked, or otherwise terminates or vacates the suspension or revocation; or

(B) the suspension or revocation expires or is subsequently overturned by a court of competent jurisdiction.

(4) Criminal history record check required

(A) In general

An insurance producer who is an individual shall not be eligible to become a member of the Association unless the insurance producer has undergone a criminal history record check that complies with regulations prescribed by the Attorney General of the United States under subparagraph (K).

(B) Criminal history record check requested by home State

An insurance producer who is licensed in a State and who has undergone a criminal history record check during the 2-year period preceding the date of submission of an application to become a member of the Association, in compliance with a requirement to undergo such criminal history record check as a condition for such licensure in the State, shall be deemed to have undergone a criminal history record check for purposes of subparagraph (A).

(C) Criminal history record check requested by Association

(i) In general

The Association shall, upon request by an insurance producer licensed in a State, submit fingerprints or other identification information obtained from the insurance producer, and a request for a criminal history record check of the insurance producer, to the Federal Bureau of Investigation.

(ii) Procedures

The board of directors of the Association (referred to in this subchapter as the "Board") shall prescribe procedures for obtaining and utilizing fingerprints or other identification information and criminal history record information, including the establishment of reasonable fees to defray the expenses of the Association in connection with the performance of a criminal history record check and appropriate safeguards for maintaining confidentiality and security of the information. Any fees charged pursuant to this clause shall be separate and distinct from those charged by the Attorney General pursuant to subparagraph (I).

(D) Form of request

A submission under subparagraph (C)(i) shall include such fingerprints or other identification information as is required by the Attorney General concerning the person about whom the criminal history record check is requested, and a statement signed by the person authorizing the Attorney General to provide the information to the Association and for the Association to receive the information.

(E) Provision of information by Attorney General

Upon receiving a submission under subparagraph (C)(i) from the Association, the Attorney General shall search all criminal history records of the Federal Bureau of Investigation, including records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation, that the Attorney General determines appropriate for criminal history records corresponding to the fingerprints or other identification information provided under subparagraph (D) and provide all criminal history record information included in the request to the Association.

(F) Limitation on permissible uses of information

Any information provided to the Association under subparagraph (E) may only—

(i) be used for purposes of determining compliance with membership criteria established by the Association;

(ii) be disclosed to State insurance regulators, or Federal or State law enforcement agencies, in conformance with applicable law; or

(iii) be disclosed, upon request, to the insurance producer to whom the criminal history record information relates.

(G) Penalty for improper use or disclosure

Whoever knowingly uses any information provided under subparagraph (E) for a purpose not authorized in subparagraph (F), or discloses any such information to anyone not authorized to receive it, shall be fined not more than $50,000 per violation as determined by a court of competent jurisdiction.

(H) Reliance on information

Neither the Association nor any of its Board members, officers, or employees shall be liable in any action for using information provided under subparagraph (E) as permitted under subparagraph (F) in good faith and in reasonable reliance on its accuracy.

(I) Fees

The Attorney General may charge a reasonable fee for conducting the search and providing the information under subparagraph (E), and any such fee shall be collected and remitted by the Association to the Attorney General.

(J) Rule of construction

Nothing in this paragraph shall be construed as—

(i) requiring a State insurance regulator to perform criminal history record checks under this section; or

(ii) limiting any other authority that allows access to criminal history records.

(K) Regulations

The Attorney General shall prescribe regulations to carry out this paragraph, which shall include—

(i) appropriate protections for ensuring the confidentiality of information provided under subparagraph (E); and

(ii) procedures providing a reasonable opportunity for an insurance producer to contest the accuracy of information regarding the insurance producer provided under subparagraph (E).

(L) Ineligibility for membership

(i) In general

The Association may, under reasonably consistently applied standards, deny membership to an insurance producer on the basis of criminal history record information provided under subparagraph (E), or where the insurance producer has been subject to disciplinary action, as described in paragraph (2).

(ii) Rights of applicants denied membership

The Association shall notify any insurance producer who is denied membership on the

basis of criminal history record information provided under subparagraph (E) of the right of the insurance producer to—

(I) obtain a copy of all criminal history record information provided to the Association under subparagraph (E) with respect to the insurance producer; and

(II) challenge the denial of membership based on the accuracy and completeness of the information.

(M) Definition

For purposes of this paragraph, the term "criminal history record check" means a national background check of criminal history records of the Federal Bureau of Investigation.

(b) Authority to establish membership criteria

The Association may establish membership criteria that bear a reasonable relationship to the purposes for which the Association was established.

(c) Establishment of classes and categories of membership

(1) Classes of membership

The Association may establish separate classes of membership, with separate criteria, if the Association reasonably determines that performance of different duties requires different levels of education, training, experience, or other qualifications.

(2) Business entities

The Association shall establish a class of membership and membership criteria for business entities. A business entity that applies for membership shall be required to designate an individual Association member responsible for the compliance of the business entity with Association standards and the insurance laws, standards, and regulations of any State in which the business entity seeks to do business on the basis of Association membership.

(3) Categories

(A) Separate categories for insurance producers permitted

The Association may establish separate categories of membership for insurance producers and for other persons or entities within each class, based on the types of licensing categories that exist under State laws.

(B) Separate treatment for depository institutions prohibited

No special categories of membership, and no distinct membership criteria, shall be established for members that are depository institutions or for employees, agents, or affiliates of depository institutions.

(d) Membership criteria

(1) In general

The Association may establish criteria for membership which shall include standards for personal qualifications, education, training, and experience. The Association shall not establish criteria that unfairly limit the ability of a small insurance producer to become a member of the Association, including imposing discriminatory membership fees.

(2) Qualifications

In establishing criteria under paragraph (1), the Association shall not adopt any qualification less protective to the public than that contained in the National Association of Insurance Commissioners (referred to in this subchapter as the "NAIC") Producer Licensing Model Act in effect as of January 12, 2015, and shall consider the highest levels of insurance producer qualifications established under the licensing laws of the States.

(3) Assistance from States

(A) In general

The Association may request a State to provide assistance in investigating and evaluating the eligibility of a prospective member for membership in the Association.

(B) Authorization of information sharing

A submission under subsection (a)(4)(C)(i) made by an insurance producer licensed in a State shall include a statement signed by the person about whom the assistance is requested authorizing—

(i) the State to share information with the Association; and

(ii) the Association to receive the information.

(C) Rule of construction

Subparagraph (A) shall not be construed as requiring or authorizing any State to adopt new or additional requirements concerning the licensing or evaluation of insurance producers.

(4) Denial of membership

The Association may, based on reasonably consistently applied standards, deny membership to any State-licensed insurance producer for failure to meet the membership criteria established by the Association.

(e) Effect of membership

(1) Authority of Association members

Membership in the Association shall—

(A) authorize an insurance producer to sell, solicit, or negotiate insurance in any State for which the member pays the licensing fee set by the State for any line or lines of insurance specified in the home State license of the insurance producer, and exercise all such incidental powers as shall be necessary to carry out such activities, including claims adjustments and settlement to the extent permissible under the laws of the State, risk management, employee benefits advice, retirement planning, and any other insurance-related consulting activities;

(B) be the equivalent of a nonresident insurance producer license for purposes of authorizing the insurance producer to engage in the activities described in subparagraph (A) in any State where the member pays the licensing fee; and

(C) be the equivalent of a nonresident insurance producer license for the purpose of subjecting an insurance producer to all laws, regulations, provisions or other action of any State concerning revocation, suspension, or other enforcement action related to the ability of a member to engage in any activity within the scope of authority granted under this subsection and to all State laws, regulations, provisions, and actions preserved under paragraph (5).

(2) Violent Crime Control and Law Enforcement Act of 1994

Nothing in this subchapter shall be construed to alter, modify, or supercede any requirement established by section 1033 of title 18.

(3) Agent for remitting fees

The Association shall act as an agent for any member for purposes of remitting licensing fees to any State pursuant to paragraph (1).

(4) Notification of action

(A) In general

The Association shall notify the States (including State insurance regulators) and the NAIC when an insurance producer has satisfied the membership criteria of this section. The States (including State insurance regulators) shall have 10 business days after the date of the notification in order to provide the Association with evidence that the insurance producer does not satisfy the criteria for membership in the Association.

(B) Ongoing disclosures required

On an ongoing basis, the Association shall disclose to the States (including State insurance regulators) and the NAIC a list of the States in which each member is authorized to operate. The

Association shall immediately notify the States (including State insurance regulators) and the NAIC when a member is newly authorized to operate in one or more States, or is no longer authorized to operate in one or more States on the basis of Association membership.

(5) Preservation of consumer protection and market conduct regulation

(A) In general

No provision of this section shall be construed as altering or affecting the applicability or continuing effectiveness of any law, regulation, provision, or other action of any State, including those described in subparagraph (B), to the extent that the State law, regulation, provision, or other action is not inconsistent with the provisions of this subchapter related to market entry for nonresident insurance producers, and then only to the extent of the inconsistency.

(B) Preserved regulations

The laws, regulations, provisions, or other actions of any State referred to in subparagraph (A) include laws, regulations, provisions, or other actions that—

(i) regulate market conduct, insurance producer conduct, or unfair trade practices;

(ii) establish consumer protections; or

(iii) require insurance producers to be appointed by a licensed or authorized insurer.

(f) Biennial renewal

Membership in the Association shall be renewed on a biennial basis.

(g) Continuing education

(1) In general

The Association shall establish, as a condition of membership, continuing education requirements which shall be comparable to the continuing education requirements under the licensing laws of a majority of the States.

(2) State continuing education requirements

A member may not be required to satisfy continuing education requirements imposed under the laws, regulations, provisions, or actions of any State other than the home State of the member.

(3) Reciprocity

The Association shall not require a member to satisfy continuing education requirements that are equivalent to any continuing education requirements of the home State of the member that have been satisfied by the member during the applicable licensing period.

(4) Limitation on the Association

The Association shall not directly or indirectly offer any continuing education courses for insurance producers.

(h) Probation, suspension and revocation

(1) Disciplinary action

The Association may place an insurance producer that is a member of the Association on probation or suspend or revoke the membership of the insurance producer in the Association, or assess monetary fines or penalties, as the Association determines to be appropriate, if—

(A) the insurance producer fails to meet the applicable membership criteria or other standards established by the Association;

(B) the insurance producer has been subject to disciplinary action pursuant to a final adjudicatory proceeding under the jurisdiction of a State insurance regulator;

(C) an insurance license held by the insurance producer has been suspended or revoked by a State insurance regulator; or

(D) the insurance producer has been convicted of a crime that would have resulted in the denial of membership pursuant to subsection (a)(4)(L)(i) at the time of application, and the

Association has received a copy of the final disposition from a court of competent jurisdiction.

(2) Violations of Association standards

The Association shall have the power to investigate alleged violations of Association standards.

(3) Reporting

The Association shall immediately notify the States (including State insurance regulators) and the NAIC when the membership of an insurance producer has been placed on probation or has been suspended, revoked, or otherwise terminated, or when the Association has assessed monetary fines or penalties.

(i) Consumer complaints

(1) In general

The Association shall—

(A) refer any complaint against a member of the Association from a consumer relating to alleged misconduct or violations of State insurance laws to the State insurance regulator where the consumer resides and, when appropriate, to any additional State insurance regulator, as determined by standards adopted by the Association; and

(B) make any related records and information available to each State insurance regulator to whom the complaint is forwarded.

(2) Telephone and other access

The Association shall maintain a toll-free number for purposes of this subsection and, as practicable, other alternative means of communication with consumers, such as an Internet webpage.

(3) Final disposition of investigation

State insurance regulators shall provide the Association with information regarding the final disposition of a complaint referred pursuant to paragraph (1)(A), but nothing shall be construed to compel a State to release confidential investigation reports or other information protected by State law to the Association.

(j) Information sharing

The Association may—

(1) share documents, materials, or other information, including confidential and privileged documents, with a State, Federal, or international governmental entity or with the NAIC or other appropriate entity referred to [1] paragraphs (3) and (4), provided that the recipient has the authority and agrees to maintain the confidentiality or privileged status of the document, material, or other information;

(2) limit the sharing of information as required under this subchapter with the NAIC or any other non-governmental entity, in circumstances under which the Association determines that the sharing of such information is unnecessary to further the purposes of this subchapter;

(3) establish a central clearinghouse, or utilize the NAIC or another appropriate entity, as determined by the Association, as a central clearinghouse, for use by the Association and the States (including State insurance regulators), through which members of the Association may disclose their intent to operate in 1 or more States and pay the licensing fees to the appropriate States; and

(4) establish a database, or utilize the NAIC or another appropriate entity, as determined by the Association, as a database, for use by the Association and the States (including State insurance regulators) for the collection of regulatory information concerning the activities of insurance producers.

(k) Effective date

The provisions of this section shall take effect on the later of—

(1) the expiration of the 2-year period beginning on January 12, 2015; and

(2) the date of incorporation of the Association.

(Pub. L. 106–102, title III, §323, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 13.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Violent Crime Control and Law Enforcement Act of 1994, referred to in subsec. (e)(2), is Pub. L. 103–322, Sept. 13, 1994, 108 Stat. 1796. For complete classification of this Act to the Code, see Short Title of 1994 Act note set out under section 10101 of Title 34, Crime Control and Law Enforcement, and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6755 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6753, Pub. L. 106–102, title III, §323, Nov. 12, 1999, 113 Stat. 1424, related to purpose of the Association, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6752 of this title.

[1] *So in original. Probably should be followed by "in".*

§6754. Board of directors

(a) Establishment

There is established a board of directors of the Association, which shall have authority to govern and supervise all activities of the Association.

(b) Powers

The Board shall have such of the powers and authority of the Association as may be specified in the bylaws of the Association.[1]

(c) Composition

(1) In general

The Board shall consist of 13 members who shall be appointed by the President, by and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112th Congress, of whom—

(A) 8 shall be State insurance commissioners appointed in the manner provided in paragraph (2), 1 of whom shall be designated by the President to serve as the chairperson of the Board until the Board elects one such State insurance commissioner Board member to serve as the chairperson of the Board;

(B) 3 shall have demonstrated expertise and experience with property and casualty insurance producer licensing; and

(C) 2 shall have demonstrated expertise and experience with life or health insurance producer licensing.

(2) State insurance regulator representatives

(A) Recommendations

Before making any appointments pursuant to paragraph (1)(A), the President shall request a list of recommended candidates from the States through the NAIC, which shall not be binding on the President. If the NAIC fails to submit a list of recommendations not later than 15 business days after the date of the request, the President may make the requisite appointments without considering the views of the NAIC.

(B) Political affiliation

Not more than 4 Board members appointed under paragraph (1)(A) shall belong to the same political party.

(C) Former State insurance commissioners

(i) In general

If, after offering each currently serving State insurance commissioner an appointment to the Board, fewer than 8 State insurance commissioners have accepted appointment to the Board, the President may appoint the remaining State insurance commissioner Board members, as required under paragraph (1)(A), of the appropriate political party as required under subparagraph (B), from among individuals who are former State insurance commissioners.

(ii) Limitation

A former State insurance commissioner appointed as described in clause (i) may not be employed by or have any present direct or indirect financial interest in any insurer, insurance producer, or other entity in the insurance industry, other than direct or indirect ownership of, or beneficial interest in, an insurance policy or annuity contract written or sold by an insurer.

(D) Service through term

If a Board member appointed under paragraph (1)(A) ceases to be a State insurance commissioner during the term of the Board member, the Board member shall cease to be a Board member.

(3) Private sector representatives

In making any appointment pursuant to subparagraph (B) or (C) of paragraph (1), the President may seek recommendations for candidates from groups representing the category of individuals described, which shall not be binding on the President.

(4) State insurance commissioner defined

For purposes of this subsection, the term "State insurance commissioner" means a person who serves in the position in State government, or on the board, commission, or other body that is the primary insurance regulatory authority for the State.

(d) Terms

(1) In general

Except as provided under paragraph (2), the term of service for each Board member shall be 2 years.

(2) Exceptions

(A) 1-year terms

The term of service shall be 1 year, as designated by the President at the time of the nomination of the subject Board members for—

(i) 4 of the State insurance commissioner Board members initially appointed under paragraph (1)(A),[2] of whom not more than 2 shall belong to the same political party;

(ii) 1 of the Board members initially appointed under paragraph (1)(B); [3] and

(iii) 1 of the Board members initially appointed under paragraph (1)(C).[4]

(B) Expiration of term

A Board member may continue to serve after the expiration of the term to which the Board member was appointed for the earlier of 2 years or until a successor is appointed.

(C) Mid-term appointments

A Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of the Board member was appointed shall be appointed only for the remainder of that term.

(3) Successive terms

Board members may be reappointed to successive terms.

(e) Initial appointments

The appointment of initial Board members shall be made no later than 90 days after January 12, 2015.

(f) Meetings

(1) In general

The Board shall meet—

(A) at the call of the chairperson;

(B) as requested in writing to the chairperson by not fewer than 5 Board members; or

(C) as otherwise provided by the bylaws of the Association.

(2) Quorum required

A majority of all Board members shall constitute a quorum.

(3) Voting

Decisions of the Board shall require the approval of a majority of all Board members present at a meeting, a quorum being present.

(4) Initial meeting

The Board shall hold its first meeting not later than 45 days after the date on which all initial Board members have been appointed.

(g) Restriction on confidential information

Board members appointed pursuant to subparagraphs (B) and (C) of subsection (c)(1) shall not have access to confidential information received by the Association in connection with complaints, investigations, or disciplinary proceedings involving insurance producers.

(h) Ethics and conflicts of interest

The Board shall issue and enforce an ethical conduct code to address permissible and prohibited activities of Board members and Association officers, employees, agents, or consultants. The code shall, at a minimum, include provisions that prohibit any Board member or Association officer, employee, agent or consultant from—

(1) engaging in unethical conduct in the course of performing Association duties;

(2) participating in the making or influencing the making of any Association decision, the outcome of which the Board member, officer, employee, agent, or consultant knows or had reason to know would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the person or a member of the immediate family of the person;

(3) accepting any gift from any person or entity other than the Association that is given because of the position held by the person in the Association;

(4) making political contributions to any person or entity on behalf of the Association; and

(5) lobbying or paying a person to lobby on behalf of the Association.

(i) Compensation

(1) In general

Except as provided in paragraph (2), no Board member may receive any compensation from the Association or any other person or entity on account of Board membership.

(2) Travel expenses and per diem

Board members may be reimbursed only by the Association for travel expenses, including per diem in lieu of subsistence, at rates consistent with rates authorized for employees of Federal agencies under subchapter I of chapter 57 of title 5, while away from home or regular places of business in performance of services for the Association.

(Pub. L. 106–102, title III, §324, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat.

20.)

EDITORIAL NOTES

REFERENCES IN TEXT

Senate Resolution 116 of the 112th Congress, referred to in subsec. (c)(1), which was agreed to June 29, 2011, provided for expedited Senate consideration of certain nominations subject to advice and consent.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6756 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6754, Pub. L. 106–102, title III, §324, Nov. 12, 1999, 113 Stat. 1424, related to relationship to the Federal Government, prior to the general amendment of this subchapter by Pub. L. 114–1.

[1] So in original. Probably should be "such powers and authority as may be specified in the bylaws of the Association."

[2] So in original. Probably should be "paragraph (1)(A) of subsection (c),".

[3] So in original. Probably should be "paragraph (1)(B) of subsection (c);".

[4] So in original. Probably should be "paragraph (1)(C) of subsection (c)."

§6755. Bylaws, standards, and disciplinary actions

(a) Adoption and amendment of bylaws and standards

(1) Procedures

The Association shall adopt procedures for the adoption of bylaws and standards that are similar to procedures under subchapter II of chapter 5 of title 5 (commonly known as the "Administrative Procedure Act").

(2) Copy required to be filed

The Board shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, all proposed bylaws and standards of the Association, or any proposed amendment to the bylaws or standards of the Association, accompanied by a concise general statement of the basis and purpose of such proposal.

(3) Effective date

Any proposed bylaw or standard of the Association, and any proposed amendment to the bylaws or standards of the Association, shall take effect, after notice under paragraph (2) and opportunity for public comment, on such date as the Association may designate, unless suspended under section 6759(c) of this title.

(4) Rule of construction

Nothing in this section shall be construed to subject the Board or the Association to the requirements of subchapter II of chapter 5 of title 5 (commonly known as the "Administrative Procedure Act").

(b) Disciplinary action by the Association

(1) Specification of charges

In any proceeding to determine whether membership shall be denied, suspended, revoked, or not renewed, or to determine whether a member of the Association should be placed on probation

(referred to in this section as a "disciplinary action") or whether to assess fines or monetary penalties, the Association shall bring specific charges, notify the member of the charges, give the member an opportunity to defend against the charges, and keep a record.

(2) Supporting statement

A determination to take disciplinary action shall be supported by a statement setting forth—

(A) any act or practice in which the member has been found to have been engaged;

(B) the specific provision of this subchapter or standard of the Association that any such act or practice is deemed to violate; and

(C) the sanction imposed and the reason for the sanction.

(3) Ineligibility of private sector representatives

Board members appointed pursuant to section 6754(c)(3) of this title may not—

(A) participate in any disciplinary action or be counted toward establishing a quorum during a disciplinary action; and

(B) have access to confidential information concerning any disciplinary action.

(Pub. L. 106–102, title III, §325, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 23.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6758 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6755, Pub. L. 106–102, title III, §325, Nov. 12, 1999, 113 Stat. 1424, related to membership in the Association, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6753 of this title.

§6756. Powers

In addition to all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, the Association shall have the power to—

(1) establish and collect such membership fees as the Association finds necessary to impose to cover the costs of its operations;

(2) adopt, amend, and repeal bylaws, procedures, or standards governing the conduct of Association business and performance of its duties;

(3) establish procedures for providing notice and opportunity for comment pursuant to section 6755(a) of this title;

(4) enter into and perform such agreements as necessary to carry out the duties of the Association;

(5) hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of this subchapter, and determine their qualification;

(6) establish personnel policies of the Association and programs relating to, among other things, conflicts of interest, rates of compensation, where applicable, and qualifications of personnel;

(7) borrow money; and

(8) secure funding for such amounts as the Association determines to be necessary and appropriate to organize and begin operations of the Association, which shall be treated as loans to be repaid by the Association with interest at market rate.

(Pub. L. 106–102, title III, §326, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 24.)

EDITORIAL NOTES

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in text, is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, which is not classified to the Code.

PRIOR PROVISIONS

A prior section 6756, Pub. L. 106–102, title III, §326, Nov. 12, 1999, 113 Stat. 1426, related to board of directors, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6754 of this title.

§6757. Report by the Association

(a) In general

As soon as practicable after the close of each fiscal year, the Association shall submit to the President, through the Department of the Treasury, and the States (including State insurance regulators), and shall publish on the website of the Association, a written report regarding the conduct of its business, and the exercise of the other rights and powers granted by this subchapter, during such fiscal year.

(b) Financial statements

Each report submitted under subsection (a) with respect to any fiscal year shall include audited financial statements setting forth the financial position of the Association at the end of such fiscal year and the results of its operations (including the source and application of its funds) for such fiscal year.

(Pub. L. 106–102, title III, §327, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 24.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6762(c) of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6757, Pub. L. 106–102, title III, §327, Nov. 12, 1999, 113 Stat. 1427, related to officers of the Association, prior to the general amendment of this subchapter by Pub. L. 114–1.

§6758. Liability of the Association and the Board members, officers, and employees of the Association

(a) In general

The Association shall not be deemed to be an insurer or insurance producer within the meaning of any State law, rule, regulation, or order regulating or taxing insurers, insurance producers, or other entities engaged in the business of insurance, including provisions imposing premium taxes, regulating insurer solvency or financial condition, establishing guaranty funds and levying assessments, or requiring claims settlement practices.

(b) Liability of Board members, officers, and employees

No Board member, officer, or employee of the Association shall be personally liable to any person for any action taken or omitted in good faith in any matter within the scope of their responsibilities in connection with the Association.

(Pub. L. 106–102, title III, §328, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 25.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6761 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6758, Pub. L. 106–102, title III, §328, Nov. 12, 1999, 113 Stat. 1427, related to bylaws, rules, and disciplinary action, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6755 of this title.

§6759. Presidential oversight

(a) Removal of Board

If the President determines that the Association is acting in a manner contrary to the interests of the public or the purposes of this subchapter or has failed to perform its duties under this subchapter, the President may remove the entire existing Board for the remainder of the term to which the Board members were appointed and appoint, in accordance with section 6754 of this title and with the advice and consent of the Senate, in accordance with the procedures established under Senate Resolution 116 of the 112th Congress, new Board members to fill the vacancies on the Board for the remainder of the terms.

(b) Removal of Board member

The President may remove a Board member only for neglect of duty or malfeasance in office.

(c) Suspension of bylaws and standards and prohibition of actions

Following notice to the Board, the President, or a person designated by the President for such purpose, may suspend the effectiveness of any bylaw or standard, or prohibit any action, of the Association that the President or the designee determines is contrary to the purposes of this subchapter.

(Pub. L. 106–102, title III, §329, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 25.)

EDITORIAL NOTES

REFERENCES IN TEXT

Senate Resolution 116 of the 112th Congress, referred to in subsec. (a), which was agreed to June 29, 2011, provided for expedited Senate consideration of certain nominations subject to advice and consent.

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6762(b)(2)(C) of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6759, Pub. L. 106–102, title III, §329, Nov. 12, 1999, 113 Stat. 1430, related to assessments, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6756(1) of this title.

§6760. Relationship to State law

(a) Preemption of State laws

State laws, regulations, provisions, or other actions purporting to regulate insurance producers shall be preempted to the extent provided in subsection (b).

(b) Prohibited actions

(1) In general

No State shall—

(A) impede the activities of, take any action against, or apply any provision of law or regulation arbitrarily or discriminatorily to, any insurance producer because that insurance producer or any affiliate plans to become, has applied to become, or is a member of the

Association;

(B) impose any requirement upon a member of the Association that it pay fees different from those required to be paid to that State were it not a member of the Association; or

(C) impose any continuing education requirements on any nonresident insurance producer that is a member of the Association.

(2) States other than a home State

No State, other than the home State of a member of the Association, shall—

(A) impose any licensing, personal or corporate qualifications, education, training, experience, residency, continuing education, or bonding requirement upon a member of the Association that is different from the criteria for membership in the Association or renewal of such membership;

(B) impose any requirement upon a member of the Association that it be licensed, registered, or otherwise qualified to do business or remain in good standing in the State, including any requirement that the insurance producer register as a foreign company with the secretary of state or equivalent State official;

(C) require that a member of the Association submit to a criminal history record check as a condition of doing business in the State; or

(D) impose any licensing, registration, or appointment requirements upon a member of the Association, or require a member of the Association to be authorized to operate as an insurance producer, in order to sell, solicit, or negotiate insurance for commercial property and casualty risks to an insured with risks located in more than one State, if the member is licensed or otherwise authorized to operate in the State where the insured maintains its principal place of business and the contract of insurance insures risks located in that State.

(3) Preservation of State disciplinary authority

Nothing in this section may be construed to prohibit a State from investigating and taking appropriate disciplinary action, including suspension or revocation of authority of an insurance producer to do business in a State, in accordance with State law and that is not inconsistent with the provisions of this section, against a member of the Association as a result of a complaint or for any alleged activity, regardless of whether the activity occurred before or after the insurance producer commenced doing business in the State pursuant to Association membership.

(Pub. L. 106–102, title III, §330, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 25.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6763 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6760, Pub. L. 106–102, title III, §330, Nov. 12, 1999, 113 Stat. 1430, related to functions of the NAIC, prior to the general amendment of this subchapter by Pub. L. 114–1.

§6761. Coordination with Financial Industry Regulatory Authority

The Association shall coordinate with the Financial Industry Regulatory Authority in order to ease any administrative burdens that fall on members of the Association that are subject to regulation by the Financial Industry Regulatory Authority, consistent with the requirements of this subchapter and the Federal securities laws.

(Pub. L. 106–102, title III, §331, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 26.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6764(b) of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6761, Pub. L. 106–102, title III, §331, Nov. 12, 1999, 113 Stat. 1430, related to liability of the Association and the directors, officers, and employees of the Association, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6758 of this title.

§6762. Right of action

(a) Right of action

Any person aggrieved by a decision or action of the Association may, after reasonably exhausting available avenues for resolution within the Association, commence a civil action in an appropriate United States district court, and obtain all appropriate relief.

(b) Association interpretations

In any action under subsection (a), the court shall give appropriate weight to the interpretation of the Association of its bylaws and standards and this subchapter.

(Pub. L. 106–102, title III, §332, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 26.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6765 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6762, Pub. L. 106–102, title III, §332, Nov. 12, 1999, 113 Stat. 1431, related to elimination of NAIC oversight, prior to the general amendment of this subchapter by Pub. L. 114–1. See sections 6757 and 6759 of this title.

§6763. Federal funding prohibited

The Association may not receive, accept, or borrow any amounts from the Federal Government to pay for, or reimburse,[1] the Association for, the costs of establishing or operating the Association.

(Pub. L. 106–102, title III, §333, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 27.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 6763, Pub. L. 106–102, title III, §333, Nov. 12, 1999, 113 Stat. 1432, related to relationship to State law, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6760 of this title.

[1] So in original. The comma probably should not appear.

§6764. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Business entity

The term "business entity" means a corporation, association, partnership, limited liability

company, limited liability partnership, or other legal entity.

(2) Depository institution

The term "depository institution" has the meaning as in section 1813 of title 12.

(3) Home State

The term "home State" means the State in which the insurance producer maintains its principal place of residence or business and is licensed to act as an insurance producer.

(4) Insurance

The term "insurance" means any product, other than title insurance or bail bonds, defined or regulated as insurance by the appropriate State insurance regulatory authority.

(5) Insurance producer

The term "insurance producer" means any insurance agent or broker, excess or surplus lines broker or agent, insurance consultant, limited insurance representative, and any other individual or entity that sells, solicits, or negotiates policies of insurance or offers advice, counsel, opinions or services related to insurance.

(6) Insurer

The term "insurer" has the meaning as in section 313(e)(2)(B) of title 31.

(7) Principal place of business

The term "principal place of business" means the State in which an insurance producer maintains the headquarters of the insurance producer and, in the case of a business entity, where high-level officers of the entity direct, control, and coordinate the business activities of the business entity.

(8) Principal place of residence

The term "principal place of residence" means the State in which an insurance producer resides for the greatest number of days during a calendar year.

(9) State

The term "State" includes any State, the District of Columbia, any territory of the United States, and Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(10) State law

(A) In general

The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.

(B) Laws applicable in the District of Columbia

A law of the United States applicable only to or within the District of Columbia shall be treated as a State law rather than a law of the United States.

(Pub. L. 106–102, title III, §334, as added Pub. L. 114–1, title II, §202(a), Jan. 12, 2015, 129 Stat. 27.)

EDITORIAL NOTES

PRIOR PROVISIONS

Provisions similar to this section were contained in section 6766 of this title, prior to the general amendment of this subchapter by Pub. L. 114–1.

A prior section 6764, Pub. L. 106–102, title III, §334, Nov. 12, 1999, 113 Stat. 1433, related to coordination with other regulators, prior to the general amendment of this subchapter by Pub. L. 114–1. See section 6761 of this title.

A prior section 6765, Pub. L. 106–102, title III, §335, Nov. 12, 1999, 113 Stat. 1433, which related to

judicial review, was omitted in the general amendment of this subchapter by Pub. L. 114–1. See section 6762 of this title.

A prior section 6766, Pub. L. 106–102, title III, §336, Nov. 12, 1999, 113 Stat. 1433, which related to definitions, was omitted in the general amendment of this subchapter by Pub. L. 114–1.

SUBCHAPTER IV—RENTAL CAR AGENCY INSURANCE ACTIVITIES

§6781. Standard of regulation for motor vehicle rentals

(a) Protection against retroactive application of regulatory and legal action

Except as provided in subsection (b), during the 3-year period beginning on November 12, 1999, it shall be a presumption that no State law imposes any licensing, appointment, or education requirements on any person who solicits the purchase of or sells insurance connected with, and incidental to, the lease or rental of a motor vehicle.

(b) Preeminence of State insurance law

No provision of this section shall be construed as altering the validity, interpretation, construction, or effect of—

(1) any State statute;

(2) the prospective application of any court judgment interpreting or applying any State statute; or

(3) the prospective application of any final State regulation, order, bulletin, or other statutorily authorized interpretation or action,

which, by its specific terms, expressly regulates or exempts from regulation any person who solicits the purchase of or sells insurance connected with, and incidental to, the short-term lease or rental of a motor vehicle.

(c) Scope of application

This section shall apply with respect to—

(1) the lease or rental of a motor vehicle for a total period of 90 consecutive days or less; and

(2) insurance which is provided in connection with, and incidentally to, such lease or rental for a period of consecutive days not exceeding the lease or rental period.

(d) Motor vehicle defined

For purposes of this section, the term "motor vehicle" has the same meaning as in section 13102 of title 49.

(Pub. L. 106–102, title III, §341, Nov. 12, 1999, 113 Stat. 1434.)

CHAPTER 94—PRIVACY

SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

Sec.

SUBCHAPTER I—DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

§6801. Protection of nonpublic personal information

(a) Privacy obligation policy

It is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information.

(b) Financial institutions safeguards

In furtherance of the policy in subsection (a), each agency or authority described in section 6805(a) of this title, other than the Bureau of Consumer Financial Protection, shall establish appropriate standards for the financial institutions subject to their jurisdiction relating to administrative, technical, and physical safeguards—

(1) to insure the security and confidentiality of customer records and information;

(2) to protect against any anticipated threats or hazards to the security or integrity of such records; and

(3) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer.

(Pub. L. 106–102, title V, §501, Nov. 12, 1999, 113 Stat. 1436; Pub. L. 111–203, title X, §1093(1), July 21, 2010, 124 Stat. 2095.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 inserted ", other than the Bureau of Consumer Financial Protection," after "section 6805(a) of this title" in introductory provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

EFFECTIVE DATE

Pub. L. 106–102, title V, §510, Nov. 12, 1999, 113 Stat. 1445, provided that: "This subtitle [subtitle A (§§501–510) of title V of Pub. L. 106–102, enacting this subchapter and amending section 1681s of this title] shall take effect 6 months after the date on which rules are required to be prescribed under section 504(a)(3) [15 U.S.C. 6804(a)(3)], except—

"(1) to the extent that a later date is specified in the rules prescribed under section 504; and

"(2) that sections 504 [15 U.S.C. 6804] and 506 [enacting section 6806 of this title and amending section 1681s of this title] shall be effective upon enactment [Nov. 12, 1999]."

§6802. Obligations with respect to disclosures of personal information

(a) Notice requirements

Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

(b) Opt out

(1) In general

A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless—

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

(2) Exception

This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 6804 of this title, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

(c) Limits on reuse of information

Except as otherwise provided in this subchapter, a nonaffiliated third party that receives from a financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

(d) Limitations on the sharing of account number information for marketing purposes

A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) General exceptions

Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information—

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with—

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing

rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3)(A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C. 3401 et seq.], to law enforcement agencies (including the Bureau of Consumer Financial Protection [1] a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of title 31, and chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(6)(A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.], or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

(Pub. L. 106–102, title V, §502, Nov. 12, 1999, 113 Stat. 1437; Pub. L. 111–203, title X, §1093(2), July 21, 2010, 124 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (c), was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Right to Financial Privacy Act of 1978, referred to in subsec. (e)(5), is title XI of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

Chapter 2 of title I of Public Law 91–508, referred to in subsec. (e)(5), is chapter 2 (§§121–129) of title I of Pub. L. 91–508, Oct. 26, 1970, 84 Stat. 1116, which is classified generally to chapter 21 (§1951 et seq.) of Title 12, Banks and Banking. For complete classification of chapter 2 to the Code, see Tables.

The Fair Credit Reporting Act, referred to in subsec. (e)(6)(A), is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

AMENDMENTS

2010—Subsec. (e)(5). Pub. L. 111–203 inserted "the Bureau of Consumer Financial Protection" after "(including".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] *So in original. Probably should be followed by a comma.*

§6803. Disclosure of institution privacy policy

(a) Disclosure required

At the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship, a financial institution shall provide a clear and conspicuous disclosure to such consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, of such financial institution's policies and practices with respect to—

(1) disclosing nonpublic personal information to affiliates and nonaffiliated third parties, consistent with section 6802 of this title, including the categories of information that may be disclosed;

(2) disclosing nonpublic personal information of persons who have ceased to be customers of the financial institution; and

(3) protecting the nonpublic personal information of consumers.

(b) Regulations

Disclosures required by subsection (a) shall be made in accordance with the regulations prescribed under section 6804 of this title.

(c) Information to be included

The disclosure required by subsection (a) shall include—

(1) the policies and practices of the institution with respect to disclosing nonpublic personal information to nonaffiliated third parties, other than agents of the institution, consistent with section 6802 of this title, and including—

(A) the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to section 6802(e) of this title; and

(B) the policies and practices of the institution with respect to disclosing of nonpublic personal information of persons who have ceased to be customers of the financial institution;

(2) the categories of nonpublic personal information that are collected by the financial institution;

(3) the policies that the institution maintains to protect the confidentiality and security of nonpublic personal information in accordance with section 6801 of this title; and

(4) the disclosures required, if any, under section 1681a(d)(2)(A)(iii) of this title.

(d) Exemption for certified public accountants

(1) In general

The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is—

(A) a certified public accountant;

(B) certified or licensed for such purpose by a State; and

(C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

(2) Limitation

Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

(3) Definitions

For purposes of this subsection, the term "State" means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.

(e) Model forms

(1) In general

The agencies referred to in section 6804(a)(1) of this title shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.

(2) Format

A model form developed under paragraph (1) shall—

(A) be comprehensible to consumers, with a clear format and design;

(B) provide for clear and conspicuous disclosures;

(C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

(D) be succinct, and use an easily readable type font.

(3) Timing

A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after October 13, 2006.

(4) Safe harbor

Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.

(f) Exception to annual notice requirement

A financial institution that—

(1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 6802 of this title or regulations prescribed under section 6804(b) of this title, and

(2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,

shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

(Pub. L. 106–102, title V, §503, Nov. 12, 1999, 113 Stat. 1439; Pub. L. 109–351, title VI, §609, title VII, §728, Oct. 13, 2006, 120 Stat. 1983, 2003; Pub. L. 114–94, div. G, title LXXV, §75001, Dec. 4, 2015, 129 Stat. 1787.)

EDITORIAL NOTES

AMENDMENTS

2015—Subsec. (f). Pub. L. 114–94 added subsec. (f).

2006—Pub. L. 109–351 designated concluding provisions of subsec. (a) as (b), inserted heading, substituted "Disclosures required by subsection (a)" for "Such disclosures", redesignated former subsec. (b) as (c), and added subsecs. (d) and (e).

EXECUTIVE DOCUMENTS

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§6804. Rulemaking

(a) Regulatory authority

(1) Rulemaking

(A) In general

Except as provided in subparagraph (C), the Bureau of Consumer Financial Protection and the Securities and Exchange Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to their respective jurisdiction under section 6805 of this title (and notwithstanding subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.]), except that the Bureau of Consumer Financial Protection shall not have authority to prescribe regulations with respect to the standards under section 6801 of this title.

(B) CFTC

The Commodity Futures Trading Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to financial institutions and other persons subject to the jurisdiction of the Commodity Futures Trading Commission under section 7b–2 of title 7.

(C) Federal Trade Commission authority

Notwithstanding the authority of the Bureau of Consumer Financial Protection under subparagraph (A), the Federal Trade Commission shall have authority to prescribe such regulations as may be necessary to carry out the purposes of this subchapter with respect to any financial institution that is a person described in section 1029(a) of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5519(a)].

(D) Rule of construction

Nothing in this paragraph shall be construed to alter, affect, or otherwise limit the authority of a State insurance authority to adopt regulations to carry out this subchapter.

(2) Coordination, consistency, and comparability

Each of the agencies authorized under paragraph (1) to prescribe regulations shall consult and coordinate with the other such agencies and, as appropriate, and with [1] representatives of State insurance authorities designated by the National Association of Insurance Commissioners, for the purpose of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

(3) Procedures and deadline

Such regulations shall be prescribed in accordance with applicable requirements of title 5.

(b) Authority to grant exceptions

The regulations prescribed under subsection (a) may include such additional exceptions to subsections (a) through (d) of section 6802 of this title as are deemed consistent with the purposes of this subchapter.

(Pub. L. 106–102, title V, §504, Nov. 12, 1999, 113 Stat. 1439; Pub. L. 111–203, title X, §1093(3), July 21, 2010, 124 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(1) and (b), was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Consumer Financial Protection Act of 2010, referred to in subsec. (a)(1)(A), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitle B (§§1021–1029A) of the Act is classified generally to part B (§5511 et seq.) of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitle B to the Code, see Tables.

AMENDMENTS

2010—Subsec. (a)(1), (2). Pub. L. 111–203, §1093(3)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which related, respectively, to rulemaking by the Federal banking agencies, the National Credit Union Administration, the Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Trade Commission, and consultation and coordination among these agencies and authorities to assure consistency and comparability of regulations.

Subsec. (a)(3). Pub. L. 111–203, §1093(3)(B), struck out "and shall be issued in final form not later than 6 months after November 12, 1999" after "title 5".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

[1] *So in original. Probably should be "and, as appropriate, with".*

§6805. Enforcement

(a) In general

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:

(1) Under section 1818 of title 12, by the appropriate Federal banking agency, as defined in section 1813(q) of title 12, in the case of—

(A) national banks, Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers);

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers); and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons

providing insurance, investment companies, and investment advisers).

(2) Under the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Board of the National Credit Union Administration with respect to any federally insured credit union, and any subsidiaries of such an entity.

(3) Under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission with respect to any broker or dealer.

(4) Under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], by the Securities and Exchange Commission with respect to investment companies.

(5) Under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.], by the Securities and Exchange Commission with respect to investment advisers registered with the Commission under such Act.

(6) Under State insurance law, in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 6701 of this title.

(7) Under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], by the Federal Trade Commission for any other financial institution or other person that is not subject to the jurisdiction of any agency or authority under paragraphs (1) through (6) of this subsection.

(8) Under subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau of Consumer Financial Protection, in the case of any financial institution and other covered person or service provider that is subject to the jurisdiction of the Bureau and any person subject to this subchapter, but not with respect to the standards under section 6801 of this title.

(b) Enforcement of section 6801

(1) In general

Except as provided in paragraph (2), the agencies and authorities described in subsection (a), other than the Bureau of Consumer Financial Protection, shall implement the standards prescribed under section 6801(b) of this title in the same manner, to the extent practicable, as standards prescribed pursuant to section 1831p–1(a) of title 12 are implemented pursuant to such section.

(2) Exception

The agencies and authorities described in paragraphs (3), (4), (5), (6), and (7) of subsection (a) shall implement the standards prescribed under section 6801(b) of this title by rule with respect to the financial institutions and other persons subject to their respective jurisdictions under subsection (a).

(c) Absence of State action

If a State insurance authority fails to adopt regulations to carry out this subchapter, such State shall not be eligible to override, pursuant to section 1831x(g)(2)(B)(iii) of title 12, the insurance customer protection regulations prescribed by a Federal banking agency under section 1831x(a) of title 12.

(d) Definitions

The terms used in subsection (a)(1) that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the same meaning as given in section 3101 of title 12.

(Pub. L. 106–102, title V, §505, Nov. 12, 1999, 113 Stat. 1440; Pub. L. 111–203, title X, §1093(4), (5), July 21, 2010, 124 Stat. 2096, 2097.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsec. (a), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955. Subtitles B (§§1021–1029A) and E (§§1051–1058) of the Act are classified generally to parts B (§5511 et seq.) and E (§5561 et seq.), respectively, of subchapter V of chapter 53 of Title 12, Banks and Banking. For complete classification of subtitles B and E to the Code, see Tables.

This subchapter, referred to in subsecs. (a), (c), and (d), was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (a)(1)(B), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (a)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (a)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(4), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (a)(5), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (a)(7), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §1093(4)(A), substituted "Subject to subtitle B of the Consumer Financial Protection Act of 2010, this subchapter and the regulations prescribed thereunder shall be enforced by the Bureau of Consumer Financial Protection, the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:" for "This subchapter and the regulations prescribed thereunder shall be enforced by the Federal functional regulators, the State insurance authorities, and the Federal Trade Commission with respect to financial institutions and other persons subject to their jurisdiction under applicable law, as follows:".

Subsec. (a)(1). Pub. L. 111–203, §1093(4)(B)(i), inserted "by the appropriate Federal banking agency, as defined in section 1813(q) of title 12," before "in the case of—".

Subsec. (a)(1)(A). Pub. L. 111–203, §1093(4)(B)(ii), struck out ", by the Office of the Comptroller of the Currency" before semicolon at end.

Subsec. (a)(1)(B). Pub. L. 111–203, §1093(4)(B)(iii), struck out ", by the Board of Governors of the Federal Reserve System" before semicolon at end.

Subsec. (a)(1)(C). Pub. L. 111–203, §1093(4)(B)(iv), struck out ", by the Board of Directors of the Federal Deposit Insurance Corporation" before "; and".

Subsec. (a)(1)(D). Pub. L. 111–203, §1093(4)(B)(v), struck out ", by the Director of the Office of Thrift Supervision" before period at end.

Subsec. (a)(8). Pub. L. 111–203, §1093(4)(C), added par. (8).

Subsec. (b)(1). Pub. L. 111–203, §1093(5), inserted ", other than the Bureau of Consumer Financial Protection," before "shall implement the standards".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6806. Relation to other provisions

Except for the amendments made by subsections (a) and (b), nothing in this chapter shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act [15 U.S.C.

1681 et seq.], and no inference shall be drawn on the basis of the provisions of this chapter regarding whether information is transaction or experience information under section 603 of such Act [15 U.S.C. 1681a].

(Pub. L. 106–102, title V, §506(c), Nov. 12, 1999, 113 Stat. 1442.)

EDITORIAL NOTES

REFERENCES IN TEXT

Amendments made by subsections (a) and (b), referred to in text, means amendments made by section 506(a) and (b) of Pub. L. 106–102, which amended section 1681s of this title.

This chapter, referred to in text, was in the original "this title", meaning title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which enacted this chapter and amended section 1681s of this title. For complete classification of title V to the Code, see Tables.

The Fair Credit Reporting Act, referred to in text, is title VI of Pub. L. 90–321, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1127, which is classified generally to subchapter III (§1681 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

§6807. Relation to State laws

(a) In general

This subchapter and the amendments made by this subchapter shall not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any State, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

(b) Greater protection under State law

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter and the amendments made by this subchapter, as determined by the Bureau of Consumer Financial Protection, after consultation with the agency or authority with jurisdiction under section 6805(a) of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

(Pub. L. 106–102, title V, §507, Nov. 12, 1999, 113 Stat. 1442; Pub. L. 111–203, title X, §1093(6), July 21, 2010, 124 Stat. 2097.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

AMENDMENTS

2010—Subsec. (b). Pub. L. 111–203 substituted "Bureau of Consumer Financial Protection" for "Federal Trade Commission".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§6808. Study of information sharing among financial affiliates

(a) In general

The Secretary of the Treasury, in conjunction with the Federal functional regulators and the Federal Trade Commission, shall conduct a study of information sharing practices among financial institutions and their affiliates. Such study shall include—

(1) the purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties;

(2) the extent and adequacy of security protections for such information;

(3) the potential risks for customer privacy of such sharing of information;

(4) the potential benefits for financial institutions and affiliates of such sharing of information;

(5) the potential benefits for customers of such sharing of information;

(6) the adequacy of existing laws to protect customer privacy;

(7) the adequacy of financial institution privacy policy and privacy rights disclosure under existing law;

(8) the feasibility of different approaches, including opt-out and opt-in, to permit customers to direct that confidential information not be shared with affiliates and nonaffiliated third parties; and

(9) the feasibility of restricting sharing of information for specific uses or of permitting customers to direct the uses for which information may be shared.

(b) Consultation

The Secretary shall consult with representatives of State insurance authorities designated by the National Association of Insurance Commissioners, and also with financial services industry, consumer organizations and privacy groups, and other representatives of the general public, in formulating and conducting the study required by subsection (a).

(c) Report

On or before January 1, 2002, the Secretary shall submit a report to the Congress containing the findings and conclusions of the study required under subsection (a), together with such recommendations for legislative or administrative action as may be appropriate.

(Pub. L. 106–102, title V, §508, Nov. 12, 1999, 113 Stat. 1442.)

§6809. Definitions

As used in this subchapter:

(1) Federal banking agency

The term "Federal banking agency" has the same meaning as given in section 1813 of title 12.

(2) Federal functional regulator

The term "Federal functional regulator" means—

(A) the Board of Governors of the Federal Reserve System;

(B) the Office of the Comptroller of the Currency;

(C) the Board of Directors of the Federal Deposit Insurance Corporation;

(D) the Director of the Office of Thrift Supervision;

(E) the National Credit Union Administration Board; and

(F) the Securities and Exchange Commission.

(3) Financial institution

(A) In general

The term "financial institution" means any institution the business of which is engaging in financial activities as described in section 1843(k) of title 12.

(B) Persons subject to CFTC regulation

Notwithstanding subparagraph (A), the term "financial institution" does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(C) Farm credit institutions

Notwithstanding subparagraph (A), the term "financial institution" does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

(D) Other secondary market institutions

Notwithstanding subparagraph (A), the term "financial institution" does not include institutions chartered by Congress specifically to engage in transactions described in section 6802(e)(1)(C) of this title, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(4) Nonpublic personal information

(A) The term "nonpublic personal information" means personally identifiable financial information—

(i) provided by a consumer to a financial institution;

(ii) resulting from any transaction with the consumer or any service performed for the consumer; or

(iii) otherwise obtained by the financial institution.

(B) Such term does not include publicly available information, as such term is defined by the regulations prescribed under section 6804 of this title.

(C) Notwithstanding subparagraph (B), such term—

(i) shall include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any nonpublic personal information other than publicly available information; but

(ii) shall not include any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any nonpublic personal information.

(5) Nonaffiliated third party

The term "nonaffiliated third party" means any entity that is not an affiliate of, or related by common ownership or affiliated by corporate control with, the financial institution, but does not include a joint employee of such institution.

(6) Affiliate

The term "affiliate" means any company that controls, is controlled by, or is under common control with another company.

(7) Necessary to effect, administer, or enforce

The term "as necessary to effect, administer, or enforce the transaction" means—

(A) the disclosure is required, or is a usual, appropriate, or acceptable method, to carry out the transaction or the product or service business of which the transaction is a part, and record or service or maintain the consumer's account in the ordinary course of providing the financial service or financial product, or to administer or service benefits or claims relating to the transaction or the product or service business of which it is a part, and includes—

(i) providing the consumer or the consumer's agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product; and

(ii) the accrual or recognition of incentives or bonuses associated with the transaction that are provided by the financial institution or any other party;

(B) the disclosure is required, or is one of the lawful or appropriate methods, to enforce the rights of the financial institution or of other persons engaged in carrying out the financial transaction, or providing the product or service;

(C) the disclosure is required, or is a usual, appropriate, or acceptable method, for insurance underwriting at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating, or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or State law; or

(D) the disclosure is required, or is a usual, appropriate or acceptable method, in connection with—

(i) the authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check, or account number, or by other payment means;

(ii) the transfer of receivables, accounts or interests therein; or

(iii) the audit of debit, credit or other payment information.

(8) State insurance authority

The term "State insurance authority" means, in the case of any person engaged in providing insurance, the State insurance authority of the State in which the person is domiciled.

(9) Consumer

The term "consumer" means an individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(10) Joint agreement

The term "joint agreement" means a formal written contract pursuant to which two or more financial institutions jointly offer, endorse, or sponsor a financial product or service, and as may be further defined in the regulations prescribed under section 6804 of this title.

(11) Customer relationship

The term "time of establishing a customer relationship" shall be defined by the regulations prescribed under section 6804 of this title, and shall, in the case of a financial institution engaged in extending credit directly to consumers to finance purchases of goods or services, mean the time of establishing the credit relationship with the consumer.

(Pub. L. 106–102, title V, §509, Nov. 12, 1999, 113 Stat. 1443.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this subtitle", meaning subtitle A (§§501–510) of title V of Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1436, which is classified principally to this subchapter. For complete classification of subtitle A to the Code, see Tables.

The Commodity Exchange Act, referred to in par. (3)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in par. (3)(C), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

SUBCHAPTER II—FRAUDULENT ACCESS TO FINANCIAL

INFORMATION

§6821. Privacy protection for customer information of financial institutions

(a) Prohibition on obtaining customer information by false pretenses

It shall be a violation of this subchapter for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person—

(1) by making a false, fictitious, or fraudulent statement or representation to an officer, employee, or agent of a financial institution;

(2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution; or

(3) by providing any document to an officer, employee, or agent of a financial institution, knowing that the document is forged, counterfeit, lost, or stolen, was fraudulently obtained, or contains a false, fictitious, or fraudulent statement or representation.

(b) Prohibition on solicitation of a person to obtain customer information from financial institution under false pretenses

It shall be a violation of this subchapter to request a person to obtain customer information of a financial institution, knowing that the person will obtain, or attempt to obtain, the information from the institution in any manner described in subsection (a).

(c) Nonapplicability to law enforcement agencies

No provision of this section shall be construed so as to prevent any action by a law enforcement agency, or any officer, employee, or agent of such agency, to obtain customer information of a financial institution in connection with the performance of the official duties of the agency.

(d) Nonapplicability to financial institutions in certain cases

No provision of this section shall be construed so as to prevent any financial institution, or any officer, employee, or agent of a financial institution, from obtaining customer information of such financial institution in the course of—

(1) testing the security procedures or systems of such institution for maintaining the confidentiality of customer information;

(2) investigating allegations of misconduct or negligence on the part of any officer, employee, or agent of the financial institution; or

(3) recovering customer information of the financial institution which was obtained or received by another person in any manner described in subsection (a) or (b).

(e) Nonapplicability to insurance institutions for investigation of insurance fraud

No provision of this section shall be construed so as to prevent any insurance institution, or any officer, employee, or agency of an insurance institution, from obtaining information as part of an insurance investigation into criminal activity, fraud, material misrepresentation, or material nondisclosure that is authorized for such institution under State law, regulation, interpretation, or order.

(f) Nonapplicability to certain types of customer information of financial institutions

No provision of this section shall be construed so as to prevent any person from obtaining customer information of a financial institution that otherwise is available as a public record filed pursuant to the securities laws (as defined in section 78c(a)(47) of this title).

(g) Nonapplicability to collection of child support judgments

No provision of this section shall be construed to prevent any State-licensed private investigator, or any officer, employee, or agent of such private investigator, from obtaining customer information of a financial institution, to the extent reasonably necessary to collect child support from a person adjudged to have been delinquent in his or her obligations by a Federal or State court, and to the

extent that such action by a State-licensed private investigator is not unlawful under any other Federal or State law or regulation, and has been authorized by an order or judgment of a court of competent jurisdiction.

(Pub. L. 106–102, title V, §521, Nov. 12, 1999, 113 Stat. 1446.)

§6822. Administrative enforcement

(a) Enforcement by Federal Trade Commission

Except as provided in subsection (b), compliance with this subchapter shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act [15 U.S.C. 1692 et seq.] to enforce compliance with such Act.

(b) Enforcement by other agencies in certain cases

(1) In general

Compliance with this subchapter shall be enforced under—

(A) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—

(i) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], by the Board;

(iii) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System and national nonmember banks) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(iv) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision; and

(B) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(2) Violations of this subchapter treated as violations of other laws

For the purpose of the exercise by any agency referred to in paragraph (1) of its powers under any Act referred to in that paragraph, a violation of this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (1), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with this subchapter, any other authority conferred on such agency by law.

(Pub. L. 106–102, title V, §522, Nov. 12, 1999, 113 Stat. 1447.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Fair Debt Collection Practices Act, referred to in subsec. (a), is title VIII of Pub. L. 90–321, as added by Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874, which is classified generally to subchapter V (§1692 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Section 25 of the Federal Reserve Act, referred to in subsec. (b)(1)(A)(ii), is classified to subchapter I (§601 et seq.) of chapter 6 of Title 12, Banks and Banking. Section 25A of the Federal Reserve Act is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12.

The Federal Credit Union Act, referred to in subsec. (b)(1)(B), is act June 26, 1934, ch. 750, 48 Stat. 1216,

which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

Functions vested in Administrator of National Credit Union Administration transferred and vested in National Credit Union Administration Board pursuant to section 1752a of Title 12, Banks and Banking.

§6823. Criminal penalty

(a) In general

Whoever knowingly and intentionally violates, or knowingly and intentionally attempts to violate, section 6821 of this title shall be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(b) Enhanced penalty for aggravated cases

Whoever violates, or attempts to violate, section 6821 of this title while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period shall be fined twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, imprisoned for not more than 10 years, or both.

(Pub. L. 106–102, title V, §523, Nov. 12, 1999, 113 Stat. 1448.)

§6824. Relation to State laws

(a) In general

This subchapter shall not be construed as superseding, altering, or affecting the statutes, regulations, orders, or interpretations in effect in any State, except to the extent that such statutes, regulations, orders, or interpretations are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency.

(b) Greater protection under State law

For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this subchapter if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this subchapter as determined by the Federal Trade Commission, after consultation with the agency or authority with jurisdiction under section 6822 of this title of either the person that initiated the complaint or that is the subject of the complaint, on its own motion or upon the petition of any interested party.

(Pub. L. 106–102, title V, §524, Nov. 12, 1999, 113 Stat. 1448.)

§6825. Agency guidance

In furtherance of the objectives of this subchapter, each Federal banking agency (as defined in section 1813(z) of title 12), the National Credit Union Administration, and the Securities and Exchange Commission or self-regulatory organizations, as appropriate, shall review regulations and guidelines applicable to financial institutions under their respective jurisdictions and shall prescribe such revisions to such regulations and guidelines as may be necessary to ensure that such financial institutions have policies, procedures, and controls in place to prevent the unauthorized disclosure of customer financial information and to deter and detect activities proscribed under section 6821 of this title.

(Pub. L. 106–102, title V, §525, Nov. 12, 1999, 113 Stat. 1448.)

§6826. Reports

(a) Report to the Congress

Before the end of the 18-month period beginning on November 12, 1999, the Comptroller General, in consultation with the Federal Trade Commission, Federal banking agencies, the National Credit Union Administration, the Securities and Exchange Commission, appropriate Federal law enforcement agencies, and appropriate State insurance regulators, shall submit to the Congress a report on the following:

(1) The efficacy and adequacy of the remedies provided in this subchapter in addressing attempts to obtain financial information by fraudulent means or by false pretenses.

(2) Any recommendations for additional legislative or regulatory action to address threats to the privacy of financial information created by attempts to obtain information by fraudulent means or false pretenses.

(b) Annual report by administering agencies

The Federal Trade Commission and the Attorney General shall submit to Congress an annual report on number and disposition of all enforcement actions taken pursuant to this subchapter.

(Pub. L. 106–102, title V, §526, Nov. 12, 1999, 113 Stat. 1448.)

§6827. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Customer

The term "customer" means, with respect to a financial institution, any person (or authorized representative of a person) to whom the financial institution provides a product or service, including that of acting as a fiduciary.

(2) Customer information of a financial institution

The term "customer information of a financial institution" means any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.

(3) Document

The term "document" means any information in any form.

(4) Financial institution

(A) In general

The term "financial institution" means any institution engaged in the business of providing financial services to customers who maintain a credit, deposit, trust, or other financial account or relationship with the institution.

(B) Certain financial institutions specifically included

The term "financial institution" includes any depository institution (as defined in section 461(b)(1)(A) of title 12), any broker or dealer, any investment adviser or investment company, any insurance company, any loan or finance company, any credit card issuer or operator of a credit card system, and any consumer reporting agency that compiles and maintains files on consumers on a nationwide basis (as defined in section 1681a(p) of this title).

(C) Securities institutions

For purposes of subparagraph (B)—

(i) the terms "broker" and "dealer" have the same meanings as given in section 78c of this title;

(ii) the term "investment adviser" has the same meaning as given in section 80b–2(a)(11) of this title; and

(iii) the term "investment company" has the same meaning as given in section 80a–3 of this title.

(D) Certain persons and entities specifically excluded

The term "financial institution" does not include any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act [7 U.S.C. 1 et seq.] and does not include the Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 [12 U.S.C. 2001 et seq.].

(E) Further definition by regulation

The Federal Trade Commission, after consultation with Federal banking agencies and the Securities and Exchange Commission, may prescribe regulations clarifying or describing the types of institutions which shall be treated as financial institutions for purposes of this subchapter.

(Pub. L. 106–102, title V, §527, Nov. 12, 1999, 113 Stat. 1449.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in par. (4)(D), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in par. (4)(D), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified generally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

CHAPTER 94A—VISUAL DEPICTION PRIVACY

§6851. Civil action relating to disclosure of intimate images

(a) Definitions

In this section:

(1) Commercial pornographic content

The term "commercial pornographic content" means any material that is subject to the record keeping requirements under section 2257 of title 18.

(2) Consent

The term "consent" means an affirmative, conscious, and voluntary authorization made by the individual free from force, fraud, misrepresentation, or coercion.

(3) Depicted individual

The term "depicted individual" means an individual whose body appears in whole or in part in an intimate visual depiction and who is identifiable by virtue of the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature, or from information displayed in connection with the visual depiction.

(4) Disclose

The term "disclose" means to transfer, publish, distribute, or make accessible.

(5) Intimate visual depiction

The term "intimate visual depiction"—

(A) means a visual depiction, as that term is defined in section 2256(5) of title 18, that depicts—

(i) the uncovered genitals, pubic area, anus, or post-pubescent female nipple of an identifiable individual; or

(ii) the display or transfer of bodily sexual fluids—

(I) on to any part of the body of an identifiable individual;

(II) from the body of an identifiable individual; or

(III) an identifiable individual engaging in sexually explicit conduct and [1]

(B) includes any visual depictions described in subparagraph (A) produced while the identifiable individual was in a public place only if the individual did not—

(i) voluntarily display the content depicted; or

(ii) consent to the sexual conduct depicted.

(6) Sexually explicit conduct

The term "sexually explicit conduct" has the meaning given the term in subparagraphs (A) and (B) of section 2256(2) of title 18.

(b) Civil action

(1) Right of action

(A) In general

Except as provided in paragraph (4), an individual whose intimate visual depiction is disclosed, in or affecting interstate or foreign commerce or using any means or facility of interstate or foreign commerce, without the consent of the individual, where such disclosure was made by a person who knows that, or recklessly disregards whether, the individual has not consented to such disclosure, may bring a civil action against that person in an appropriate district court of the United States for relief as set forth in paragraph (3).

(B) Rights on behalf of certain individuals

In the case of an individual who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the individual or representative of the identifiable individual's estate, another family member, or any other person appointed as suitable by the court, may assume the identifiable individual's' [1] rights under this section, but in no event shall the defendant be named as such representative or guardian.

(2) Consent

For purposes of an action under paragraph (1)—

(A) the fact that the individual consented to the creation of the depiction shall not establish that the person consented to its distribution; and

(B) the fact that the individual disclosed the intimate visual depiction to someone else shall not establish that the person consented to the further disclosure of the intimate visual depiction by the person alleged to have violated paragraph (1).

(3) Relief

(A) In general

In a civil action filed under this section—

(i) an individual may recover the actual damages sustained by the individual or liquidated damages in the amount of $150,000, and the cost of the action, including reasonable attorney's fees and other litigation costs reasonably incurred; and

(ii) the court may, in addition to any other relief available at law, order equitable relief,

including a temporary restraining order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the visual depiction.

(B) Preservation of anonymity

In ordering relief under subparagraph (A), the court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym.

(4) Exceptions

An identifiable individual may not bring an action for relief under this section relating to—

(A) an intimate image that is commercial pornographic content, unless that content was produced by force, fraud, misrepresentation, or coercion of the depicted individual;

(B) a disclosure made in good faith—

(i) to a law enforcement officer or agency;

(ii) as part of a legal proceeding;

(iii) as part of medical education, diagnosis, or treatment; or

(iv) in the reporting or investigation of—

(I) unlawful content; or

(II) unsolicited or unwelcome conduct;

(C) a matter of public concern or public interest; or

(D) a disclosure reasonably intended to assist the identifiable individual.

(Pub. L. 117–103, div. W, title XIII, §1309, Mar. 15, 2022, 136 Stat. 929.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 117–103, div. W, §4, Mar. 15, 2022, 136 Stat. 846, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this Act [div. W of Pub. L. 117–103, see Tables for classification] and the amendments made by this Act shall not take effect until October 1 of the first fiscal year beginning after the date of enactment of this Act [Mar. 15, 2022].

"(b) EFFECTIVE ON DATE OF ENACTMENT.—Sections 106, 107, 304, 606, 803, and 1306 [amending section 2265 of Title 18, Crimes and Criminal Procedure, section 1302a of Title 25, Indians, and section 21308 of Title 34, Crime Control and Law Enforcement] and any amendments made by such sections shall take effect on the date of enactment of this Act."

SEVERABILITY

Pub. L. 117–103, div. W, §6, Mar. 15, 2022, 136 Stat. 846, provided that: "If any provision of this Act [div. W of Pub. L. 117–103, see Tables for classification], an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of the provisions or amendment to any other person or circumstance, shall not be affected."

DEFINITIONS

For definitions of terms used in this section, see section 12291 of Title 34, Crime Control and Law Enforcement, as made applicable by section 2(b) of div. W of Pub. L. 117–103, which is set out as a note under section 12291 of Title 34.

[1] *So in original.*

CHAPTER 95—MICROENTERPRISE TECHNICAL ASSISTANCE AND CAPACITY BUILDING PROGRAM

Sec.

§6901. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Administration

The term "Administration" means the Small Business Administration.

(2) Administrator

The term "Administrator" means the Administrator of the Small Business Administration.

(3) Capacity building services

The term "capacity building services" means services provided to an organization that is, or that is in the process of becoming, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs.

(4) Collaborative

The term "collaborative" means 2 or more nonprofit entities that agree to act jointly as a qualified organization under this chapter.

(5) Disadvantaged entrepreneur

The term "disadvantaged entrepreneur" means a microentrepreneur that is—

(A) a low-income person;

(B) a very low-income person; or

(C) an entrepreneur that lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator.

(6) Indian tribe

The term "Indian tribe" has the meaning given the term in section 4702 of title 12.

(7) Intermediary

The term "intermediary" means a private, nonprofit entity that seeks to serve microenterprise development organizations and programs as authorized under section 6904 of this title.

(8) Low-income person

The term "low-income person" has the meaning given the term in section 4702 of title 12.

(9) Microentrepreneur

The term "microentrepreneur" means the owner or developer of a microenterprise.

(10) Microenterprise

The term "microenterprise" means a sole proprietorship, partnership, or corporation that—

(A) has fewer than 5 employees; and

(B) generally lacks access to conventional loans, equity, or other banking services.

(11) Microenterprise development organization or program

The term "microenterprise development organization or program" means a nonprofit entity, or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to

disadvantaged entrepreneurs.

(12) Training and technical assistance

The term "training and technical assistance" means services and support provided to disadvantaged entrepreneurs, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.

(13) Very low-income person

The term "very low-income person" means having an income, adjusted for family size, of not more than 150 percent of the poverty line (as defined in section 9902(2) of title 42, including any revision required by that section).

(Pub. L. 103–325, title I, §172, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1472.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 103–325, title I, §171, as added by Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1471, provided that: "This subtitle [subtitle C (§§171–181) of title I of Pub. L. 103–325, as added by Pub. L. 106–102, enacting this chapter] may be cited as the 'Program for Investment in Microentrepreneurs Act of 1999', also referred to as the 'PRIME Act'."

§6902. Establishment of program

The Administrator shall establish a microenterprise technical assistance and capacity building grant program to provide assistance from the Administration in the form of grants to qualified organizations in accordance with this chapter.

(Pub. L. 103–325, title I, §173, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1473.)

§6903. Uses of assistance

A qualified organization shall use grants made under this chapter—

(1) to provide training and technical assistance to disadvantaged entrepreneurs;

(2) to provide training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist such organizations and programs in developing microenterprise training and services;

(3) to aid in researching and developing the best practices in the field of microenterprise and technical assistance programs for disadvantaged entrepreneurs; and

(4) for such other activities as the Administrator determines are consistent with the purposes of this chapter.

(Pub. L. 103–325, title I, §174, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1473.)

§6904. Qualified organizations

For purposes of eligibility for assistance under this chapter, a qualified organization shall be—

(1) a nonprofit microenterprise development organization or program (or a group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs;

(2) an intermediary;

(3) a microenterprise development organization or program that is accountable to a local community, working in conjunction with a State or local government or Indian tribe; or

(4) an Indian tribe acting on its own, if the Indian tribe can certify that no private organization or program referred to in this paragraph exists within its jurisdiction.

(Pub. L. 103–325, title I, §175, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1473.)

§6905. Allocation of assistance; subgrants

(a) Allocation of assistance

(1) In general

The Administrator shall allocate assistance from the Administration under this chapter to ensure that—

(A) activities described in section 6903(1) of this title are funded using not less than 75 percent of amounts made available for such assistance; and

(B) activities described in section 6903(2) of this title are funded using not less than 15 percent of amounts made available for such assistance.

(2) Limit on individual assistance

No single person may receive more than 10 percent of the total funds appropriated under this chapter in a single fiscal year.

(b) Targeted assistance

The Administrator shall ensure that not less than 50 percent of the grants made under this chapter are used to benefit very low-income persons, including those residing on Indian reservations.

(c) Subgrants authorized

(1) In general

A qualified organization receiving assistance under this chapter may provide grants using that assistance to qualified small and emerging microenterprise organizations and programs, subject to such rules and regulations as the Administrator determines to be appropriate.

(2) Limit on administrative expenses

Not more than 7.5 percent of assistance received by a qualified organization under this chapter may be used for administrative expenses in connection with the making of subgrants under paragraph (1).

(d) Diversity

In making grants under this chapter, the Administrator shall ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural, and Indian tribal communities serving diverse populations.

(e) Prohibition on preferential consideration of certain SBA program participants

In making grants under this chapter, the Administrator shall ensure that any application made by a qualified organization that is a participant in the program established under section 636(m) of this title does not receive preferential consideration over applications from other qualified organizations that are not participants in such program.

(Pub. L. 103–325, title I, §176, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1473.)

§6906. Matching requirements

(a) In general

Financial assistance under this chapter shall be matched with funds from sources other than the Federal Government on the basis of not less than 50 percent of each dollar provided by the Administration.

(b) Sources of matching funds

Fees, grants, gifts, funds from loan sources, and in-kind resources of a grant recipient from public or private sources may be used to comply with the matching requirement in subsection (a).

(c) Exception

(1) In general

In the case of an applicant for assistance under this chapter with severe constraints on available sources of matching funds, the Administrator may reduce or eliminate the matching requirements of subsection (a).

(2) Limitation

Not more than 10 percent of the total funds made available from the Administration in any fiscal year to carry out this chapter may be excepted from the matching requirements of subsection (a), as authorized by paragraph (1) of this subsection.

(Pub. L. 103–325, title I, §177, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1474.)

§6907. Applications for assistance

An application for assistance under this chapter shall be submitted in such form and in accordance with such procedures as the Administrator shall establish.

(Pub. L. 103–325, title I, §178, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1474.)

§6908. Recordkeeping

The requirements of section 4714 of title 12 shall apply to a qualified organization receiving assistance from the Administration under this chapter as if it were a community development financial institution receiving assistance from the Fund under subtitle A.

(Pub. L. 103–325, title I, §179, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1474.)

EDITORIAL NOTES

REFERENCES IN TEXT

Subtitle A, referred to in text, is subtitle A (§§101–121) of title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2163, known as the Community Development Banking and Financial Institutions Act of 1994, which is classified principally to subchapter I (§4701 et seq.) of chapter 47 of Title 12, Banks and Banking. For complete classification of subtitle A to the Code, see Short Title note set out under section 4701 of Title 12 and Tables.

§6909. Authorization

In addition to funds otherwise authorized to be appropriated to the Fund to carry out this title,[1] there are authorized to be appropriated to the Administrator to carry out this chapter—

(1) $15,000,000 for fiscal year 2000;
(2) $15,000,000 for fiscal year 2001;
(3) $15,000,000 for fiscal year 2002; and

(4) $15,000,000 for fiscal year 2003.

(Pub. L. 103–325, title I, §180, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1474.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in text, is title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2163. Subtitle A (§§101–121) of title I, known as the Community Development Banking and Financial Institutions Act of 1994, is classified principally to subchapter I (§4701 et seq.) of chapter 47 of Title 12, Banks and Banking. Subtitle B (§§151–158) of title I, known as the Home Ownership and Equity Protection Act of 1994, enacted sections 1639 and 1648 of this title, amended sections 1602, 1604, 1610, 1640, 1641, and 1647 of this title, and enacted provisions set out as notes under sections 1601 and 1602 of this title. Subtitle C (§§171–181) of title I, known as the Program for Investment in Microentrepreneurs Act of 1999 or PRIME Act, is classified generally to this chapter. For complete classification of title I of Pub. L. 103–325 to the Code, see Tables.

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

§6910. Implementation

The Administrator shall, by regulation, establish such requirements as may be necessary to carry out this chapter.

(Pub. L. 103–325, title I, §181, as added Pub. L. 106–102, title VII, §725, Nov. 12, 1999, 113 Stat. 1475.)

CHAPTER 96—ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE

SUBCHAPTER I—ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

SUBCHAPTER I—ELECTRONIC RECORDS AND SIGNATURES IN COMMERCE

§7001. General rule of validity

(a) In general

Notwithstanding any statute, regulation, or other rule of law (other than this subchapter and subchapter II), with respect to any transaction in or affecting interstate or foreign commerce—

(1) a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form; and

(2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation.

(b) Preservation of rights and obligations

This subchapter does not—

(1) limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to the rights and obligations of persons under such statute, regulation, or rule of law other than a requirement that contracts or other records be written, signed, or in nonelectronic form; or

(2) require any person to agree to use or accept electronic records or electronic signatures, other than a governmental agency with respect to a record other than a contract to which it is a party.

(c) Consumer disclosures

(1) Consent to electronic records

Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if—

(A) the consumer has affirmatively consented to such use and has not withdrawn such consent;

(B) the consumer, prior to consenting, is provided with a clear and conspicuous statement—

(i) informing the consumer of (I) any right or option of the consumer to have the record provided or made available on paper or in nonelectronic form, and (II) the right of the consumer to withdraw the consent to have the record provided or made available in an electronic form and of any conditions, consequences (which may include termination of the parties' relationship), or fees in the event of such withdrawal;

(ii) informing the consumer of whether the consent applies (I) only to the particular transaction which gave rise to the obligation to provide the record, or (II) to identified categories of records that may be provided or made available during the course of the parties' relationship;

(iii) describing the procedures the consumer must use to withdraw consent as provided in clause (i) and to update information needed to contact the consumer electronically; and

(iv) informing the consumer (I) how, after the consent, the consumer may, upon request, obtain a paper copy of an electronic record, and (II) whether any fee will be charged for such copy;

(C) the consumer—

(i) prior to consenting, is provided with a statement of the hardware and software requirements for access to and retention of the electronic records; and

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent; and

(D) after the consent of a consumer in accordance with subparagraph (A), if a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain a subsequent electronic record that was the subject of the consent, the person providing the electronic record—

(i) provides the consumer with a statement of (I) the revised hardware and software requirements for access to and retention of the electronic records, and (II) the right to withdraw consent without the imposition of any fees for such withdrawal and without the imposition of any condition or consequence that was not disclosed under subparagraph (B)(i); and

(ii) again complies with subparagraph (C).

(2) Other rights

(A) Preservation of consumer protections

Nothing in this subchapter affects the content or timing of any disclosure or other record required to be provided or made available to any consumer under any statute, regulation, or other rule of law.

(B) Verification or acknowledgment

If a law that was enacted prior to this chapter expressly requires a record to be provided or made available by a specified method that requires verification or acknowledgment of receipt, the record may be provided or made available electronically only if the method used provides verification or acknowledgment of receipt (whichever is required).

(3) Effect of failure to obtain electronic consent or confirmation of consent

The legal effectiveness, validity, or enforceability of any contract executed by a consumer shall not be denied solely because of the failure to obtain electronic consent or confirmation of consent by that consumer in accordance with paragraph (1)(C)(ii).

(4) Prospective effect

Withdrawal of consent by a consumer shall not affect the legal effectiveness, validity, or enforceability of electronic records provided or made available to that consumer in accordance with paragraph (1) prior to implementation of the consumer's withdrawal of consent. A consumer's withdrawal of consent shall be effective within a reasonable period of time after receipt of the withdrawal by the provider of the record. Failure to comply with paragraph (1)(D) may, at the election of the consumer, be treated as a withdrawal of consent for purposes of this paragraph.

(5) Prior consent

This subsection does not apply to any records that are provided or made available to a consumer who has consented prior to the effective date of this subchapter to receive such records in electronic form as permitted by any statute, regulation, or other rule of law.

(6) Oral communications

An oral communication or a recording of an oral communication shall not qualify as an electronic record for purposes of this subsection except as otherwise provided under applicable law.

(d) Retention of contracts and records

(1) Accuracy and accessibility

If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that—

(A) accurately reflects the information set forth in the contract or other record; and

(B) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

(2) Exception

A requirement to retain a contract or other record in accordance with paragraph (1) does not apply to any information whose sole purpose is to enable the contract or other record to be sent,

communicated, or received.

(3) Originals

If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).

(4) Checks

If a statute, regulation, or other rule of law requires the retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with paragraph (1).

(e) Accuracy and ability to retain contracts and other records

Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be in writing, the legal effect, validity, or enforceability of an electronic record of such contract or other record may be denied if such electronic record is not in a form that is capable of being retained and accurately reproduced for later reference by all parties or persons who are entitled to retain the contract or other record.

(f) Proximity

Nothing in this subchapter affects the proximity required by any statute, regulation, or other rule of law with respect to any warning, notice, disclosure, or other record required to be posted, displayed, or publicly affixed.

(g) Notarization and acknowledgment

If a statute, regulation, or other rule of law requires a signature or record relating to a transaction in or affecting interstate or foreign commerce to be notarized, acknowledged, verified, or made under oath, that requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable statute, regulation, or rule of law, is attached to or logically associated with the signature or record.

(h) Electronic agents

A contract or other record relating to a transaction in or affecting interstate or foreign commerce may not be denied legal effect, validity, or enforceability solely because its formation, creation, or delivery involved the action of one or more electronic agents so long as the action of any such electronic agent is legally attributable to the person to be bound.

(i) Insurance

It is the specific intent of the Congress that this subchapter and subchapter II apply to the business of insurance.

(j) Insurance agents and brokers

An insurance agent or broker acting under the direction of a party that enters into a contract by means of an electronic record or electronic signature may not be held liable for any deficiency in the electronic procedures agreed to by the parties under that contract if—

(1) the agent or broker has not engaged in negligent, reckless, or intentional tortious conduct;

(2) the agent or broker was not involved in the development or establishment of such electronic procedures; and

(3) the agent or broker did not deviate from such procedures.

(Pub. L. 106–229, title I, §101, June 30, 2000, 114 Stat. 464.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (c)(2)(B), was in the original "this Act", meaning Pub. L. 106–229, June 30, 2000, 114 Stat. 464, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

For the effective date of this subchapter, referred to in subsec. (c)(5), see Effective Date note below.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 106–229, title I, §107, June 30, 2000, 114 Stat. 473, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this title [enacting this subchapter] shall be effective on October 1, 2000.

"(b) EXCEPTIONS.—

"(1) RECORD RETENTION.—

"(A) IN GENERAL.—Subject to subparagraph (B), this title [enacting this subchapter] shall be effective on March 1, 2001, with respect to a requirement that a record be retained imposed by—

"(i) a Federal statute, regulation, or other rule of law, or

"(ii) a State statute, regulation, or other rule of law administered or promulgated by a State regulatory agency.

"(B) DELAYED EFFECT FOR PENDING RULEMAKINGS.—If on March 1, 2001, a Federal regulatory agency or State regulatory agency has announced, proposed, or initiated, but not completed, a rulemaking proceeding to prescribe a regulation under section 104(b)(3) [15 U.S.C. 7004(b)(3)] with respect to a requirement described in subparagraph (A), this title shall be effective on June 1, 2001, with respect to such requirement.

"(2) CERTAIN GUARANTEED AND INSURED LOANS.—With regard to any transaction involving a loan guarantee or loan guarantee commitment (as those terms are defined in section 502 of the Federal Credit Reform Act of 1990 [2 U.S.C. 661a]), or involving a program listed in the Federal Credit Supplement, Budget of the United States, FY 2001, this title applies only to such transactions entered into, and to any loan or mortgage made, insured, or guaranteed by the United States Government thereunder, on and after one year after the date of enactment of this Act [June 30, 2000].

"(3) STUDENT LOANS.—With respect to any records that are provided or made available to a consumer pursuant to an application for a loan, or a loan made, pursuant to title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.], section 101(c) of this Act [15 U.S.C. 7001(c)] shall not apply until the earlier of—

"(A) such time as the Secretary of Education publishes revised promissory notes under section 432(m) of the Higher Education Act of 1965 [20 U.S.C. 1082(m)]; or

"(B) one year after the date of enactment of this Act [June 30, 2000]."

SHORT TITLE

Pub. L. 106–229, §1, June 30, 2000, 114 Stat. 464, provided that: "This Act [enacting this chapter and amending provisions set out as a note under section 231 of Title 47, Telecommunications] may be cited as the 'Electronic Signatures in Global and National Commerce Act'."

§7002. Exemption to preemption

(a) In general

A State statute, regulation, or other rule of law may modify, limit, or supersede the provisions of section 7001 of this title with respect to State law only if such statute, regulation, or rule of law—

(1) constitutes an enactment or adoption of the Uniform Electronic Transactions Act as approved and recommended for enactment in all the States by the National Conference of Commissioners on Uniform State Laws in 1999, except that any exception to the scope of such Act enacted by a State under section 3(b)(4) of such Act shall be preempted to the extent such exception is inconsistent with this subchapter or subchapter II, or would not be permitted under paragraph (2)(A)(ii) of this subsection; or

(2)(A) specifies the alternative procedures or requirements for the use or acceptance (or both) of

electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, if—

(i) such alternative procedures or requirements are consistent with this subchapter and subchapter II; and

(ii) such alternative procedures or requirements do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and

(B) if enacted or adopted after June 30, 2000, makes specific reference to this chapter.

(b) Exceptions for actions by States as market participants

Subsection (a)(2)(A)(ii) shall not apply to the statutes, regulations, or other rules of law governing procurement by any State, or any agency or instrumentality thereof.

(c) Prevention of circumvention

Subsection (a) does not permit a State to circumvent this subchapter or subchapter II through the imposition of nonelectronic delivery methods under section 8(b)(2) of the Uniform Electronic Transactions Act.

(Pub. L. 106–229, title I, §102, June 30, 2000, 114 Stat. 467.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 2000, with exceptions relating to record retention and certain loans, see section 107 of Pub. L. 106–229, set out as a note under section 7001 of this title.

§7003. Specific exceptions

(a) Excepted requirements

The provisions of section 7001 of this title shall not apply to a contract or other record to the extent it is governed by—

(1) a statute, regulation, or other rule of law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) a State statute, regulation, or other rule of law governing adoption, divorce, or other matters of family law; or

(3) the Uniform Commercial Code, as in effect in any State, other than sections 1–107 and 1–206 and Articles 2 and 2A.

(b) Additional exceptions

The provisions of section 7001 of this title shall not apply to—

(1) court orders or notices, or official court documents (including briefs, pleadings, and other writings) required to be executed in connection with court proceedings;

(2) any notice of—

(A) the cancellation or termination of utility services (including water, heat, and power);

(B) default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual;

(C) the cancellation or termination of health insurance or benefits or life insurance benefits (excluding annuities); or

(D) recall of a product, or material failure of a product, that risks endangering health or safety; or

(3) any document required to accompany any transportation or handling of hazardous materials,

pesticides, or other toxic or dangerous materials.

(c) Review of exceptions

(1) Evaluation required

The Secretary of Commerce, acting through the Assistant Secretary for Communications and Information, shall review the operation of the exceptions in subsections (a) and (b) to evaluate, over a period of 3 years, whether such exceptions continue to be necessary for the protection of consumers. Within 3 years after June 30, 2000, the Assistant Secretary shall submit a report to the Congress on the results of such evaluation.

(2) Determinations

If a Federal regulatory agency, with respect to matter within its jurisdiction, determines after notice and an opportunity for public comment, and publishes a finding, that one or more such exceptions are no longer necessary for the protection of consumers and eliminating such exceptions will not increase the material risk of harm to consumers, such agency may extend the application of section 7001 of this title to the exceptions identified in such finding.

(Pub. L. 106–229, title I, §103, June 30, 2000, 114 Stat. 468.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 2000, with exceptions relating to record retention and certain loans, see section 107 of Pub. L. 106–229, set out as a note under section 7001 of this title.

§7004. Applicability to Federal and State governments

(a) Filing and access requirements

Subject to subsection (c)(2), nothing in this subchapter limits or supersedes any requirement by a Federal regulatory agency, self-regulatory organization, or State regulatory agency that records be filed with such agency or organization in accordance with specified standards or formats.

(b) Preservation of existing rulemaking authority

(1) Use of authority to interpret

Subject to paragraph (2) and subsection (c), a Federal regulatory agency or State regulatory agency that is responsible for rulemaking under any other statute may interpret section 7001 of this title with respect to such statute through—

(A) the issuance of regulations pursuant to a statute; or

(B) to the extent such agency is authorized by statute to issue orders or guidance, the issuance of orders or guidance of general applicability that are publicly available and published (in the Federal Register in the case of an order or guidance issued by a Federal regulatory agency).

This paragraph does not grant any Federal regulatory agency or State regulatory agency authority to issue regulations, orders, or guidance pursuant to any statute that does not authorize such issuance.

(2) Limitations on interpretation authority

Notwithstanding paragraph (1), a Federal regulatory agency shall not adopt any regulation, order, or guidance described in paragraph (1), and a State regulatory agency is preempted by section 7001 of this title from adopting any regulation, order, or guidance described in paragraph (1), unless—

(A) such regulation, order, or guidance is consistent with section 7001 of this title;

(B) such regulation, order, or guidance does not add to the requirements of such section; and

(C) such agency finds, in connection with the issuance of such regulation, order, or guidance,

that—

(i) there is a substantial justification for the regulation, order, or guidance;

(ii) the methods selected to carry out that purpose—

(I) are substantially equivalent to the requirements imposed on records that are not electronic records; and

(II) will not impose unreasonable costs on the acceptance and use of electronic records; and

(iii) the methods selected to carry out that purpose do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures.

(3) Performance standards

(A) Accuracy, record integrity, accessibility

Notwithstanding paragraph (2)(C)(iii), a Federal regulatory agency or State regulatory agency may interpret section 7001(d) of this title to specify performance standards to assure accuracy, record integrity, and accessibility of records that are required to be retained. Such performance standards may be specified in a manner that imposes a requirement in violation of paragraph (2)(C)(iii) if the requirement (i) serves an important governmental objective; and (ii) is substantially related to the achievement of that objective. Nothing in this paragraph shall be construed to grant any Federal regulatory agency or State regulatory agency authority to require use of a particular type of software or hardware in order to comply with section 7001(d) of this title.

(B) Paper or printed form

Notwithstanding subsection (c)(1), a Federal regulatory agency or State regulatory agency may interpret section 7001(d) of this title to require retention of a record in a tangible printed or paper form if—

(i) there is a compelling governmental interest relating to law enforcement or national security for imposing such requirement; and

(ii) imposing such requirement is essential to attaining such interest.

(4) Exceptions for actions by government as market participant

Paragraph (2)(C)(iii) shall not apply to the statutes, regulations, or other rules of law governing procurement by the Federal or any State government, or any agency or instrumentality thereof.

(c) Additional limitations

(1) Reimposing paper prohibited

Nothing in subsection (b) (other than paragraph (3)(B) thereof) shall be construed to grant any Federal regulatory agency or State regulatory agency authority to impose or reimpose any requirement that a record be in a tangible printed or paper form.

(2) Continuing obligation under Government Paperwork Elimination Act

Nothing in subsection (a) or (b) relieves any Federal regulatory agency of its obligations under the Government Paperwork Elimination Act (title XVII of Public Law 105–277).

(d) Authority to exempt from consent provision

(1) In general

A Federal regulatory agency may, with respect to matter within its jurisdiction, by regulation or order issued after notice and an opportunity for public comment, exempt without condition a specified category or type of record from the requirements relating to consent in section 7001(c) of this title if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.

(2) Prospectuses

Within 30 days after June 30, 2000, the Securities and Exchange Commission shall issue a regulation or order pursuant to paragraph (1) exempting from section 7001(c) of this title any records that are required to be provided in order to allow advertising, sales literature, or other information concerning a security issued by an investment company that is registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], or concerning the issuer thereof, to be excluded from the definition of a prospectus under section 77b(a)(10)(A) of this title.

(e) Electronic letters of agency

The Federal Communications Commission shall not hold any contract for telecommunications service or letter of agency for a preferred carrier change, that otherwise complies with the Commission's rules, to be legally ineffective, invalid, or unenforceable solely because an electronic record or electronic signature was used in its formation or authorization.

(Pub. L. 106–229, title I, §104, June 30, 2000, 114 Stat. 469.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Government Paperwork Elimination Act, referred to in subsec. (c)(2), is title XVII of Pub. L. 105–277, div. C, Oct. 21, 1998, 112 Stat. 2681–749, which amended section 3504 of Title 44, Public Printing and Documents, and enacted provisions set out as a note under section 3504 of Title 44. For complete classification of this Act to the Code, see Tables.

The Investment Company Act of 1940, referred to in subsec. (d)(2), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 2000, with exceptions relating to record retention and certain loans, see section 107 of Pub. L. 106–229, set out as a note under section 7001 of this title.

§7005. Studies

(a) Delivery

Within 12 months after June 30, 2000, the Secretary of Commerce shall conduct an inquiry regarding the effectiveness of the delivery of electronic records to consumers using electronic mail as compared with delivery of written records via the United States Postal Service and private express mail services. The Secretary shall submit a report to the Congress regarding the results of such inquiry by the conclusion of such 12-month period.

(b) Study of electronic consent

Within 12 months after June 30, 2000, the Secretary of Commerce and the Federal Trade Commission shall submit a report to the Congress evaluating any benefits provided to consumers by the procedure required by section 7001(c)(1)(C)(ii) of this title; any burdens imposed on electronic commerce by that provision; whether the benefits outweigh the burdens; whether the absence of the procedure required by section 7001(c)(1)(C)(ii) of this title would increase the incidence of fraud directed against consumers; and suggesting any revisions to the provision deemed appropriate by the Secretary and the Commission. In conducting this evaluation, the Secretary and the Commission shall solicit comment from the general public, consumer representatives, and electronic commerce businesses.

(Pub. L. 106–229, title I, §105, June 30, 2000, 114 Stat. 471.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 2000, with exceptions relating to record retention and certain loans, see section 107 of Pub. L. 106–229, set out as a note under section 7001 of this title.

§7006. Definitions

For purposes of this subchapter:

(1) Consumer

The term "consumer" means an individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

(2) Electronic

The term "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) Electronic agent

The term "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part without review or action by an individual at the time of the action or response.

(4) Electronic record

The term "electronic record" means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.

(5) Electronic signature

The term "electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

(6) Federal regulatory agency

The term "Federal regulatory agency" means an agency, as that term is defined in section 552(f) of title 5.

(7) Information

The term "information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(8) Person

The term "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(9) Record

The term "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) Requirement

The term "requirement" includes a prohibition.

(11) Self-regulatory organization

The term "self-regulatory organization" means an organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and

is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

(12) State

The term "State" includes the District of Columbia and the territories and possessions of the United States.

(13) Transaction

The term "transaction" means an action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct—

(A) the sale, lease, exchange, licensing, or other disposition of (i) personal property, including goods and intangibles, (ii) services, and (iii) any combination thereof; and

(B) the sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.

(Pub. L. 106–229, title I, §106, June 30, 2000, 114 Stat. 472.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 2000, with exceptions relating to record retention and certain loans, see section 107 of Pub. L. 106–229, set out as a note under section 7001 of this title.

SUBCHAPTER II—TRANSFERABLE RECORDS

§7021. Transferable records

(a) Definitions

For purposes of this section:

(1) Transferable record

The term "transferable record" means an electronic record that—

(A) would be a note under Article 3 of the Uniform Commercial Code if the electronic record were in writing;

(B) the issuer of the electronic record expressly has agreed is a transferable record; and

(C) relates to a loan secured by real property.

A transferable record may be executed using an electronic signature.

(2) Other definitions

The terms "electronic record", "electronic signature", and "person" have the same meanings provided in section 7006 of this title.

(b) Control

A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) Conditions

A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that—

(1) a single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as—

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Status as holder

Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 1–201(20) of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under section 3–302(a), 9–308, or revised section 9–330 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course or a purchaser, respectively. Delivery, possession, and endorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Obligor rights

Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) Proof of control

If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

(g) UCC references

For purposes of this subsection, all references to the Uniform Commercial Code are to the Uniform Commercial Code as in effect in the jurisdiction the law of which governs the transferable record.

(Pub. L. 106–229, title II, §201, June 30, 2000, 114 Stat. 473.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 106–229, title II, §202, June 30, 2000, 114 Stat. 475, provided that: "This title [enacting this subchapter] shall be effective 90 days after the date of enactment of this Act [June 30, 2000]."

SUBCHAPTER III—PROMOTION OF INTERNATIONAL ELECTRONIC COMMERCE

§7031. Principles governing the use of electronic signatures in international transactions

(a) Promotion of electronic signatures

(1) Required actions

The Secretary of Commerce shall promote the acceptance and use, on an international basis, of electronic signatures in accordance with the principles specified in paragraph (2) and in a manner consistent with section 7001 of this title. The Secretary of Commerce shall take all actions necessary in a manner consistent with such principles to eliminate or reduce, to the maximum extent possible, the impediments to commerce in electronic signatures, for the purpose of facilitating the development of interstate and foreign commerce.

(2) Principles

The principles specified in this paragraph are the following:

(A) Remove paper-based obstacles to electronic transactions by adopting relevant principles from the Model Law on Electronic Commerce adopted in 1996 by the United Nations Commission on International Trade Law.

(B) Permit parties to a transaction to determine the appropriate authentication technologies and implementation models for their transactions, with assurance that those technologies and implementation models will be recognized and enforced.

(C) Permit parties to a transaction to have the opportunity to prove in court or other proceedings that their authentication approaches and their transactions are valid.

(D) Take a nondiscriminatory approach to electronic signatures and authentication methods from other jurisdictions.

(b) Consultation

In conducting the activities required by this section, the Secretary shall consult with users and providers of electronic signature products and services and other interested persons.

(c) Definitions

As used in this section, the terms "electronic record" and "electronic signature" have the same meanings provided in section 7006 of this title.

(Pub. L. 106–229, title III, §301, June 30, 2000, 114 Stat. 475.)

CHAPTER 97—WOMEN'S BUSINESS ENTERPRISE DEVELOPMENT

Sec.

EDITORIAL NOTES

CODIFICATION

This chapter is comprised of title IV of Pub. L. 100–533, as added by Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4193, and amended. Title IV of Pub. L. 100–533 was formerly set out as a note under section 631 of this title.

§7101. Establishment of the Interagency Committee

There is established an interagency committee to be known as the Interagency Committee on Women's Business Enterprise.

(Pub. L. 100–533, title IV, §401, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4193.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 401 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2694, related to the establishment of the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403. See section 7105 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–554, §1(a)(9) [title VII, §701], Dec. 21, 2000, 114 Stat. 2763, 2763A–701, provided that: "This title [amending sections 7107, 7109, and 7110 of this title and repealing former section 7109 of this title] may be cited as the 'National Women's Business Council Reauthorization Act of 2000'."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 12138. NATIONAL WOMEN'S BUSINESS ENTERPRISE POLICY AND NATIONAL PROGRAM FOR WOMEN'S BUSINESS ENTERPRISE

Ex. Ord. No. 12138, May 18, 1979, 44 F.R. 29637, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

In response to the findings of the Interagency Task Force on Women Business Owners and congressional findings that recognize:

1. the significant role which small business and women entrepreneurs can play in promoting full employment and balanced growth in our economy;

2. the many obstacles facing women entrepreneurs; and

3. the need to aid and stimulate women's business enterprise;

By the authority vested in me as President of the United States of America, in order to create a National Women's Business Enterprise Policy and to prescribe arrangements for developing, coordinating and implementing a national program for women's business enterprise, it is ordered as follows:

1–1. RESPONSIBILITIES OF THE FEDERAL DEPARTMENTS AND AGENCIES

1–101. Within the constraints of statutory authority and as otherwise permitted by law:

(a) Each department and agency of the Executive Branch shall take appropriate action to facilitate, preserve and strengthen women's business enterprise and to ensure full participation by women in the free enterprise system.

(b) Each department and agency shall take affirmative action in support of women's business enterprise in appropriate programs and activities including but not limited to:

(1) management, technical, financial and procurement assistance,

(2) business-related education, training, counseling and information dissemination, and

(3) procurement.

(c) Each department or agency empowered to extend Federal financial assistance to any program or activity shall issue regulations requiring the recipient of such assistance to take appropriate affirmative action in support of women's business enterprise and to prohibit actions or policies which discriminate against women's business enterprise on the ground of sex. For purposes of this subsection, Federal financial assistance means assistance extended by way of grant, cooperative agreement, loan or contract other than a contract of insurance or guaranty. These regulations shall prescribe sanctions for noncompliance. Unless otherwise

specified by law, no agency sanctions shall be applied until the agency or department concerned has advised the appropriate person or persons of the failure to comply with its regulations and has determined that compliance cannot be secured by voluntary means.

1–102. For purposes of this Order, affirmative action may include, but is not limited to, creating or supporting new programs responsive to the special needs of women's business enterprise, establishing incentives to promote business or business-related opportunities for women's business enterprise, collecting and disseminating information in support of women's business enterprise, and insuring to women's business enterprise knowledge of and ready access to business-related services and resources. If, in implementing this Order, an agency undertakes to use or to require compliance with numerical set-asides, or similar measures, it shall state the purpose of such measure, and the measure shall be designed on the basis of pertinent factual findings of discrimination against women's business enterprise and the need for such measure.

1–103. In carrying out their responsibilities under Section 1–1, the departments and agencies shall consult the Department of Justice, and the Department of Justice shall provide legal guidance concerning these responsibilities.

1–2. ESTABLISHMENT OF THE INTERAGENCY COMMITTEE ON WOMEN'S BUSINESS ENTERPRISE

1–201. To help insure that the actions ordered above are carried out in an effective manner, I hereby establish the Interagency Committee on Women's Business Enterprise (hereinafter called the Committee).

1–202. The Chairperson of the Committee (hereinafter called the Chairperson) shall be appointed by the President. The Chairperson shall be the presiding officer of the Committee and shall have such duties as prescribed in this Order or by the Committee in its rules of procedure. The Chairperson may also represent his or her department, agency or office on the Committee.

1–203. The Committee shall be composed of the Chairperson and other members appointed by the heads of departments and agencies from among high level policy-making officials. In making these appointments, the recommendations of the Chairperson shall be taken into consideration. The following departments and agencies and such other departments and agencies as the Chairperson shall select shall be members of the Committee: the Departments of Agriculture; Commerce; Defense; Energy; Health and Human Services; Housing and Urban Development; Interior; Justice; Labor; Transportation; Treasury; the Federal Trade Commission; General Services Administration; National Science Foundation; Office of Federal Procurement Policy; and the Small Business Administration. These members shall have a vote. Nonvoting members shall include the Executive Director of the Committee and at least one but no more than three representatives from the Executive Office of the President appointed by the President.

1–204. The Committee shall meet at least quarterly at the call of the Chairperson, and at such other times as may be determined to be useful according to the rules of procedure adopted by the Committee.

1–205. The Administrator of the Small Business Administration shall provide an Executive Director and adequate staff and administrative support for the Committee. The staff shall be located in the Office of the Chief Counsel for Advocacy of the Small Business Administration, or in such other office as may be established specifically to further the policies expressed herein. Nothing in this Section prohibits the use of other properly available funds and resources in support of the Committee.

1–3. FUNCTIONS OF THE COMMITTEE

The Committee shall in a manner consistent with law:

1–301. Promote, coordinate and monitor the plans, programs and operations of the departments and agencies of the Executive Branch which may contribute to the establishment, preservation and strengthening of women's business enterprise. It may, as appropriate, develop comprehensive interagency plans and specific program goals for women's business enterprise with the cooperation of the departments and agencies.

1–302. Establish such policies, definitions, procedures and guidelines to govern the implementation, interpretation and application of this order, and generally perform such functions and take such steps as the Committee may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.

1–303. Promote the mobilization of activities and resources of State and local governments, business and trade associations, private industry, colleges and universities, foundations, professional organizations, and volunteer and other groups toward the growth of women's business enterprise, and facilitate the coordination of the efforts of these groups with those of the departments and agencies.

1–304. Make an annual assessment of the progress made in the Federal Government toward assisting women's business enterprise to enter the mainstream of business ownership and to provide recommendations for future actions to the President.

1–305. Convene and consult as necessary with persons inside and outside government to develop and promote new ideas concerning the development of women's business enterprise.

1–306. Consider the findings and recommendations of government and private sector investigations and studies of the problems of women entrepreneurs, and promote further research into such problems.

1–307. Design a comprehensive and innovative plan for a joint Federal and private sector effort to develop increased numbers of new women-owned businesses and larger and more successful women-owned businesses. The plan should set specific reasonable targets which can be achieved at reasonable and identifiable costs and should provide for the measurement of progress towards these targets at the end of two and five years. Related outcomes such as income and tax revenues generated, jobs created, new products and services introduced or new domestic or foreign markets created should also be projected and measured in relation to costs wherever possible. The Committee should submit the plan to the President for approval within six months of the effective date of this Order.

1–4. OTHER RESPONSIBILITIES OF THE FEDERAL DEPARTMENTS AND AGENCIES

1–401. The head of each department and agency shall designate a high level official to have the responsibility for the participation and cooperation of that department or agency in carrying out this Executive order. This person may be the same person who is the department or agency's representative to the Committee.

1–402. To the extent permitted by law, each department and agency upon request by the Chairperson shall furnish information, assistance and reports and otherwise cooperate with the Chairperson and the Committee in the performance of their functions hereunder. Each department or agency shall ensure that systematic data collection processes are capable of providing the Committee current data helpful in evaluating and promoting the efforts herein described.

1–403. The officials designated under Section 1–401, when so requested, shall review the policies and programs of the women's business enterprise program, and shall keep the Chairperson informed of proposed budget, plans and programs of their departments or agencies affecting women's business enterprise.

1–404. Each Federal department or agency, within constraints of law, shall continue current efforts to foster and promote women's business enterprise and to support the program herein set forth, and shall cooperate with the Chairperson and the Committee in increasing the total Federal effort.

1–5. REPORTS

1–501. The Chairperson shall, promptly after the close of the fiscal year, submit to the President a full report of the activities of the Committee hereunder during the previous fiscal year. Further, the Chairperson shall, from time to time, submit to the President the Committee's recommendations for legislation or other action to promote the purposes of this Order.

1–502. Each Federal department and agency shall report to the Chairperson as hereinabove provided on a timely basis so that the Chairperson and the Committee can consider such reports for the Committee report to the President.

1–6. DEFINITIONS

For the purposes of this Order, the following definitions shall apply:

1–601. "Women-owned business" means a business that is at least 51 percent owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

1–602. "Women's business enterprise" means a woman-owned business or businesses or the efforts of a woman or women to establish, maintain or develop such a business or businesses.

1–603. Nothing in subsections 1–601 or 1–602 of this Section (1–6) should be construed to prohibit the use of other definitions of a woman-owned business or women's business enterprise by departments and agencies of the Executive Branch where other definitions are deemed reasonable and useful for any purpose not inconsistent with the purposes of this Order. Wherever feasible, departments and agencies should use the definition of a woman-owned business in subsection 1–601 above for monitoring performance with respect to women's business enterprise in order to assure comparability of data throughout the Federal Government.

1–7. CONSTRUCTION

Nothing in this Order shall be construed as limiting the meaning or effect of any existing Executive order.

§7102. Duties of the Interagency Committee

(a) In general

The Interagency Committee shall—

(1) monitor, coordinate, and promote the plans, programs, and operations of the departments and agencies of the Federal Government that may contribute to the establishment and growth of women's business enterprise;

(2) develop and promote new public sector initiatives, policies, programs, and plans designed to foster women's business enterprise;

(3) review, monitor, and coordinate plans and programs, developed in the public sector, which affect the ability of women-owned businesses to obtain capital and credit;

(4) promote and assist, as appropriate, in the development of surveys of women-owned business; and

(5) design a comprehensive plan for a joint public-private sector effort to facilitate growth and development of women's business enterprise, which plan shall, not later than 1 year after October 22, 1994, be submitted to the President for review.

(b) Meetings

The Interagency Committee shall meet not less than biannually at such times as the Interagency Committee determines to be necessary to perform the duties under subsection (a). A majority of the members of the Committee shall constitute a quorum for the approval of recommendations or reports issued pursuant to this section.

(c) Interaction with Council

In performing its duties under subsection (a), the Interagency Committee shall consult with the Council. The Interagency Committee may meet jointly with the Council at the discretion of the chairperson of the Interagency Committee and the chairperson of the Council, but not less frequently than twice annually. The chairperson of the Interagency Committee shall serve as chairperson of any joint meetings of the Interagency Committee and the Council.

(Pub. L. 100–533, title IV, §402, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4193.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 402 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2694, related to duties of the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403. See section 7106 of this title.

§7103. Membership of the Interagency Committee

(a) In general

(1) Participants

The Interagency Committee shall be composed of 1 representative from each of the following:

(A) The Department of Commerce.

(B) The Department of Defense.

(C) The Department of Health and Human Services.

(D) The Department of Labor.

(E) The Small Business Administration.

(F) The Department of Transportation.

(G) The Department of the Treasury.

(H) The General Services Administration.

(I) The Board of Governors of the Federal Reserve.

(J) The Executive staff of the President engaged in policymaking activities.

(2) Appointments

(A) In general

Except as provided in subparagraph (B), the head of each department and agency listed in paragraph (1) shall, not later than 45 days after December 2, 1997, designate a representative who shall be a policymaking official within the department or agency, and who shall report directly to the head of the agency on the status of the activities of the Interagency Committee.

(B) Small Business Administration

With respect to the Small Business Administration, the representative shall be the Assistant Administrator of the Office of Women's Business Ownership, who also shall serve as the vice chairperson of the Interagency Committee and shall report directly to the Administrator on the status of the activities on the Interagency Committee and shall serve as the Interagency Committee Liaison to the National Women's Business Council established under section 7105 of this title.

(3) Other participation

Other representatives of the Federal Government not listed in paragraph (1) may participate in the meetings and functions of the Interagency Committee on a temporary basis as needed to carry out specific Interagency Committee goals.

(b) Appointment of chairperson

Not later than 45 days after December 2, 1997, the President, in consultation with the Administrator of the Small Business Administration, shall appoint 1 of the members of the Interagency Committee to serve as chairperson.

(c) Noncompensation

The members of the Interagency Committee shall serve without additional pay for such membership.

(d) Detail of Federal employees

Upon request by the chairperson of the Interagency Committee, the head of any Federal department or agency may detail any of the personnel of such agency to assist the Interagency Committee in carrying out its duties under this chapter without regard to section 3341 of title 5.

(Pub. L. 100–533, title IV, §403, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4194; amended Pub. L. 105–135, title III, §301, Dec. 2, 1997, 111 Stat. 2608.)

EDITORIAL NOTES

CODIFICATION

December 2, 1997, referred to in subsec. (a)(2)(A), was in the original "the date of enactment of the Small Business Administration Reauthorization Act of 1997" and December 2, 1997, referred to in subsec. (b), was in the original "enactment of the Small Business Administration Reauthorization Act of 1997", both of which were translated as meaning the date of enactment of the Small Business Reauthorization Act of 1997, Pub. L. 105–135, which was approved Dec. 2, 1997, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 403 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2694; Pub. L. 102–191, §5, Dec. 5, 1991, 105 Stat. 1591, related to membership of the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403. See section 7107 of this title.

AMENDMENTS

1997—Subsec. (a)(2)(A). Pub. L. 105–135, §301(1), substituted "December 2, 1997" for "October 22, 1994" and inserted before period at end ", and who shall report directly to the head of the agency on the status of the activities of the Interagency Committee". See Codification note above.

Subsec. (a)(2)(B). Pub. L. 105–135, §301(2), inserted before period at end "and shall report directly to the Administrator on the status of the activities on the Interagency Committee and shall serve as the Interagency

Committee Liaison to the National Women's Business Council established under section 7105 of this title".

Subsec. (b). Pub. L. 105–135, §301(3), substituted "December 2, 1997" for "October 22, 1994". See Codification note above.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

§7104. Reports from the Interagency Committee

Not later than September 30, 1995, and annually thereafter, the Interagency Committee shall transmit, through the Small Business Administration, to the President and to the Committees on Small Business of the Senate and the House of Representatives, a report containing—

(1) a detailed description of the activities of the Interagency Committee, including a verbatim report on the status of progress of the Interagency Committee in meeting its responsibilities and duties under section 7102(a) of this title;

(2) the findings and conclusions of the Interagency Committee; and

(3) the Interagency Committee's recommendations for such legislation and administrative actions as the Interagency Committee considers appropriate to promote the development of small business concerns owned and controlled by women.

(Pub. L. 100–533, title IV, §404, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4194; amended Pub. L. 105–135, title III, §302, Dec. 2, 1997, 111 Stat. 2608.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 404 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2695, related to appointment and pay of the Director and staff of the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403. See section 7107 of this title.

AMENDMENTS

1997—Pub. L. 105–135, §302(1), in introductory provisions, inserted ", through the Small Business Administration," after "transmit".

Par. (1). Pub. L. 105–135, §302(3), inserted before semicolon at end ", including a verbatim report on the status of progress of the Interagency Committee in meeting its responsibilities and duties under section 7102(a) of this title".

Pub. L. 105–135, §302(2), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: "any recommendations of the Council and any comments of the Interagency Committee thereon;".

Pars. (2) to (4). Pub. L. 105–135, §302(2), redesignated pars. (2) to (4) as (1) to (3), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

§7105. Establishment of the National Women's Business Council

There is established a council to be known as the National Women's Business Council, which shall serve as an independent source of advice and policy recommendations to the Interagency Committee, to the Administrator through the Assistant Administrator of the Office of Women's Business Ownership, to the Congress, and to the President.

(Pub. L. 100–533, title IV, §405, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4195.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 405 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2696, related to powers of the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403.

§7106. Duties of the Council

(a) In general

The Council shall advise and consult with the Interagency Committee on matters relating to the activities, functions, and policies of the Interagency Committee, as provided in this chapter. The Council shall meet jointly with the Interagency Committee at the discretion of the chairperson of the Council and the chairperson of the Interagency Committee, but not less than biannually.

(b) Meetings

The Council shall meet separately at such times as the Council deems necessary. A majority of the members of the Council shall constitute a quorum for the approval of recommendations or reports issued pursuant to this section.

(c) Recommendations

The Council shall make annual recommendations for consideration by the Interagency Committee. The Council shall also provide reports and make such other recommendations as it deems appropriate to the Interagency Committee, to the President, to the Administrator (through the Assistant Administrator of the Office of Women's Business Ownership), and to the Committees on Small Business of the Senate and the House of Representatives.

(d) Other duties

The Council shall—

(1) review, coordinate, and monitor plans and programs developed in the public and private sectors, which affect the ability of women-owned business enterprises to obtain capital and credit;

(2) promote and assist in the development of a women's business census and other surveys of women-owned businesses;

(3) monitor and promote the plans, programs, and operations of the departments and agencies of the Federal Government which may contribute to the establishment and growth of women's business enterprise;

(4) develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprise;

(5) advise and consult with the Interagency Committee in the design of a comprehensive plan for a joint public-private sector effort to facilitate growth and development of women's business enterprise; [1]

(6) not later than 90 days after the last day of each fiscal year, submit to the President and to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives, a report containing—

(A) a detailed description of the activities of the council,[2] including a status report on the Council's progress toward meeting its duties outlined in subsections (a) and (d) of this section;

(B) the findings, conclusions, and recommendations of the Council; and

(C) the Council's recommendations for such legislation and administrative actions as the Council considers appropriate to promote the development of small business concerns owned and controlled by women.

(e) Form of transmittal

The information included in each report under subsection (d) that is described in subparagraphs (A) through (C) of subsection (d)(6), shall be reported verbatim, together with any separate additional, concurring, or dissenting views of the Administrator.

(Pub. L. 100–533, title IV, §406, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4195; amended Pub. L. 105–135, title III, §303, Dec. 2, 1997, 111 Stat. 2609.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 406 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2696, related to requirement of reports to the President and Congress by the National Women's Business Council, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403.

AMENDMENTS

1997—Subsec. (c). Pub. L. 105–135, §303(1), inserted "(through the Assistant Administrator of the Office of Women's Business Ownership)" after "Administrator".

Subsec. (d)(6). Pub. L. 105–135, §303(2), added par. (6).

Subsec. (e). Pub. L. 105–135, §303(2), added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

[1] So in original. Semicolon probably should be followed by "and".

[2] So in original. Probably should be capitalized.

§7107. Membership of the Council

(a) Chairperson

The President shall appoint an individual to serve as chairperson of the Council, in consultation with the Administrator. The chairperson of the Council shall be a prominent business woman who is qualified to head the Council by virtue of her education, training, and experience.

(b) Other members

The Administrator shall, after receiving the recommendations of the Chairman and the Ranking Member of the Committees on Small Business of the House of Representatives and the Senate, appoint, in consultation with the chairperson of the Council appointed under subsection (a), 14 members of the Council, of whom—

(1) 4 shall be—

(A) owners of small businesses, as such term is defined in section 632 of this title; and

(B) members of the same political party as the President;

(2) 4 shall—

(A) be owners of small businesses, as such term is defined in section 632 of this title; and

(B) not be members of the same political party as the President; and

(3) 6 shall be representatives of women's business organizations, including representatives of women's business center sites.

(c) Diversity

In appointing members of the Council, the Administrator shall, to the extent possible, ensure that the members appointed reflect geographic (including both urban and rural areas), racial, economic, and sectoral diversity.

(d) Terms

Each member of the Council shall be appointed for a term of 3 years.

(e) Other Federal service

If any member of the Council subsequently becomes an officer or employee of the Federal Government or of the Congress, such individual may continue as a member of the Council for not longer than the 30-day period beginning on the date on which such individual becomes such an officer or employee.

(f) Vacancies

(1) In general

A vacancy on the Council shall be filled not later than 30 days after the date on which the vacancy occurs, in the manner in which the original appointment was made, and shall be subject to any conditions that applied to the original appointment.

(2) Unexpired term

An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(g) Reimbursements

Members of the Council shall serve without pay for such membership, except that members shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out the functions of the Council, in the same manner as persons serving on advisory boards pursuant to section 637(b) of this title.

(h) Executive director

The Administrator, in consultation with the chairperson of the Council, shall appoint an executive director of the Council. Upon the recommendation by the executive director, the chairperson of the Council may appoint and fix the pay of 4 additional employees of the Council, at a rate of pay not to exceed the maximum rate of pay payable for a position at GS–15 of the General Schedule. All such appointments shall be subject to the appropriation of funds.

(i) Rates of pay

The executive director and staff of the Council may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and except as provided in subsection (e), may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that the executive director may not receive pay in excess of the annual rate of basic pay payable for a position at ES–3 of the Senior Executive Pay Schedule under section 5832 [1] of title 5.

(Pub. L. 100–533, title IV, §407, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4196; amended Pub. L. 105–135, title III, §304, Dec. 2, 1997, 111 Stat. 2609; Pub. L. 106–554, §1(a)(9) [title VII, §702], Dec. 21, 2000, 114 Stat. 2763, 2763A–701.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Schedule, referred to in subsecs. (h) and (i), is set out under section 5332 of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 407 of Pub. L. 100–533, title IV, Oct. 25, 1988, 102 Stat. 2696; Pub. L. 103–81, §11, Aug. 13, 1993, 107 Stat. 783, related to authorization of appropriations to carry out this chapter, prior to the general amendment of title IV of Pub. L. 100–533 by Pub. L. 103–403. See section 7110 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554, §1(a)(9) [title VII, §702(1)], substituted "The President" for "Not later than 45 days after December 2, 1997, the President".

Subsec. (b). Pub. L. 106–554, §1(a)(9) [title VII, §702(2)], in introductory provisions, substituted "The Administrator" for "Not later than 60 days after December 2, 1997, the Administrator" and struck out "the Assistant Administrator of the Office of Women's Business Ownership and" after "in consultation with".

Subsec. (d). Pub. L. 106–554, §1(a)(9) [title VII, §702(3)], struck out before period at end ", except that, of the initial members appointed to the Council—

"(1) 2 members appointed under subsection (b)(1) of this section shall be appointed for a term of 1 year;

"(2) 2 members appointed under subsection (b)(2) of this section shall be appointed for a term of 1 year; and

"(3) each member appointed under subsection (b)(3) of this section shall be appointed for a term of 2 years".

Subsec. (h). Pub. L. 106–554, §1(a)(9) [title VII, §702(4)], substituted "The Administrator" for "Not later than 60 days after October 22, 1994, the Administrator".

1997—Subsec. (a). Pub. L. 105–135, §304(1), made substitution in original which was executed by substituting "December 2, 1997" for "October 22, 1994" to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 105–135, §304(2)(A)–(C), in introductory provisions made substitution in original which was executed by substituting "December 2, 1997" for "October 22, 1994" to reflect the probable intent of Congress, inserted ", after receiving the recommendations of the Chairman and the Ranking Member of the Committees on Small Business of the House of Representatives and the Senate," after "the Administrator shall", and substituted "14" for "9".

Subsec. (b)(1), (2). Pub. L. 105–135, §304(2)(D), (E), substituted "4" for "2" in introductory provisions.

Subsec. (b)(3). Pub. L. 105–135, §304(2)(F), substituted "6" for "5", struck out "national" after "representatives of", and inserted before period at end ", including representatives of women's business center sites".

Subsec. (c). Pub. L. 105–135, §304(3), inserted "(including both urban and rural areas)" after "geographic".

Subsec. (d). Pub. L. 105–135, §304(4), added subsec. (d) and struck out heading and text of former subsec. (d). Text read as follows: "The term of service of the members of the Council shall be 3 years."

Subsec. (f). Pub. L. 105–135, §304(5), added subsec. (f) and struck out heading and text of former subsec. (f). Text read as follows: "A vacancy on the Council shall, not later than 30 days after the date on which the vacancy occurs, be filled in the same manner in which the original appointment was made."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

[1] *So in original. Probably should be section "5382".*

§7108. Definitions

For purposes of this chapter—

(1) the term "Administration" means the Small Business Administration;

(2) the term "Administrator" means the Administrator of the Small Business Administration;

(3) the term "control" means exercising the power to make policy decisions concerning a business;

(4) the term "Council" means the National Women's Business Council, established under section 7105 of this title;

(5) the term "Interagency Committee" means the Interagency Committee on Women's Business Enterprise, established under section 7101 of this title;

(6) the term "operate" means being actively involved in the day-to-day management of a business;

(7) the term "women's business enterprise" means—

(A) a business or businesses owned by a woman or a group of women; or

(B) the establishment, maintenance, or development of a business or businesses by a woman or a group of women; and

(8) the term "women-owned business" means a small business which a woman or a group of women—

(A) control and operate; and

(B) own not less than 51 percent of the business.

(Pub. L. 100–533, title IV, §408, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4197.)

§7109. Studies and other research

(a) In general

The Council may conduct such studies and other research relating to the award of Federal prime contracts and subcontracts to women-owned businesses, to access to credit and investment capital by women entrepreneurs, or to other issues relating to women-owned businesses, as the Council determines to be appropriate.

(b) Contract authority

In conducting any study or other research under this section, the Council may contract with one or more public or private entities.

(Pub. L. 100–533, title IV, §409, formerly §410, as added Pub. L. 105–135, title III, §307, Dec. 2, 1997, 111 Stat. 2611; renumbered §409 and amended Pub. L. 106–554, §1(a)(9) [title VII, §704], Dec. 21, 2000, 114 Stat. 2763, 2763A–701.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 409 of Pub. L. 100–533, as added Pub. L. 105–135, title III, §306, Dec. 2, 1997, 111 Stat. 2610, related to the National Women's Business Council procurement project, prior to repeal by Pub. L. 106–554, §1(a)(9) [title VII, §703], Dec. 21, 2000, 114 Stat. 2763, 2763A–701.

Another prior section 409 of Pub. L. 100–533 was renumbered section 410 and is classified to section 7110 of this title.

AMENDMENTS

2000—Pub. L. 106–554 amended section catchline and text generally. Prior to amendment, text provided conditional authorization for the Council to conduct studies and research relating to the award of Federal prime contracts and subcontracts to women-owned businesses or to issues relating to access to credit and

investment capital by women entrepreneurs and to contract with other entities to conduct such studies and research.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as an Effective Date of 1997 Amendment note under section 631 of this title.

§7110. Authorization of appropriations

(a) In general

There is authorized to be appropriated to carry out this chapter $1,000,000, for each of fiscal years 2001 through 2003, of which $550,000 shall be available in each such fiscal year to carry out section 7109 of this title.

(b) Budget review

No amount made available under this section for any fiscal year may be obligated or expended by the Council before the date on which the Council reviews and approves the operating budget of the Council to carry out the responsibilities of the Council for that fiscal year.

(Pub. L. 100–533, title IV, §410, formerly §409, as added Pub. L. 103–403, title IV, §413, Oct. 22, 1994, 108 Stat. 4197; renumbered §411 and amended Pub. L. 105–135, title III, §305, Dec. 2, 1997, 111 Stat. 2610; renumbered §410 and amended Pub. L. 106–554, §1(a)(9) [title VII, §705], Dec. 21, 2000, 114 Stat. 2763, 2763A–702.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 410 of Pub. L. 100–533 was renumbered section 409 and is classified to section 7109 of this title.

AMENDMENTS

2000—Pub. L. 106–554 amended section catchline and text generally. Prior to amendment, text authorized appropriations to carry out this chapter for fiscal years 1998 through 2000 and limited obligation or expenditure of those funds prior to the budget review by the Council for that fiscal year.

1997—Pub. L. 105–135 amended section catchline and text generally. Prior to amendment, text read as follows: "There are authorized to be appropriated for each of fiscal years 1995 through 1997, to carry out this chapter, $350,000."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

CHAPTER 98—PUBLIC COMPANY ACCOUNTING REFORM AND CORPORATE RESPONSIBILITY

Sec.

§7201. Definitions

Except as otherwise specifically provided in this Act, in this Act, the following definitions shall apply:

(1) Appropriate State regulatory authority

The term "appropriate State regulatory authority" means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) Audit

The term "audit" means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 7213 of this title, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) Audit committee

The term "audit committee" means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(4) Audit report

The term "audit report" means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) Board

The term "Board" means the Public Company Accounting Oversight Board established under section 7211 of this title.

(6) Commission

The term "Commission" means the Securities and Exchange Commission.

(7) Issuer

The term "issuer" means an issuer (as defined in section 78c of this title), the securities of which are registered under section 78l of this title, or that is required to file reports under section 78o(d) of this title, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(8) Non-audit services

The term "non-audit services" means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

(9) Person associated with a public accounting firm

(A) In general

The terms "person associated with a public accounting firm" (or with a "registered public accounting firm") and "associated person of a public accounting firm" (or of a "registered public accounting firm") mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) Exemption authority

The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is consistent with the purposes of this Act, the public interest, or the protection of investors.

(C) Investigative and enforcement authority

For purposes of sections 7202(c), 7211(c), 7215, and 7217(c) of this title and the rules of the Board and Commission issued thereunder, except to the extent specifically excepted by such rules, the terms defined in subparagraph (A) shall include any person associated, seeking to become associated, or formerly associated with a public accounting firm, except that—

(i) the authority to conduct an investigation of such person under section 7215(b) of this title shall apply only with respect to any act or practice, or omission to act, by the person while such person was associated or seeking to become associated with a registered public accounting firm; and

(ii) the authority to commence a disciplinary proceeding under section 7215(c)(1) of this

title, or impose sanctions under section 7215(c)(4) of this title, against such person shall apply only with respect to—

(I) conduct occurring while such person was associated or seeking to become associated with a registered public accounting firm; or

(II) non-cooperation, as described in section 7215(b)(3) of this title, with respect to a demand in a Board investigation for testimony, documents, or other information relating to a period when such person was associated or seeking to become associated with a registered public accounting firm.

(10) Professional standards

The term "professional standards" means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933 [15 U.S.C. 77s(b)], or prescribed by the Commission under section 19(a) of that Act [15 U.S.C. 77s(a)] or section 78m(b) of this title; and

(ii) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers; and

(ii) are established or adopted by the Board under section 7213(a) of this title, or are promulgated as rules of the Commission.

(11) Public accounting firm

The term "public accounting firm" means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

(B) to the extent so designated by the rules of the Board, any associated person of any entity described in subparagraph (A).

(12) Registered public accounting firm

The term "registered public accounting firm" means a public accounting firm registered with the Board in accordance with this Act.

(13) Rules of the Board

The term "rules of the Board" means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 7217 of this title), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

(14) Security

The term "security" has the same meaning as in section 78c(a) of this title.

(15) Securities laws

The term "securities laws" means the provisions of law referred to in section 78c(a)(47) of this title and includes the rules, regulations, and orders issued by the Commission thereunder.

(16) State

The term "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(17) Foreign auditor oversight authority

The term "foreign auditor oversight authority" means any governmental body or other entity

empowered by a foreign government to conduct inspections of public accounting firms or otherwise to administer or enforce laws related to the regulation of public accounting firms.

(Pub. L. 107–204, §2(a), July 30, 2002, 116 Stat. 746; Pub. L. 111–203, title IX, §§929F(g)(1), 981(a), 982(a)(2), July 21, 2010, 124 Stat. 1854, 1926, 1928.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The Securities Act of 1933, referred to in par. (7), is title I of act May 27, 1933, ch. 38, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

Title II, referred to in par. (10)(B), means title II of Pub. L. 107–204, July 30, 2002, 116 Stat. 771, which enacted subchapter II of this chapter and amended sections 78c, 78j–1, 78l and 78q of this title. For complete classification of title II to the Code, see Tables.

AMENDMENTS

2010—Pub. L. 111–203, §982(a)(2), substituted "Except as otherwise specifically provided in this Act, in this" for "In this" in introductory provisions.

Par. (9)(C). Pub. L. 111–203, §929F(g)(1), added subpar. (C).

Par. (17). Pub. L. 111–203, §981(a), added par. (17).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

SHORT TITLE OF 2020 AMENDMENT

Pub. L. 116–222, §1, Dec. 18, 2020, 134 Stat. 1063, provided that: "This Act [enacting section 7214a of this title and amending section 7214 of this title] may be cited as the 'Holding Foreign Companies Accountable Act'."

SHORT TITLE

Pub. L. 107–204, §1(a), July 30, 2002, 116 Stat. 745, provided that: "This Act [see Tables for classification] may be cited as the 'Sarbanes-Oxley Act of 2002'."

GAO STUDY AND REPORT REGARDING CONSOLIDATION OF PUBLIC ACCOUNTING FIRMS

Pub. L. 107–204, title VII, §701, July 30, 2002, 116 Stat. 797, directed the Comptroller General, in consultation with the Commission, regulatory agencies in other countries of the Group of Seven Industrialized Nations, the Justice Department, and others, to study the factors resulting in the consolidation of public accounting firms and their impact, and to report the study findings to Congress not later than 1 year after July 30, 2002.

§7202. Commission rules and enforcement

(a) Regulatory action

The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.

(b) Enforcement

(1) In general

A violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.

(2) to (4) Omitted

(c) Effect on Commission authority

Nothing in this Act or the rules of the Board shall be construed to impair or limit—

(1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

(2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law; or

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any registered public accounting firm or any associated person thereof.

(Pub. L. 107–204, §3, July 30, 2002, 116 Stat. 749.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

CODIFICATION

Section is comprised of section 3 of Pub. L. 107–204. Subsec. (b)(2)–(4) of section 3 of Pub. L. 107–204 amended sections 78l, 78u, and 78u–3 of this title.

SUBCHAPTER I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

§7211. Establishment; administrative provisions

(a) Establishment of Board

There is established the Public Company Accounting Oversight Board, to oversee the audit of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

(b) Status

The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a

nonprofit corporation by, the District of Columbia Nonprofit Corporation Act. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.

(c) Duties of the Board

The Board shall, subject to action by the Commission under section 7217 of this title, and once a determination is made by the Commission under subsection (d) of this section—

(1) register public accounting firms that prepare audit reports for issuers, brokers, and dealers, in accordance with section 7212 of this title;

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, brokers, and dealers, in accordance with section 7213 of this title;

(3) conduct inspections of registered public accounting firms, in accordance with section 7214 of this title and the rules of the Board;

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon, registered public accounting firms and associated persons of such firms, in accordance with section 7215 of this title;

(5) perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

(6) enforce compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; and

(7) set the budget and manage the operations of the Board and the staff of the Board.

(d) Commission determination

The members of the Board shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine, not later than 270 days after July 30, 2002, that the Board is so organized and has the capacity to carry out the requirements of this subchapter, and to enforce compliance with this subchapter by registered public accounting firms and associated persons thereof. The Commission shall be responsible, prior to the appointment of the Board, for the planning for the establishment and administrative transition to the Board's operation.

(e) Board membership

(1) Composition

The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers, brokers, and dealers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

(2) Limitation

Two members, and only 2 members, of the Board shall be or have been certified public accountants pursuant to the laws of 1 or more States, provided that, if 1 of those 2 members is the chairperson, he or she may not have been a practicing certified public accountant for at least 5 years prior to his or her appointment to the Board.

(3) Full-time independent service

Each member of the Board shall serve on a full-time basis, and may not, concurrent with service on the Board, be employed by any other person or engage in any other professional or business activity. No member of the Board may share in any of the profits of, or receive payments from, a

public accounting firm (or any other person, as determined by rule of the Commission), other than fixed continuing payments, subject to such conditions as the Commission may impose, under standard arrangements for the retirement of members of public accounting firms.

(4) Appointment of Board members

(A) Initial Board

Not later than 90 days after July 30, 2002, the Commission, after consultation with the Chairman of the Board of Governors of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.

(B) Vacancies

A vacancy on the Board shall not affect the powers of the Board, but shall be filled in the same manner as provided for appointments under this section.

(5) Term of service

(A) In general

The term of service of each Board member shall be 5 years, and until a successor is appointed, except that—

(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and

(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

(B) Term limitation

No person may serve as a member of the Board, or as chairperson of the Board, for more than 2 terms, whether or not such terms of service are consecutive.

(6) Removal from office

A member of the Board may be removed by the Commission from office, in accordance with section 7217(d)(3) of this title, for good cause shown before the expiration of the term of that member.

(f) Powers of the Board

In addition to any authority granted to the Board otherwise in this Act, the Board shall have the power, subject to section 7217 of this title—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;

(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);

(5) to allocate, assess, and collect accounting support fees established pursuant to section 7219 of this title, for the Board, and other fees and charges imposed under this subchapter; and

(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this subchapter.

(g) Rules of the Board

The rules of the Board shall, subject to the approval of the Commission—

(1) provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under this Act;

(2) permit, as the Board determines necessary or appropriate, delegation by the Board of any of its functions to an individual member or employee of the Board, or to a division of the Board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter, except that—

(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion;

(B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and

(C) if the right to exercise a review described in subparagraph (A) is declined, or if no such review is sought within the time stated in the rules of the Board, then the action taken by the holder of such delegation shall for all purposes, including appeal or review thereof, be deemed to be the action of the Board;

(3) establish ethics rules and standards of conduct for Board members and staff, including a bar on practice before the Board (and the Commission, with respect to Board-related matters) of 1 year for former members of the Board, and appropriate periods (not to exceed 1 year) for former staff of the Board; and

(4) provide as otherwise required by this Act.

(h) Annual report to the Commission

The Board shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission.

(Pub. L. 107–204, title I, §101, July 30, 2002, 116 Stat. 750; Pub. L. 111–203, title IX, §982(b), July 21, 2010, 124 Stat. 1928.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsecs. (b), (c)(5), (6), (f), and (g)(1), (4), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (b), is Pub. L. 87–569, Aug. 6, 1962, 76 Stat. 265, which is not classified to the Code.

CONSTITUTIONALITY

For information regarding the constitutionality of certain provisions of this section, see the Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court on the Constitution Annotated website, constitution.congress.gov.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §982(b)(2), substituted "companies that" for "public companies that" and struck out "for companies the securities of which are sold to, and held by and for, public investors" after "independent audit reports".

Subsecs. (c)(1), (2), (e)(1). Pub. L. 111–203, §982(b)(1), substituted "issuers, brokers, and dealers" for "issuers".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7212. Registration with the Board

(a) Mandatory registration

It shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer, broker, or dealer.

(b) Applications for registration

(1) Form of application

A public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.

(2) Contents of applications

Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—

(A) the names of all issuers, brokers, and dealers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

(B) the annual fees received by the firm from each such issuer, broker, or dealer for audit services, other accounting services, and non-audit services, respectively;

(C) such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request;

(D) a statement of the quality control policies of the firm for its accounting and auditing practices;

(E) a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person, as well as the State license numbers of the firm itself;

(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

(G) copies of any periodic or annual disclosure filed by an issuer, broker, or dealer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer, broker, or dealer and the firm in connection with an audit report furnished or prepared by the firm for such issuer, broker, or dealer; and

(H) such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors.

(3) Consents

Each application for registration under this subsection shall include—

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this subchapter (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by subparagraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of the Board, shall be a condition to the continuing effectiveness of the registration of the firm with the Board.

(c) Action on applications

(1) Timing

The Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.

(2) Treatment

A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction for purposes of sections 7215(d) and 7217(c) of this title.

(d) Periodic reports

Each registered public accounting firm shall submit an annual report to the Board, and may be required to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2).

(e) Public availability

Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

(f) Registration and annual fees

The Board shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.

(Pub. L. 107–204, title I, §102, July 30, 2002, 116 Stat. 753; Pub. L. 111–203, title IX, §982(c), July 21, 2010, 124 Stat. 1928.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §982(c)(1), substituted "It" for "Beginning 180 days after the date of the determination of the Commission under section 7211(d) of this title, it".

Subsec. (b)(2)(A). Pub. L. 111–203, §982(c)(2)(A), substituted "issuers, brokers, and dealers" for "issuers".

Subsec. (b)(2)(B), (G). Pub. L. 111–203, §982(c)(2)(B), substituted "issuer, broker, or dealer" for "issuer" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7213. Auditing, quality control, and independence standards and rules

(a) Auditing, quality control, and ethics standards

(1) In general

The Board shall, by rule, establish, including, to the extent it determines appropriate, through

adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, such ethics standards, and such independence standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) Rule requirements

In carrying out paragraph (1), the Board—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;

(ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by the Board) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by the Board); and

(iii) in each audit report for an issuer, describe the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 7262(b) of this title, and present (in such report or in a separate report)—

(I) the findings of the auditor from such testing;

(II) an evaluation of whether such internal control structure and procedures—

(aa) include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(bb) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(III) a description, at a minimum, of material weaknesses in such internal controls, and of any material noncompliance found on the basis of such testing.

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from issuers, brokers, and dealers on behalf of which the firm issues audit reports;

(ii) consultation within such firm on accounting and auditing questions;

(iii) supervision of audit work;

(iv) hiring, professional development, and advancement of personnel;

(v) the acceptance and continuation of engagements;

(vi) internal inspection; and

(vii) such other requirements as the Board may prescribe, subject to subsection (a)(1).

(3) Authority to adopt other standards

(A) In general

In carrying out this subsection, the Board—

(i) may adopt as its rules, subject to the terms of section 7217 of this title, any portion of any statement of auditing standards or other professional standards that the Board determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Board, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

(B) Initial and transitional standards

The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the Commission under section 7211(d) of this title, and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 7217 of this title that otherwise would apply to the approval of rules of the Board.

(C) Transition period for emerging growth companies

Any rules of the Board requiring mandatory audit firm rotation or a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an emerging growth company, as defined in section 78c of this title. Any additional rules adopted by the Board after April 5, 2012, shall not apply to an audit of any emerging growth company, unless the Commission determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation.

(4) Advisory groups

The Board shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Board may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) Independence standards and rules

The Board shall establish such rules as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, title II of this Act.

(c) Cooperation with designated professional groups of accountants and advisory groups

(1) In general

The Board shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a)(3)(A) and advisory groups convened under subsection (a)(4) in the examination of the need for changes in any standards subject to its authority under subsection (a), recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.

(2) Board responses

The Board shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which the Board has authority.

(d) Evaluation of standard setting process

The Board shall include in the annual report required by section 7211(h) of this title the results of its standard setting responsibilities during the period to which the report relates, including a discussion of the work of the Board with any designated professional groups of accountants and advisory groups described in paragraphs (3)(A) and (4) of subsection (a), and its pending issues agenda for future standard setting projects.

(Pub. L. 107–204, title I, §103, July 30, 2002, 116 Stat. 755; Pub. L. 111–203, title IX, §982(d), July

21, 2010, 124 Stat. 1929; Pub. L. 112–106, title I, §104, Apr. 5, 2012, 126 Stat. 310.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

Title II of this Act, referred to in subsec. (b), is title II of Pub. L. 107–204, July 30, 2002, 116 Stat. 771, which enacted subchapter II of this chapter and amended sections 78c, 78j–1, 78l, and 78q of this title. For complete classification of title II to the Code, see Tables.

AMENDMENTS

2012—Subsec. (a)(3)(C). Pub. L. 112–106 added subpar. (C).

2010—Subsec. (a)(1). Pub. L. 111–203, §982(d)(1), substituted "such ethics standards, and such independence standards" for "and such ethics standards".

Subsec. (a)(2)(A)(iii). Pub. L. 111–203, §982(d)(2), substituted "in each audit report for an issuer, describe" for "describe in each audit report" in introductory provisions.

Subsec. (a)(2)(B)(i). Pub. L. 111–203, §982(d)(3), substituted "issuers, brokers, and dealers" for "issuers".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7214. Inspections of registered public accounting firms

(a) In general

(1) Inspections generally

The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(2) Inspections of audit reports for brokers and dealers

(A) The Board may, by rule, conduct and require a program of inspection in accordance with paragraph (1), on a basis to be determined by the Board, of registered public accounting firms that provide one or more audit reports for a broker or dealer. The Board, in establishing such a program, may allow for differentiation among classes of brokers and dealers, as appropriate.

(B) If the Board determines to establish a program of inspection pursuant to subparagraph (A), the Board shall consider in establishing any inspection schedules whether differing schedules would be appropriate with respect to registered public accounting firms that issue audit reports only for one or more brokers or dealers that do not receive, handle, or hold customer securities or cash or are not a member of the Securities Investor Protection Corporation.

(C) Any rules of the Board pursuant to this paragraph shall be subject to prior approval by the Commission pursuant to section 7217(b) of this title before the rules become effective, including an opportunity for public notice and comment.

(D) Notwithstanding anything to the contrary in section 7212 of this title, a public accounting firm shall not be required to register with the Board if the public accounting firm is exempt from the inspection program which may be established by the Board under subparagraph (A).

(b) Inspection frequency

(1) In general

Subject to paragraph (2), inspections required by this section shall be conducted—

(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and

(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.

(2) Adjustments to schedules

The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors. The Board may conduct special inspections at the request of the Commission or upon its own motion.

(c) Procedures

The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—

(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;

(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

(3) begin a formal investigation or take disciplinary action, if appropriate, with respect to any such violation, in accordance with this Act and the rules of the Board.

(d) Conduct of inspections

In conducting an inspection of a registered public accounting firm under this section, the Board shall—

(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

(e) Record retention

The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 7213 of this title or the rules issued thereunder.

(f) Procedures for review

The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.

(g) Report

A written report of the findings of the Board for each inspection under this section, subject to subsection (h), shall be—

(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

(2) made available in appropriate detail to the public (subject to section 7215(b)(5)(A) of this title, and to the protection of such confidential and proprietary information as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.

(h) Interim Commission review

(1) Reviewable matters

A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or

(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2).

(2) Treatment of review

Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 78y of this title, or deemed to be "final agency action" for purposes of section 704 of title 5.

(3) Timing

Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).

(i) Disclosure Regarding Foreign Jurisdictions That Prevent Inspections

(1) Definitions

In this subsection—

(A) the term "covered issuer" means an issuer that is required to file reports under section 78m or 78o(d) of this title; and

(B) the term "non-inspection year" means, with respect to a covered issuer, a year—

(i) during which the Commission identifies the covered issuer under paragraph (2)(A) with respect to every report described in subparagraph (A) filed by the covered issuer during that year; and

(ii) that begins after December 18, 2020.

(2) Disclosure to Commission

The Commission shall—

(A) identify each covered issuer that, with respect to the preparation of the audit report on the financial statement of the covered issuer that is included in a report described in paragraph (1)(A) filed by the covered issuer, retains a registered public accounting firm that has a branch or office that—

(i) is located in a foreign jurisdiction; and

(ii) the Board is unable to inspect or investigate completely because of a position taken by an authority in a foreign jurisdiction, as determined by the Board; and

(B) require each covered issuer identified under subparagraph (A) to, in accordance with the rules issued by the Commission under paragraph (4), submit to the Commission documentation that establishes that the covered issuer is not owned or controlled by a governmental entity in the foreign jurisdiction described in subparagraph (A)(i).

(3) Trading prohibition after 2 years of non-inspections

(A) In general

If the Commission determines that a covered issuer has 2 consecutive non-inspection years, the Commission shall prohibit the securities of the covered issuer from being traded—

(i) on a national securities exchange; or

(ii) through any other method that is within the jurisdiction of the Commission to regulate, including through the method of trading that is commonly referred to as the "over-the-counter" trading of securities.

(B) Removal of initial prohibition

If, after the Commission imposes a prohibition on a covered issuer under subparagraph (A), the covered issuer certifies to the Commission that the covered issuer has retained a registered public accounting firm that the Board has inspected under this section to the satisfaction of the Commission, the Commission shall end that prohibition.

(C) Recurrence of non-inspection years

If, after the Commission ends a prohibition under subparagraph (B) or (D) with respect to a covered issuer, the Commission determines that the covered issuer has a non-inspection year, the Commission shall prohibit the securities of the covered issuer from being traded—

(i) on a national securities exchange; or

(ii) through any other method that is within the jurisdiction of the Commission to regulate, including through the method of trading that is commonly referred to as the "over-the-counter" trading of securities.

(D) Removal of subsequent prohibition

If, after the end of the 5-year period beginning on the date on which the Commission imposes a prohibition on a covered issuer under subparagraph (C), the covered issuer certifies to the Commission that the covered issuer will retain a registered public accounting firm that the Board is able to inspect under this section, the Commission shall end that prohibition.

(4) Rules

Not later than 90 days after December 18, 2020, the Commission shall issue rules that establish the manner and form in which a covered issuer shall make a submission required under paragraph (2)(B).

(Pub. L. 107–204, title I, §104, July 30, 2002, 116 Stat. 757; Pub. L. 111–203, title IX, §982(e)(1), July 21, 2010, 124 Stat. 1929; Pub. L. 116–222, §2, Dec. 18, 2020, 134 Stat. 1063; Pub. L. 117–328, div. AA, title III, §301, Dec. 29, 2022, 136 Stat. 5536.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsecs. (a)(1), (b), and (c), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2022—Subsec. (i)(2)(A)(ii). Pub. L. 117–328, §301(1), substituted "a foreign jurisdiction" for "the foreign jurisdiction described in clause (i)".

Subsec. (i)(3). Pub. L. 117–328, §301(2)(A), substituted "2" for "3" in heading.

Subsec. (i)(3)(A). Pub. L. 117–328, §301(2)(B), substituted "2" for "3".

2020—Subsec. (i). Pub. L. 116–222 added subsec. (i).

2010—Subsec. (a). Pub. L. 111–203 designated existing provisions as par. (1), inserted heading, and added par. (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7214a. Additional disclosure

(a) Definitions

In this section—

(1) the term "audit report" has the meaning given the term in section 7201(a) of this title;

(2) the term "Commission" means the Securities and Exchange Commission;

(3) the term "covered form"—

(A) means—

(i) the form described in section 249.310 of title 17, Code of Federal Regulations, or any successor regulation; and

(ii) the form described in section 249.220f of title 17, Code of Federal Regulations, or any successor regulation; and

(B) includes a form that—

(i) is the equivalent of, or substantially similar to, the form described in clause (i) or (ii) of subparagraph (A); and

(ii) a foreign issuer files with the Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or rules issued under that Act;

(4) the terms "covered issuer" and "non-inspection year" have the meanings given the terms in subsection (i)(1) of section 7214 of this title, as added by section 2 of this Act; and

(5) the term "foreign issuer" has the meaning given the term in section 240.3b–4 of title 17, Code of Federal Regulations, or any successor regulation.

(b) Requirement

Each covered issuer that is a foreign issuer and for which, during a non-inspection year with respect to the covered issuer, a registered public accounting firm described in subsection (i)(2)(A) of section 7214 of this title, as added by section 2 of this Act, has prepared an audit report shall disclose in each covered form filed by that issuer that covers such a non-inspection year—

(1) that, during the period covered by the covered form, such a registered public accounting firm has prepared an audit report for the issuer;

(2) the percentage of the shares of the issuer owned by governmental entities in the foreign jurisdiction in which the issuer is incorporated or otherwise organized;

(3) whether governmental entities in the applicable foreign jurisdiction with respect to that registered public accounting firm have a controlling financial interest with respect to the issuer;

(4) the name of each official of the Chinese Communist Party who is a member of the board of directors of—

(A) the issuer; or

(B) the operating entity with respect to the issuer; and

(5) whether the articles of incorporation of the issuer (or equivalent organizing document) contains any charter of the Chinese Communist Party, including the text of any such charter.

(Pub. L. 116–222, §3, Dec. 18, 2020, 134 Stat. 1064.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (a)(3)(B)(ii), is act June 6, 1934, ch. 404, 48

Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

Section 2 of this Act, referred to in subsecs. (a)(4) and (b), means section 2 of Pub. L. 116–222.

§7215. Investigations and disciplinary proceedings

(a) In general

The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

(b) Investigations

(1) Authority

In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

(2) Testimony and document production

In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) Noncooperation with investigations

(A) In general

If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

(ii) suspend or revoke the registration of the public accounting firm; and

(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

(B) Procedure

Any action taken by the Board under this paragraph shall be subject to the terms of section 7217(c) of this title.

(4) Coordination and referral of investigations

(A) Coordination

The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work with the work of the Commission's Division of Enforcement, as necessary to protect an ongoing Commission investigation.

(B) Referral

The Board may refer an investigation under this section—

(i) to the Commission;

(ii) to a self-regulatory organization, in the case of an investigation that concerns an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization;

(iii) to any other Federal functional regulator (as defined in section 6809 of this title), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

(iv) at the direction of the Commission, to—

(I) the Attorney General of the United States;

(II) the attorney general of 1 or more States; and

(III) the appropriate State regulatory authority.

(5) Use of documents

(A) Confidentiality

Except as provided in subparagraphs (B) and (C), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 7214 of this title or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a),[1] or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) Availability to Government agencies

Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) be made available to the Commission; and

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) the Attorney General of the United States;

(II) the appropriate Federal functional regulator (as defined in section 6809 of this title), other than the Commission, and the Director of the Federal Housing Finance Agency, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(III) State attorneys general in connection with any criminal investigation;

(IV) any appropriate State regulatory authority; and

(V) a self-regulatory organization, with respect to an audit report for a broker or dealer that is under the jurisdiction of such self-regulatory organization,

each of which shall maintain such information as confidential and privileged.

(C) Availability to foreign oversight authorities

Without the loss of its status as confidential and privileged in the hands of the Board, all

information referred to in subparagraph (A) that relates to a public accounting firm that a foreign government has empowered a foreign auditor oversight authority to inspect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, if—

(i) the Board finds that it is necessary to accomplish the purposes of this Act or to protect investors;

(ii) the foreign auditor oversight authority provides—

(I) such assurances of confidentiality as the Board may request;

(II) a description of the applicable information systems and controls of the foreign auditor oversight authority; and

(III) a description of the laws and regulations of the foreign government of the foreign auditor oversight authority that are relevant to information access; and

(iii) the Board determines that it is appropriate to share such information.

(6) Immunity

Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) Disciplinary procedures

(1) Notification; recordkeeping

The rules of the Board shall provide that in any proceeding by the Board to determine whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

(2) Public hearings

Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

(3) Supporting statement

A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

(4) Sanctions

If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this subchapter;

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm

or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than $100,000 for a natural person or $2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than $750,000 for a natural person or $15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

(5) Intentional or other knowing conduct

The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) Failure to supervise

(A) In general

The Board may impose sanctions under this section on a registered accounting firm or upon any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

(B) Rule of construction

No current or former supervisory person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any associated person for purposes of subparagraph (A), if—

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

(7) Effect of suspension

(A) Association with a public accounting firm

It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) Association with an issuer, broker, or dealer

It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated

with any issuer, broker, or dealer in an accountancy or a financial management capacity, and for any issuer, broker, or dealer that knew, or in the exercise of reasonable care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) Reporting of sanctions

(1) Recipients

If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

(A) the Commission;

(B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and

(C) the public (once any stay on the imposition of such sanction has been lifted).

(2) Contents

The information reported under paragraph (1) shall include—

(A) the name of the sanctioned person;

(B) a description of the sanction and the basis for its imposition; and

(C) such other information as the Board deems appropriate.

(e) Stay of sanctions

(1) In general

Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

(2) Expedited procedures

The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

(Pub. L. 107–204, title I, §105, July 30, 2002, 116 Stat. 759; Pub. L. 110–289, div. A, title I, §1161(h), July 30, 2008, 122 Stat. 2781; Pub. L. 111–203, title IX, §§929F(h), 981(b), (c), 982(f), (i), (j), July 21, 2010, 124 Stat. 1855, 1926, 1927, 1929–1931.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsecs. (b)(1), (5)(B)(ii), (C)(i), (6) and (c)(3)(B), (4), (6)(A), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

The Freedom of Information Act, referred to in subsec. (b)(5)(A), is section 552 of Title 5, Government Organization and Employees. Section 552a of Title 5 is commonly known as the "Privacy Act".

AMENDMENTS

2010—Subsec. (b)(4)(B)(ii) to (iv). Pub. L. 111–203, §982(i), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (b)(5)(A). Pub. L. 111–203, §981(c), substituted "subparagraphs (B) and (C)" for "subparagraph (B)".

Subsec. (b)(5)(B)(ii)(V). Pub. L. 111–203, §982(j), added subcl. (V).

Subsec. (b)(5)(C). Pub. L. 111–203, §981(b), added subpar. (C).

Subsec. (c)(6)(A). Pub. L. 111–203, §929F(h)(1), substituted "any person who is, or at the time of the alleged failure reasonably to supervise was, a supervisory person" for "the supervisory personnel" in introductory provisions.

Subsec. (c)(6)(B). Pub. L. 111–203, §929F(h)(2), in introductory provisions, substituted "No current or former supervisory person" for "No associated person" and "any associated person" for "any other person".

Subsec. (c)(7)(B). Pub. L. 111–203, §982(f), in heading, inserted ", broker, or dealer" after "issuer" and, in text, substituted "a registered public accounting firm under this subsection" for "an issuer under this subsection" and "any issuer, broker, or dealer" for "any issuer" in two places.

2008—Subsec. (b)(5)(B)(ii)(II). Pub. L. 110–289 inserted "and the Director of the Federal Housing Finance Agency," after "Commission,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

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

§7216. Foreign public accounting firms

(a) Applicability to certain foreign firms

(1) In general

Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, broker, or dealer, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 7212 of this title shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) Board authority

The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, brokers, or dealers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm (or firms) for purposes of registration under, and oversight by the Board in accordance with, this subchapter.

(b) Production of documents

(1) Production by foreign firms

If a foreign public accounting firm performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, issues an audit report, performs audit work, or conducts interim reviews, the foreign public accounting firm shall—

(A) produce the audit work papers of the foreign public accounting firm and all other documents of the firm related to any such audit work or interim review to the Commission or the Board, upon request of the Commission or the Board; and

(B) be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for such documents.

(2) Other production

Any registered public accounting firm that relies, in whole or in part, on the work of a foreign public accounting firm in issuing an audit report, performing audit work, or conducting an interim review, shall—

(A) produce the audit work papers of the foreign public accounting firm and all other

documents related to any such work in response to a request for production by the Commission or the Board; and

(B) secure the agreement of any foreign public accounting firm to such production, as a condition of the reliance by the registered public accounting firm on the work of that foreign public accounting firm.

(c) Exemption authority

The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

(d) Service of requests or process

(1) In general

Any foreign public accounting firm that performs work for a domestic registered public accounting firm shall furnish to the domestic registered public accounting firm a written irrevocable consent and power of attorney that designates the domestic registered public accounting firm as an agent upon whom may be served any request by the Commission or the Board under this section or upon whom may be served any process, pleadings, or other papers in any action brought to enforce this section.

(2) Specific audit work

Any foreign public accounting firm that performs material services upon which a registered public accounting firm relies in the conduct of an audit or interim review, issues an audit report, performs audit work, or, performs interim reviews, shall designate to the Commission or the Board an agent in the United States upon whom may be served any request by the Commission or the Board under this section or upon whom may be served any process, pleading, or other papers in any action brought to enforce this section.

(e) Sanctions

A willful refusal to comply, in whole in or in part, with any request by the Commission or the Board under this section, shall be deemed a violation of this Act.

(f) Other means of satisfying production obligations

Notwithstanding any other provisions of this section, the staff of the Commission or the Board may allow a foreign public accounting firm that is subject to this section to meet production obligations under this section through alternate means, such as through foreign counterparts of the Commission or the Board.

(g) Definition

In this section, the term "foreign public accounting firm" means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

(Pub. L. 107–204, title I, §106, July 30, 2002, 116 Stat. 764; Pub. L. 111–203, title IX, §§929J, 982(g), July 21, 2010, 124 Stat. 1859, 1930.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (c), and (e), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §982(g)(1), substituted "issuer, broker, or dealer" for "issuer".
Subsec. (a)(2). Pub. L. 111–203, §982(g)(2), substituted "issuers, brokers, or dealers" for "issuers".
Subsec. (b). Pub. L. 111–203, §929J(1), added subsec. (b) and struck out former subsec. (b) which related

to deemed consent to production of audit workpapers by foreign and domestic firms.

Subsecs. (d) to (g). Pub. L. 111–203, §929J(2), (3), added subsecs. (d) to (f) and redesignated former subsec. (d) as (g).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7217. Commission oversight of the Board

(a) General oversight responsibility

The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. The provisions of section 78q(a)(1) of this title, and of section 78q(b)(1) of this title shall apply to the Board as fully as if the Board were a "registered securities association" for purposes of those sections 78q(a)(1) and 78q(b)(1).

(b) Rules of the Board

(1) Definition

In this section, the term "proposed rule" means any proposed rule of the Board, and any modification of any such rule.

(2) Prior approval required

No rule of the Board shall become effective without prior approval of the Commission in accordance with this section, other than as provided in section 7213(a)(3)(B) of this title with respect to initial or transitional standards.

(3) Approval criteria

The Commission shall approve a proposed rule, if it finds that the rule is consistent with the requirements of this Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.

(4) Proposed rule procedures

The provisions of paragraphs (1) through (3) of section 78s(b) of this title shall govern the proposed rules of the Board, as fully as if the Board were a "registered securities association" for purposes of that section 78s(b), except that, for purposes of this paragraph—

(A) the phrase "consistent with the requirements of this chapter and the rules and regulations thereunder applicable to such organization" in section 78s(b)(2) of this title shall be deemed to read "consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors"; and

(B) the phrase "otherwise in furtherance of the purposes of this chapter" in section 78s(b)(3)(C) of this title shall be deemed to read "otherwise in furtherance of the purposes of title I of the Sarbanes-Oxley Act of 2002".

(5) Commission authority to amend rules of the Board

The provisions of section 78s(c) of this title shall govern the abrogation, deletion, or addition to portions of the rules of the Board by the Commission as fully as if the Board were a "registered securities association" for purposes of that section 78s(c), except that the phrase "to conform its rules to the requirements of this chapter and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this chapter" in section 78s(c) of this title shall, for purposes of this paragraph, be deemed to read "to assure the fair administration

of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Sarbanes-Oxley Act of 2002, or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board".

(c) Commission review of disciplinary action taken by the Board

(1) Notice of sanction

The Board shall promptly file notice with the Commission of any final sanction on any registered public accounting firm or on any associated person thereof, in such form and containing such information as the Commission, by rule, may prescribe.

(2) Review of sanctions

The provisions of sections 78s(d)(2) and 78s(e)(1) of this title shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 7215(b)(3) of this title for noncooperation in an investigation of the Board), as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 78s(d)(2) and 78s(e)(1), except that, for purposes of this paragraph—

(A) section 7215(e) of this title (rather than that section 78s(d)(2)) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

(B) references in that section 78s(e)(1) to "members" of such an organization shall be deemed to be references to registered public accounting firms;

(C) the phrase "consistent with the purposes of this chapter" in that section 78s(e)(1) shall be deemed to read "consistent with the purposes of this chapter and title I of the Sarbanes-Oxley Act of 2002";

(D) references to rules of the Municipal Securities Rulemaking Board in that section 78s(e)(1) shall not apply; and

(E) the reference to section 78s(e)(2) of this title shall refer instead to section 7217(c)(3) of this title.

(3) Commission modification authority

The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a proceeding in accordance with this subsection, that the sanction—

(A) is not necessary or appropriate in furtherance of this Act or the securities laws; or

(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed.

(d) Censure of the Board; other sanctions

(1) Rescission of Board authority

The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

(2) Censure of the Board; limitations

The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board,

or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) Censure of Board members; removal from office

The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove from office or censure any person who is, or at the time of the alleged misconduct was, a member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

(B) has willfully abused the authority of that member; or

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

(Pub. L. 107–204, title I, §107, July 30, 2002, 116 Stat. 765; Pub. L. 111–203, title IX, §929F(i), July 21, 2010, 124 Stat. 1855.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act and the Sarbanes-Oxley Act of 2002, referred to in text, are Pub. L. 107–204, July 30, 2002, 116 Stat. 745. Title I of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Tables.

CONSTITUTIONALITY

For information regarding the constitutionality of certain provisions of this section, see the Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court on the Constitution Annotated website, constitution.congress.gov.

AMENDMENTS

2010—Subsec. (d)(3). Pub. L. 111–203 substituted "any person who is, or at the time of the alleged misconduct was, a member" for "any member" in introductory provisions.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7218. Accounting standards

(a) Omitted

(b) Commission authority

The Commission shall promulgate such rules and regulations to carry out section 77s(b) of this title as it deems necessary or appropriate in the public interest or for the protection of investors.

(c) No effect on Commission powers

Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.

(d) Study and report on adopting principles-based accounting

(1) Study

(A) In general

The Commission shall conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

(B) Study topics

The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

(ii) the length of time required for change from a rules-based to a principles-based financial reporting system;

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) Report

Not later than 1 year after July 30, 2002, the Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(Pub. L. 107–204, title I, §108, July 30, 2002, 116 Stat. 768.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section is comprised of section 108 of Pub. L. 107–204. Subsec. (a) of section 108 of Pub. L. 107–204 amended section 77s of this title.

§7219. Funding

(a) In general

The Board, and the standard setting body designated pursuant to section 77s(b) of this title, shall be funded as provided in this section.

(b) Annual budgets

The Board and the standard setting body referred to in subsection (a) shall each establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains (or at the beginning of the Board's first fiscal year, which may be a short fiscal year). The budget of the Board shall be subject to approval by the Commission. The budget for the first fiscal year of the Board shall be prepared and approved promptly following the appointment of the initial five Board members, to permit action by the Board of the organizational tasks contemplated by section 7211(d) of this title.

(c) Sources and uses of funds

(1) Recoverable budget expenses

The budget of the Board (reduced by any registration or annual fees received under section 7212(e) of this title for the year preceding the year for which the budget is being computed), and

all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Board and of such standard-setting body shall not be considered public monies of the United States.

(2) Funds generated from the collection of monetary penalties

Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (j), all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) Annual accounting support fee for the Board

(1) Establishment of fee

The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board. Such fee may also cover costs incurred in the Board's first fiscal year (which may be a short fiscal year), or may be levied separately with respect to such short fiscal year.

(2) Assessments

The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (g), and among brokers and dealers, in accordance with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate.

(3) Brokers and dealers

The Board shall begin the allocation, assessment, and collection of fees under paragraph (2) with respect to brokers and dealers with the payment of support fees to fund the first full fiscal year beginning after July 21, 2010.

(e) Annual accounting support fee for standard setting body

The annual accounting support fee for the standard setting body referred to in subsection (a)—

(1) shall be allocated in accordance with subsection (g), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) Limitation on fee

The amount of fees collected under this section for a fiscal year on behalf of the Board or the standards setting body, as the case may be, shall not exceed the recoverable budget expenses of the Board or body, respectively (which may include operating, capital, and accrued items), referred to in subsection (c)(1).

(g) Allocation of accounting support fees among issuers

Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such

issuers for such 12-month period.

(h) Allocation of accounting support fees among brokers and dealers

(1) Obligation to pay

Each broker or dealer shall pay to the Board the annual accounting support fee allocated to such broker or dealer under this section.

(2) Allocation

Any amount due from a broker or dealer (or from a particular class of brokers and dealers) under this section shall be allocated among brokers and dealers and payable by the broker or dealer (or the brokers and dealers in the particular class, as applicable).

(3) Proportionality

The amount due from a broker or dealer shall be in proportion to the net capital of the broker or dealer (before or after any adjustments), compared to the total net capital of all brokers and dealers (before or after any adjustments), in accordance with rules issued by the Board.

(i) Omitted

(j) Rule of construction

Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

(k) Start-up expenses of the Board

From the unexpended balances of the appropriations to the Commission for fiscal year 2003, the Secretary of the Treasury is authorized to advance to the Board not to exceed the amount necessary to cover the expenses of the Board during its first fiscal year (which may be a short fiscal year).

(Pub. L. 107–204, title I, §109, July 30, 2002, 116 Stat. 769; Pub. L. 111–203, title IX, §982(h), July 21, 2010, 124 Stat. 1930.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of section 109 of Pub. L. 107–204. Subsec. (i) of section 109 of Pub. L. 107–204 amended section 78m of this title.

AMENDMENTS

2010—Subsec. (c)(2). Pub. L. 111–203, §982(h)(1), substituted "subsection (j)" for "subsection (i)".

Subsec. (d)(2). Pub. L. 111–203, §982(h)(2)(A), substituted "and among brokers and dealers, in accordance with subsection (h), and allowing for differentiation among classes of issuers, brokers and dealers, as appropriate" for "allowing for differentiation among classes of issuers, as appropriate".

Subsec. (d)(3). Pub. L. 111–203, §982(h)(2)(B), added par. (3).

Subsecs. (h) to (k). Pub. L. 111–203, §982(h)(3), (4), added subsec. (h) and redesignated former subsecs. (h) to (j) as (i) to (k), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

OBLIGATION OF FUNDS FOR ACCOUNTING SCHOLARSHIP PROGRAM

Pub. L. 116–93, div. C, title VI, §620(b), Dec. 20, 2019, 133 Stat. 2481, provided that: "Beginning in fiscal year 2021 and for each fiscal year thereafter, the Board [Public Company Accounting Oversight Board] shall have authority to obligate funds for the scholarship program established by section 109(c)(2) of the Sarbanes-Oxley Act of 2002 (Public Law 107–204) [15 U.S.C. 7219(c)(2)] in such fiscal year in an aggregate amount not exceeding the amounts of funds collected by the Board between October 1 and September 30 of such fiscal year, including accrued interest, as a result of the assessment of monetary penalties. Funds made available for obligation in any fiscal year shall be in addition to amounts made available in prior fiscal years and shall remain available until expended."

MONETARY PENALTIES TO FUND SCHOLARSHIPS FOR ACCOUNTING STUDENTS

Pub. L. 116–6, div. D, title VI, §620, Feb. 15, 2019, 133 Stat. 184, provided in part that: "Beginning in fiscal year 2020 and for each fiscal year thereafter, monetary penalties collected pursuant to 15 U.S.C. 7215 shall be deposited in the Public Company Accounting Oversight Board account as discretionary offsetting receipts."

§7220. Definitions

For the purposes of this subchapter, the following definitions shall apply:

(1) Audit

The term "audit" means an examination of the financial statements, reports, documents, procedures, controls, or notices of any issuer, broker, or dealer by an independent public accounting firm in accordance with the rules of the Board or the Commission, for the purpose of expressing an opinion on the financial statements or providing an audit report.

(2) Audit report

The term "audit report" means a document, report, notice, or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer, broker, or dealer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, notice, or other document, procedures, or controls; or

(ii) asserts that no such opinion can be expressed.

(3) Broker

The term "broker" means a broker (as such term is defined in section 78c(a)(4) of this title) that is required to file a balance sheet, income statement, or other financial statement under section 78q(e)(1)(A) of this title, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

(4) Dealer

The term "dealer" means a dealer (as such term is defined in section 78c(a)(5) of this title) that is required to file a balance sheet, income statement, or other financial statement under section 78q(e)(1)(A) of this title, where such balance sheet, income statement, or financial statement is required to be certified by a registered public accounting firm.

(5) Professional standards

The term "professional standards" means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 77s(b) of this title, as amended by this Act, or prescribed by the Commission under section 77s(a) of this title or section 78m(b) of this title; and

(ii) relevant to audit reports for particular issuers, brokers, or dealers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and

procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers, brokers, or dealers; and

(ii) are established or adopted by the Board under section 7213(a) of this title, or are promulgated as rules of the Commission.

(6) Self-regulatory organization

The term "self-regulatory organization" has the same meaning as in section 78c(a) of this title.

(Pub. L. 107–204, title I, §110, as added Pub. L. 111–203, title IX, §982(a)(1), July 21, 2010, 124 Stat. 1927.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 77s(b) of this title, as amended by this Act, referred to in par. (5)(A)(i), means section 77s(b) of this title, as amended by Pub. L. 107–204.

Title II, referred to in par. (5)(B), means title II of Pub. L. 107–204, July 30, 2002, 116 Stat. 771, which enacted subchapter II of this chapter and amended sections 78c, 78j–1, 78l and 78q of this title. For complete classification of title II to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

SUBCHAPTER II—AUDITOR INDEPENDENCE

§7231. Exemption authority

The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 78j–1(g) of this title, to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 7217 of this title.

(Pub. L. 107–204, title II, §201(b), July 30, 2002, 116 Stat. 772.)

§7232. Study of mandatory rotation of registered public accounting firms

(a) Study and review required

The Comptroller General of the United States shall conduct a study and review of the potential effects of requiring the mandatory rotation of registered public accounting firms.

(b) Report required

Not later than 1 year after July 30, 2002, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study and review required by this section.

(c) Definition

For purposes of this section, the term "mandatory rotation" refers to the imposition of a limit on

the period of years in which a particular registered public accounting firm may be the auditor of record for a particular issuer.

(Pub. L. 107–204, title II, §207, July 30, 2002, 116 Stat. 775.)

§7233. Commission authority

(a) Commission regulations

Not later than 180 days after July 30, 2002, the Commission shall issue final regulations to carry out each of subsections (g) through (l) of section 78j–1 of this title.

(b) Auditor independence

It shall be unlawful for any registered public accounting firm (or an associated person thereof, as applicable) to prepare or issue any audit report with respect to any issuer, if the firm or associated person engages in any activity with respect to that issuer prohibited by any of subsections (g) through (l) of section 78j–1 of this title or any rule or regulation of the Commission or of the Board issued thereunder.

(Pub. L. 107–204, title II, §208, July 30, 2002, 116 Stat. 775.)

§7234. Considerations by appropriate State regulatory authorities

In supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

(Pub. L. 107–204, title II, §209, July 30, 2002, 116 Stat. 775.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 107–204, July 30, 2002, 116 Stat. 745, known as the Sarbanes-Oxley Act of 2002. For complete classification of this Act to the Code, see Tables.

SUBCHAPTER III—CORPORATE RESPONSIBILITY

§7241. Corporate responsibility for financial reports

(a) Regulations required

The Commission shall, by rule, require, for each company filing periodic reports under section 78m(a) or 78o(d) of this title, that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of this title that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information

included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

(b) Foreign reincorporations have no effect

Nothing in this section shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section, by an issuer having reincorporated or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the United States to outside of the United States.

(c) Deadline

The rules required by subsection (a) shall be effective not later than 30 days after July 30, 2002.

(Pub. L. 107–204, title III, §302, July 30, 2002, 116 Stat. 777.)

§7242. Improper influence on conduct of audits

(a) Rules to prohibit

It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

(b) Enforcement

In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) No preemption of other law

The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.

(d) Deadline for rulemaking

The Commission shall—

(1) propose the rules or regulations required by this section, not later than 90 days after July 30, 2002; and

(2) issue final rules or regulations required by this section, not later than 270 days after July 30, 2002.

(Pub. L. 107–204, title III, §303, July 30, 2002, 116 Stat. 778.)

§7243. Forfeiture of certain bonuses and profits

(a) Additional compensation prior to noncompliance with Commission financial reporting requirements

If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for—

(1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and

(2) any profits realized from the sale of securities of the issuer during that 12-month period.

(b) Commission exemption authority

The Commission may exempt any person from the application of subsection (a), as it deems necessary and appropriate.

(Pub. L. 107–204, title III, §304, July 30, 2002, 116 Stat. 778.)

§7244. Insider trades during pension fund blackout periods

(a) Prohibition of insider trading during pension fund blackout periods

(1) In general

Except to the extent otherwise provided by rule of the Commission pursuant to paragraph (3), it shall be unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any blackout period with respect to such equity security if such director or officer acquires such equity security in connection with his or her service or employment as a director or executive officer.

(2) Remedy

(A) In general

Any profit realized by a director or executive officer referred to in paragraph (1) from any purchase, sale, or other acquisition or transfer in violation of this subsection shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

(B) Actions to recover profits

An action to recover profits in accordance with this subsection may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit shall be brought more than 2 years after the date on which such profit was realized.

(3) Rulemaking authorized

The Commission shall, in consultation with the Secretary of Labor, issue rules to clarify the application of this subsection and to prevent evasion thereof. Such rules shall provide for the application of the requirements of paragraph (1) with respect to entities treated as a single employer with respect to an issuer under section 414(b), (c), (m), or (o) of title 26 to the extent necessary to clarify the application of such requirements and to prevent evasion thereof. Such rules may also provide for appropriate exceptions from the requirements of this subsection, including exceptions for purchases pursuant to an automatic dividend reinvestment program or purchases or sales made pursuant to an advance election.

(4) Blackout period

For purposes of this subsection, the term "blackout period", with respect to the equity securities of any issuer—

(A) means any period of more than 3 consecutive business days during which the ability of not fewer than 50 percent of the participants or beneficiaries under all individual account plans maintained by the issuer to purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan; and

(B) does not include, under regulations which shall be prescribed by the Commission—

(i) a regularly scheduled period in which the participants and beneficiaries may not purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer, if such period is—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before becoming participants under the individual account plan or as a subsequent amendment to the plan; or

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

(5) Individual account plan

For purposes of this subsection, the term "individual account plan" has the meaning provided in section 1002(34) of title 29, except that such term shall not include a one-participant retirement plan (within the meaning of section 1021(i)(8)(B) of title 29).

(6) Notice to directors, executive officers, and the Commission

In any case in which a director or executive officer is subject to the requirements of this subsection in connection with a blackout period (as defined in paragraph (4)) with respect to any equity securities, the issuer of such equity securities shall timely notify such director or officer and the Securities and Exchange Commission of such blackout period.

(b) Notice requirements to participants and beneficiaries under ERISA

(1) Omitted

(2) Issuance of initial guidance and model notice

The Secretary of Labor shall issue initial guidance and a model notice pursuant to section 1021(i)(6) of title 29 not later than January 1, 2003. Not later than 75 days after July 30, 2002, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(3) Plan amendments

If any amendment made by this subsection requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date of this section, if—

(A) during the period after such amendment made by this subsection takes effect and before such first plan year, the plan is operated in good faith compliance with the requirements of such amendment made by this subsection, and

(B) such plan amendment applies retroactively to the period after such amendment made by this subsection takes effect and before such first plan year.

(c) Effective date

The provisions of this section (including the amendments made thereby) shall take effect 180 days after July 30, 2002. Good faith compliance with the requirements of such provisions in advance of the issuance of applicable regulations thereunder shall be treated as compliance with such provisions.

(Pub. L. 107–204, title III, §306, July 30, 2002, 116 Stat. 779.)

EDITORIAL NOTES

REFERENCES IN TEXT

For amendments made by this subsection and this section, referred to in subsecs. (b) and (c), see Codification note below.

CODIFICATION

Section is comprised of section 306 of Pub. L. 107–204. Subsec. (b)(1) of section 306 of Pub. L. 107–204 amended section 1021 of Title 29, Labor, and another par. (3) of subsec. (b) amended section 1132 of Title 29.

§7245. Rules of professional responsibility for attorneys

Not later than 180 days after July 30, 2002, the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

(Pub. L. 107–204, title III, §307, July 30, 2002, 116 Stat. 784.)

§7246. Fair funds for investors

(a) Civil penalties to be used for the relief of victims

If, in any judicial or administrative action brought by the Commission under the securities laws, the Commission obtains a civil penalty against any person for a violation of such laws, or such person agrees, in settlement of any such action, to such civil penalty, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of a disgorgement fund or other fund established for the benefit of the victims of such violation.

(b) Acceptance of additional donations

The Commission is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, to the United States for a disgorgement fund or other fund described in subsection (a). Such gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in such fund and shall be available for allocation in accordance with subsection (a).

(c) Study required

(1) Subject of study

The Commission shall review and analyze—

(A) enforcement actions by the Commission over the five years preceding July 30, 2002, that have included proceedings to obtain civil penalties or disgorgements to identify areas where such proceedings may be utilized to efficiently, effectively, and fairly provide restitution for injured investors; and

(B) other methods to more efficiently, effectively, and fairly provide restitution to injured investors, including methods to improve the collection rates for civil penalties and disgorgements.

(2) Report required

The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days after of [1] July 30, 2002, and shall use such findings to revise its rules and regulations as necessary. The report shall include a discussion of regulatory or legislative actions that are recommended or that may be necessary to address concerns identified in the study.

(Pub. L. 107–204, title III, §308, July 30, 2002, 116 Stat. 784; Pub. L. 111–203, title IX, §929B, July 21, 2010, 124 Stat. 1852.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of section 308 of Pub. L. 107–204. Subsec. (d) of section 308 of Pub. L. 107–204 amended sections 77t, 78u, 78u–1, 80a–41, and 80b–9 of this title.

AMENDMENTS

2010—Subsec. (a). Pub. L. 111–203, §929B(1), added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 78c(a)(47) of this title) the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation."

Subsec. (b). Pub. L. 111–203, §929B(2), substituted "for a disgorgement fund or other fund described in subsection (a)" for "for a disgorgement fund described in subsection (a)" and "in such fund" for "in the disgorgement fund".

Subsec. (e). Pub. L. 111–203, §929B(3), struck out subsec. (e). Text read as follows: "As used in this section, the term 'disgorgement fund' means a fund established in any administrative or judicial proceeding described in subsection (a) of this section."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

[1] So in original. The word "of" probably should not appear.

SUBCHAPTER IV—ENHANCED FINANCIAL DISCLOSURES

§7261. Disclosures in periodic reports

(a) Omitted

(b) Commission rules on pro forma figures

Not later than 180 days after July 30, 2002, the Commission shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the Commission pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that—

(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

(c) Study and report on special purpose entities

(1) Study required

The Commission shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules required by section 78m(j) of this title, complete a study of filings by issuers and their disclosures to determine—

(A) the extent of off-balance sheet transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

(2) Report and recommendations

Not later than 6 months after the date of completion of the study required by paragraph (1), the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, setting forth—

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 78m or 78o of this title;

(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;

(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and

(E) any recommendations of the Commission for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the Commission.

(Pub. L. 107–204, title IV, §401, July 30, 2002, 116 Stat. 785.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of section 401 of Pub. L. 107–204. Subsec. (a) of section 401 of Pub. L. 107–204 amended section 78m of this title.

§7262. Management assessment of internal controls

(a) Rules required

The Commission shall prescribe rules requiring each annual report required by section 78m(a) or 78o(d) of this title to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) Internal control evaluation and reporting

With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer, other than an issuer that is an emerging growth company (as defined in section 78c of this title), shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

(c) Exemption for smaller issuers

Subsection (b) shall not apply with respect to any audit report prepared for an issuer that is neither a "large accelerated filer" nor an "accelerated filer" as those terms are defined in Rule 12b–2 of the Commission (17 C.F.R. 240.12b–2).

(Pub. L. 107–204, title IV, §404, July 30, 2002, 116 Stat. 789; Pub. L. 111–203, title IX, §989G(a), July 21, 2010, 124 Stat. 1948; Pub. L. 112–106, title I, §103, Apr. 5, 2012, 126 Stat. 310.)

EDITORIAL NOTES

AMENDMENTS

2012—Subsec. (b). Pub. L. 112–106 inserted ", other than an issuer that is an emerging growth company (as defined in section 78c of this title)," before "shall attest to".

2010—Subsec. (c). Pub. L. 111–203 added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

§7263. Exemption

Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 80a–8 of this title.

(Pub. L. 107–204, title IV, §405, July 30, 2002, 116 Stat. 789.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 401, 402, and 404, referred to in text, mean sections 401, 402, and 404 of Pub. L. 107–204. Section 401 enacted section 7261 of this title and amended section 78m of this title. Section 402 amended section 78m of this title. Section 404 enacted section 7262 of this title.

§7264. Code of ethics for senior financial officers

(a) Code of ethics disclosure

The Commission shall issue rules to require each issuer, together with periodic reports required pursuant to section 78m(a) or 78o(d) of this title, to disclose whether or not, and if not, the reason therefor, such issuer has adopted a code of ethics for senior financial officers, applicable to its principal financial officer and comptroller or principal accounting officer, or persons performing similar functions.

(b) Changes in codes of ethics

The Commission shall revise its regulations concerning matters requiring prompt disclosure on Form 8–K (or any successor thereto) to require the immediate disclosure, by means of the filing of such form, dissemination by the Internet or by other electronic means, by any issuer of any change in or waiver of the code of ethics for senior financial officers.

(c) Definition

In this section, the term "code of ethics" means such standards as are reasonably necessary to promote—

(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and

(3) compliance with applicable governmental rules and regulations.

(d) Deadline for rulemaking

The Commission shall—

(1) propose rules to implement this section, not later than 90 days after July 30, 2002; and

(2) issue final rules to implement this section, not later than 180 days after July 30, 2002.

(Pub. L. 107–204, title IV, §406, July 30, 2002, 116 Stat. 789.)

§7265. Disclosure of audit committee financial expert

(a) Rules defining "financial expert"

The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 78m(a) and 78o(d) of this title, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) Considerations

In defining the term "financial expert" for purposes of subsection (a), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

(1) an understanding of generally accepted accounting principles and financial statements;

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

(c) Deadline for rulemaking

The Commission shall—

(1) propose rules to implement this section, not later than 90 days after July 30, 2002; and

(2) issue final rules to implement this section, not later than 180 days after July 30, 2002.

(Pub. L. 107–204, title IV, §407, July 30, 2002, 116 Stat. 790.)

§7266. Enhanced review of periodic disclosures by issuers

(a) Regular and systematic review

The Commission shall review disclosures made by issuers reporting under section 78m(a) of this title (including reports filed on Form 10–K), and which have a class of securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association, on a regular and systematic basis for the protection of investors. Such review shall include a review of an issuer's financial statement.

(b) Review criteria

For purposes of scheduling the reviews required by subsection (a), the Commission shall consider, among other factors—

(1) issuers that have issued material restatements of financial results;

(2) issuers that experience significant volatility in their stock price as compared to other issuers;

(3) issuers with the largest market capitalization;

(4) emerging companies with disparities in price to earning ratios;

(5) issuers whose operations significantly affect any material sector of the economy; and

(6) any other factors that the Commission may consider relevant.

(c) Minimum review period

In no event shall an issuer required to file reports under section 78m(a) or 78o(d) of this title be reviewed under this section less frequently than once every 3 years.

(Pub. L. 107–204, title IV, §408, July 30, 2002, 116 Stat. 790.)

CHAPTER 99—NATIONAL CONSTRUCTION SAFETY TEAM

Sec.

§7301. National Construction Safety Teams

(a) Establishment

The Director of the National Institute of Standards and Technology (in this chapter referred to as

the "Director") is authorized to establish National Construction Safety Teams (in this chapter referred to as a "Team") for deployment after events causing the failure of a building or buildings that has resulted in substantial loss of life or that posed significant potential for substantial loss of life. To the maximum extent practicable, the Director shall establish and deploy a Team within 48 hours after such an event. The Director shall promptly publish in the Federal Register notice of the establishment of each Team.

(b) Purpose of investigation; duties

(1) Purpose

The purpose of investigations by Teams is to improve the safety and structural integrity of buildings in the United States.

(2) Duties

A Team shall—

(A) establish the likely technical cause or causes of the building failure;

(B) evaluate the technical aspects of evacuation and emergency response procedures;

(C) recommend, as necessary, specific improvements to building standards, codes, and practices based on the findings made pursuant to subparagraphs (A) and (B); and

(D) recommend any research and other appropriate actions needed to improve the structural safety of buildings, and improve evacuation and emergency response procedures, based on the findings of the investigation.

(c) Procedures

(1) Development

Not later than 3 months after October 1, 2002, the Director, in consultation with the United States Fire Administration and other appropriate Federal agencies, shall develop procedures for the establishment and deployment of Teams. The Director shall update such procedures as appropriate. Such procedures shall include provisions—

(A) regarding conflicts of interest related to service on the Team;

(B) defining the circumstances under which the Director will establish and deploy a Team;

(C) prescribing the appropriate size of Teams;

(D) guiding the disclosure of information under section 7306 of this title;

(E) guiding the conduct of investigations under this chapter, including procedures for providing written notice of inspection authority under section 7303(a) of this title and for ensuring compliance with any other applicable law;

(F) identifying and prescribing appropriate conditions for the provision by the Director of additional resources and services Teams may need;

(G) to ensure that investigations under this chapter do not impede and are coordinated with any search and rescue efforts being undertaken at the site of the building failure;

(H) for regular briefings of the public on the status of the investigative proceedings and findings;

(I) guiding the Teams in moving and preserving evidence as described in section 7303(a)(4), (b)(2), and (d)(4) of this title;

(J) providing for coordination with Federal, State, and local entities that may sponsor research or investigations of building failures, including research conducted under the Earthquake Hazards Reduction Act of 1977 [42 U.S.C. 7701 et seq.]; and

(K) regarding such other issues as the Director considers appropriate.

(2) Publication

The Director shall publish promptly in the Federal Register final procedures, and subsequent updates thereof, developed under paragraph (1).

(Pub. L. 107–231, §2, Oct. 1, 2002, 116 Stat. 1471; Pub. L. 107–305, §15, Nov. 27, 2002, 116 Stat. 2381.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c)(1)(E), (G), was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Earthquake Hazards Reduction Act of 1977, referred to in subsec. (c)(1)(J), is Pub. L. 95–124, Oct. 7, 1977, 91 Stat. 1098, which is classified generally to chapter 86 (§7701 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of Title 42 and Tables.

AMENDMENTS

2002—Subsec. (c)(1)(D). Pub. L. 107–305, which directed the substitution of "section 7306 of this title;" for "section 7307 of this title;" in subsec. (c)(1)(d), was executed to subsec. (c)(1)(D), to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 107–231, §1, Oct. 1, 2002, 116 Stat. 1471, provided that: "This Act [enacting this chapter and amending section 281a of this title] may be cited as the 'National Construction Safety Team Act'."

§7302. Composition of Teams

Each Team shall be composed of individuals selected by the Director and led by an individual designated by the Director. Team members shall include at least 1 employee of the National Institute of Standards and Technology and shall include other experts who are not employees of the National Institute of Standards and Technology, who may include private sector experts, university experts, representatives of professional organizations with appropriate expertise, and appropriate Federal, State, or local officials. Team members who are not Federal employees shall be considered Federal Government contractors.

(Pub. L. 107–231, §3, Oct. 1, 2002, 116 Stat. 1472.)

§7303. Authorities

(a) Entry and inspection

In investigating a building failure under this chapter, members of a Team, and any other person authorized by the Director to support a Team, on display of appropriate credentials provided by the Director and written notice of inspection authority, may—

(1) enter property where a building failure being investigated has occurred, or where building components, materials, and artifacts with respect to the building failure are located, and take action necessary, appropriate, and reasonable in light of the nature of the property to be inspected to carry out the duties of the Team under section 7301(b)(2)(A) and (B) of this title;

(2) during reasonable hours, inspect any record (including any design, construction, or maintenance record), process, or facility related to the investigation;

(3) inspect and test any building components, materials, and artifacts related to the building failure; and

(4) move such records, components, materials, and artifacts as provided by the procedures developed under section 7301(c)(1) of this title.

(b) Avoiding unnecessary interference and preserving evidence

An inspection, test, or other action taken by a Team under this section shall be conducted in a way

that—

(1) does not interfere unnecessarily with services provided by the owner or operator of the building components, materials, or artifacts, property, records, process, or facility; and

(2) to the maximum extent feasible, preserves evidence related to the building failure, consistent with the ongoing needs of the investigation.

(c) Coordination

(1) With search and rescue efforts

A Team shall not impede, and shall coordinate its investigation with, any search and rescue efforts being undertaken at the site of the building failure.

(2) With other research

A Team shall coordinate its investigation, to the extent practicable, with qualified researchers who are conducting engineering or scientific (including social science) research relating to the building failure.

(3) Memoranda of understanding

The National Institute of Standards and Technology shall enter into a memorandum of understanding with each Federal agency that may conduct or sponsor a related investigation, providing for coordination of investigations.

(4) With State and local authorities

A Team shall cooperate with State and local authorities carrying out any activities related to a Team's investigation.

(5) Civil suits

Where practicable, a Team shall cooperate with civil litigants without compromising a Team's investigation or the evidence preservation activities as described in this section.

(d) Investigation priorities

(1) In general

Except as provided in paragraph (2) or (3), a Team investigation shall have priority over any other investigation of any other Federal agency or any civil suit or civil action.

(2) National Transportation Safety Board

If the National Transportation Safety Board is conducting an investigation related to an investigation of a Team, the National Transportation Safety Board investigation shall have priority over the Team investigation. Such priority shall not otherwise affect the authority of the Team to continue its investigation under this chapter.

(3) Criminal acts

If the Attorney General, in consultation with the Director, determines, and notifies the Director, that circumstances reasonably indicate that the building failure being investigated by a Team may have been caused by a criminal act, the Team shall relinquish investigative priority to the appropriate law enforcement agency. The relinquishment of investigative priority by the Team shall not otherwise affect the authority of the Team to continue its investigation under this chapter.

(4) Preservation of evidence

If a Federal law enforcement agency suspects and notifies the Director that a building failure being investigated by a Team under this chapter may have been caused by a criminal act, the Team, in consultation with the Federal law enforcement agency, shall take necessary actions to ensure that evidence of the criminal act is preserved.

(Pub. L. 107–231, §4, Oct. 1, 2002, 116 Stat. 1472; Pub. L. 117–167, div. B, title II, §10246(h), Aug. 9, 2022, 136 Stat. 1494.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (d)(2) to (4), was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

AMENDMENTS

2022—Subsec. (c)(5). Pub. L. 117–167, §10246(h)(1), added par. (5).

Subsec. (d). Pub. L. 117–167, §10246(h)(2)(A), substituted "Investigation" for "Interagency" in heading.

Subsec. (d)(1). Pub. L. 117–167, §10246(h)(2)(B), inserted "or any civil suit or civil action" after "Federal agency".

§7304. Briefings, hearings, witnesses, and subpoenas

(a) General authority

The Director or his designee, on behalf of a Team, may conduct hearings, administer oaths, and require, by subpoena (pursuant to subsection (e)) and otherwise, necessary witnesses and evidence as necessary to carry out this chapter.

(b) Briefings

The Director or his designee (who may be the leader or a member of a Team), on behalf of a Team, shall hold regular public briefings on the status of investigative proceedings and findings, including a final briefing after the report required by section 7307 of this title is issued.

(c) Public hearings

During the course of an investigation by a Team, the National Institute of Standards and Technology may, if the Director considers it to be in the public interest, hold a public hearing for the purposes of—

(1) gathering testimony from witnesses; and

(2) informing the public on the progress of the investigation.

(d) Production of witnesses

A witness or evidence in an investigation under this chapter may be summoned or required to be produced from any place in the United States. A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.

(e) Issuance of subpoenas

A subpoena shall be issued only under the signature of the Director but may be served by any person designated by the Director.

(f) Failure to obey subpoena

If a person disobeys a subpoena issued by the Director under this chapter, the Attorney General, acting on behalf of the Director, may bring a civil action in a district court of the United States to enforce the subpoena. An action under this subsection may be brought in the judicial district in which the person against whom the action is brought resides, is found, or does business. The court may punish a failure to obey an order of the court to comply with the subpoena as a contempt of court.

(Pub. L. 107–231, §5, Oct. 1, 2002, 116 Stat. 1474.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (d), and (f), was in the original "this Act", meaning Pub. L.

107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

§7305. Additional powers

In order to support Teams in carrying out this chapter, the Director may—

(1) procure the temporary or intermittent services of experts or consultants under section 3109 of title 5;

(2) request the use, when appropriate, of available services, equipment, personnel, and facilities of a department, agency, or instrumentality of the United States Government on a reimbursable or other basis;

(3) confer with employees and request the use of services, records, and facilities of State and local governmental authorities;

(4) accept voluntary and uncompensated services;

(5) accept and use gifts of money and other property, to the extent provided in advance in appropriations Acts;

(6) make contracts with nonprofit entities to carry out studies related to purpose, functions, and authorities of the Teams; and

(7) provide nongovernmental members of the Team reasonable compensation for time spent carrying out activities under this chapter.

(Pub. L. 107–231, §6, Oct. 1, 2002, 116 Stat. 1474.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

§7306. Disclosure of information

(a) General rule

Except as otherwise provided in this section, a copy of a record, information, or investigation submitted or received by a Team shall be made available to the public on request and at reasonable cost.

(b) Exceptions

Subsection (a) does not require the release of—

(1) information described by section 552(b) of title 5 or protected from disclosure by any other law of the United States; or

(2) information described in subsection (a) by the National Institute of Standards and Technology or by a Team until the report required by section 7307 of this title is issued.

(c) Protection of voluntary submission of information

Notwithstanding any other provision of law, a Team, the National Institute of Standards and Technology, and any agency receiving information from a Team or the National Institute of Standards and Technology, shall not disclose voluntarily provided safety-related information if that information is not directly related to the building failure being investigated and the Director finds that the disclosure of the information would inhibit the voluntary provision of that type of information.

(d) Public safety information

A Team and the National Institute of Standards and Technology shall not publicly release any information it receives in the course of an investigation under this chapter if the Director finds that the disclosure of that information might jeopardize public safety.

(Pub. L. 107–231, §7, Oct. 1, 2002, 116 Stat. 1475.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

§7307. National Construction Safety Team report

Not later than 90 days after completing an investigation, a Team shall issue a public report which includes—

(1) an analysis of the likely technical cause or causes of the building failure investigated;

(2) any technical recommendations for changes to or the establishment of evacuation and emergency response procedures;

(3) any recommended specific improvements to building standards, codes, and practices; and

(4) recommendations for research and other appropriate actions needed to help prevent future building failures.

(Pub. L. 107–231, §8, Oct. 1, 2002, 116 Stat. 1475.)

§7308. National Institute of Standards and Technology actions

After the issuance of a public report under section 7307 of this title, the National Institute of Standards and Technology shall comprehensively review the report and, working with the United States Fire Administration and other appropriate Federal and non-Federal agencies and organizations—

(1) conduct, or enable or encourage the conducting of, appropriate research recommended by the Team; and

(2) promote (consistent with existing procedures for the establishment of building standards, codes, and practices) the appropriate adoption by the Federal Government, and encourage the appropriate adoption by other agencies and organizations, of the recommendations of the Team with respect to—

(A) technical aspects of evacuation and emergency response procedures;

(B) specific improvements to building standards, codes, and practices; and

(C) other actions needed to help prevent future building failures.

(Pub. L. 107–231, §9, Oct. 1, 2002, 116 Stat. 1475.)

§7309. National Institute of Standards and Technology annual report

Not later than February 15 of each year, the Director shall transmit to the Committee on Science of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate a report that includes—

(1) a summary of the investigations conducted by Teams during the prior fiscal year;

(2) a summary of recommendations made by the Teams in reports issued under section 7307 of this title during the prior fiscal year and a description of the extent to which those

recommendations have been implemented; and

(3) a description of the actions taken to improve building safety and structural integrity by the National Institute of Standards and Technology during the prior fiscal year in response to reports issued under section 7307 of this title.

(Pub. L. 107–231, §10, Oct. 1, 2002, 116 Stat. 1476.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§7310. Advisory committee

(a) Establishment and functions

The Director, in consultation with the United States Fire Administration and other appropriate Federal agencies, shall establish an advisory committee to advise the Director on carrying out this chapter and to review the procedures developed under section 7301(c)(1) of this title and the reports issued under section 7307 of this title.

(b) Annual report

On January 1 of each year, the advisory committee shall transmit to the Committee on Science of the House of Representatives and to the Committee on Commerce, Science, and Transportation of the Senate a report that includes—

(1) an evaluation of Team activities, along with recommendations to improve the operation and effectiveness of Teams; and

(2) an assessment of the implementation of the recommendations of Teams and of the advisory committee.

(c) Duration of advisory committee

Section 1013 of title 5 shall not apply to the advisory committee established under this section.

(Pub. L. 107–231, §11, Oct. 1, 2002, 116 Stat. 1476; Pub. L. 117–286, §4(a)(77), Dec. 27, 2022, 136 Stat. 4314.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

AMENDMENTS

2022—Subsec. (c). Pub. L. 117–286 substituted "Section 1013 of title 5" for "Section 14 of the Federal Advisory Committee Act".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of

House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§7311. Additional applicability

The authorities and restrictions applicable under this chapter to the Director and to Teams shall apply to the activities of the National Institute of Standards and Technology in response to the attacks of September 11, 2001.

(Pub. L. 107–231, §12, Oct. 1, 2002, 116 Stat. 1476.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

§7312. Construction

Nothing in this chapter shall be construed to confer any authority on the National Institute of Standards and Technology to require the adoption of building standards, codes, or practices.

(Pub. L. 107–231, §14, Oct. 1, 2002, 116 Stat. 1477.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

§7313. Authorization of appropriations

The National Institute of Standards and Technology is authorized to use funds otherwise authorized by law to carry out this chapter.

(Pub. L. 107–231, §15, Oct. 1, 2002, 116 Stat. 1477.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–231, Oct. 1, 2002, 116 Stat. 1471, known as the National Construction Safety Team Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7301 of this title and Tables.

CHAPTER 100—CYBER SECURITY RESEARCH AND DEVELOPMENT

Sec.

§7401. Findings

The Congress finds the following:

(1) Revolutionary advancements in computing and communications technology have interconnected government, commercial, scientific, and educational infrastructures—including critical infrastructures for electric power, natural gas and petroleum production and distribution, telecommunications, transportation, water supply, banking and finance, and emergency and government services—in a vast, interdependent physical and electronic network.

(2) Exponential increases in interconnectivity have facilitated enhanced communications, economic growth, and the delivery of services critical to the public welfare, but have also increased the consequences of temporary or prolonged failure.

(3) A Department of Defense Joint Task Force concluded after a 1997 United States information warfare exercise that the results "clearly demonstrated our lack of preparation for a coordinated cyber and physical attack on our critical military and civilian infrastructure".

(4) Computer security technology and systems implementation lack—

(A) sufficient long term research funding;

(B) adequate coordination across Federal and State government agencies and among government, academia, and industry; and

(C) sufficient numbers of outstanding researchers in the field.

(5) Accordingly, Federal investment in computer and network security research and development must be significantly increased to—

(A) improve vulnerability assessment and technological and systems solutions;

(B) expand and improve the pool of information security professionals, including researchers, in the United States workforce; and

(C) better coordinate information sharing and collaboration among industry, government, and academic research projects.

(6) While African-Americans, Hispanics, and Native Americans constitute 25 percent of the total United States workforce and 30 percent of the college-age population, members of these minorities comprise less than 7 percent of the United States computer and information science workforce.

(Pub. L. 107–305, §2, Nov. 27, 2002, 116 Stat. 2367.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 107–305, §1, Nov. 27, 2002, 116 Stat. 2367, provided that: "This Act [enacting this chapter and section 278h of this title, amending sections 278g–3, 1511e, and 7301 of this title and section 1862 of Title 42, The Public Health and Welfare, and redesignating section 278h of this title as 278q of this title] may be cited

as the 'Cyber Security Research and Development Act'."

§7402. Definitions

In this chapter:

(1) Director

The term "Director" means the Director of the National Science Foundation.

(2) Institution of higher education

The term "institution of higher education" has the meaning given that term in section 1001(a) of title 20.

(Pub. L. 107–305, §3, Nov. 27, 2002, 116 Stat. 2368.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–305, Nov. 27, 2002, 116 Stat. 2367, known as the Cyber Security Research and Development Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

§7403. National Science Foundation research

(a) Computer and network security research grants

(1) In general

The Director shall award grants for basic research on innovative approaches to the structure of computer and network hardware and software that are aimed at enhancing computer security. Research areas may include—

(A) authentication, cryptography, and other secure data communications technology;

(B) computer forensics and intrusion detection;

(C) reliability of computer and network applications, middleware, operating systems, control systems, and communications infrastructure;

(D) privacy and confidentiality;

(E) network security architecture, including tools for security administration and analysis;

(F) emerging threats;

(G) vulnerability assessments and techniques for quantifying risk;

(H) remote access and wireless security;

(I) enhancement of law enforcement ability to detect, investigate, and prosecute cyber-crimes, including those that involve piracy of intellectual property;

(J) secure fundamental protocols that are integral to inter-network communications and data exchange;

(K) secure software engineering and software assurance, including—

(i) programming languages and systems that include fundamental security features;

(ii) portable or reusable code that remains secure when deployed in various environments;

(iii) verification and validation technologies to ensure that requirements and specifications have been implemented; and

(iv) models for comparison and metrics to assure that required standards have been met;

(L) holistic system security that—

(i) addresses the building of secure systems from trusted and untrusted components;

(ii) proactively reduces vulnerabilities;

(iii) addresses insider threats; and
(iv) supports privacy in conjunction with improved security;

(M) monitoring and detection;
(N) mitigation and rapid recovery methods;
(O) security of wireless networks and mobile devices;
(P) security of cloud infrastructure and services;
(Q) security of election-dedicated voting system software and hardware; and
(R) role of the human factor in cybersecurity and the interplay of computers and humans and the physical world.

(2) Merit review; competition

Grants shall be awarded under this section on a merit-reviewed competitive basis.

(3) Authorization of appropriations

There are authorized to be appropriated to the National Science Foundation to carry out this subsection—

(A) $35,000,000 for fiscal year 2003;
(B) $40,000,000 for fiscal year 2004;
(C) $46,000,000 for fiscal year 2005;
(D) $52,000,000 for fiscal year 2006; and
(E) $60,000,000 for fiscal year 2007.

(b) Computer and network security research centers

(1) In general

The Director shall award multiyear grants, subject to the availability of appropriations, to institutions of higher education, nonprofit research institutions, or consortia thereof to establish multidisciplinary Centers for Computer and Network Security Research. Institutions of higher education, nonprofit research institutions, or consortia thereof receiving such grants may partner with 1 or more government laboratories or for-profit institutions, or other institutions of higher education or nonprofit research institutions.

(2) Merit review; competition

Grants shall be awarded under this subsection on a merit-reviewed competitive basis.

(3) Purpose

The purpose of the Centers shall be to generate innovative approaches to computer and network security by conducting cutting-edge, multidisciplinary research in computer and network security, including improving the security and resiliency of information technology, reducing cyber vulnerabilities, and anticipating and mitigating consequences of cyber attacks on critical infrastructure, by conducting research in the areas described in subsection (a)(1).

(4) Applications

An institution of higher education, nonprofit research institution, or consortia thereof seeking funding under this subsection shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the research projects that will be undertaken by the Center and the contributions of each of the participating entities;

(B) how the Center will promote active collaboration among scientists and engineers from different disciplines, such as computer scientists, engineers, mathematicians, and social science researchers;

(C) how the Center will contribute to increasing the number and quality of computer and network security researchers and other professionals, including individuals from groups historically underrepresented in these fields; and

(D) how the Center will disseminate research results quickly and widely to improve cyber security in information technology networks, products, and services.

(5) Criteria

In evaluating the applications submitted under paragraph (4), the Director shall consider, at a minimum—

(A) the ability of the applicant to generate innovative approaches to computer and network security and effectively carry out the research program;

(B) the experience of the applicant in conducting research on computer and network security and the capacity of the applicant to foster new multidisciplinary collaborations;

(C) the capacity of the applicant to attract and provide adequate support for a diverse group of undergraduate and graduate students and postdoctoral fellows to pursue computer and network security research;

(D) the extent to which the applicant will partner with government laboratories, for-profit entities, other institutions of higher education, or nonprofit research institutions, and the role the partners will play in the research undertaken by the Center;

(E) the demonstrated capability of the applicant to conduct high performance computation integral to complex computer and network security research, through on-site or off-site computing;

(F) the applicant's affiliation with private sector entities involved with industrial research described in subsection (a)(1);

(G) the capability of the applicant to conduct research in a secure environment;

(H) the applicant's affiliation with existing research programs of the Federal Government;

(I) the applicant's experience managing public-private partnerships to transition new technologies into a commercial setting or the government user community;

(J) the capability of the applicant to conduct interdisciplinary cybersecurity research, basic and applied, such as in law, economics, or behavioral sciences; and

(K) the capability of the applicant to conduct research in areas such as systems security, wireless security, networking and protocols, formal methods and networking and information technology, nanotechnology, or industrial control systems.

(6) Annual meeting

The Director shall convene an annual meeting of the Centers in order to foster collaboration and communication between Center participants.

(7) Authorization of appropriations

There are authorized to be appropriated for the National Science Foundation to carry out this subsection—

(A) $12,000,000 for fiscal year 2003;

(B) $24,000,000 for fiscal year 2004;

(C) $36,000,000 for fiscal year 2005;

(D) $36,000,000 for fiscal year 2006; and

(E) $36,000,000 for fiscal year 2007.

(Pub. L. 107–305, §4, Nov. 27, 2002, 116 Stat. 2368; Pub. L. 113–274, title II, §§201(e), 202, Dec. 18, 2014, 128 Stat. 2978; Pub. L. 114–329, title I, §§104(a), 105(r), Jan. 6, 2017, 130 Stat. 2975, 2984.)

EDITORIAL NOTES

AMENDMENTS

2017—Subsec. (a)(1)(Q), (R). Pub. L. 114–329, §104(a), added subpars. (Q) and (R).

Subsec. (b)(5)(K). Pub. L. 114–329, §105(r), substituted "networking and information technology" for "high-performance computing".

2014—Subsec. (a)(1)(J) to (P). Pub. L. 113–274, §201(e), added subpars. (J) to (P).

Subsec. (b)(3). Pub. L. 113–274, §202(1), substituted "improving the security and resiliency of information technology, reducing cyber vulnerabilities, and anticipating and mitigating consequences of cyber attacks on critical infrastructure, by conducting research in the areas" for "the research areas".

Subsec. (b)(4)(D). Pub. L. 113–274, §202(2), substituted "the Center" for "the center".

Subsec. (b)(5)(E) to (K). Pub. L. 113–274, §202(3), added subpars. (E) to (K).

§7404. National Science Foundation computer and network security programs

(a) Computer and network security capacity building grants

(1) In general

The Director shall establish a program to award grants to institutions of higher education (or consortia thereof) to establish or improve undergraduate and master's degree programs in computer and network security, to increase the number of students, including the number of students from groups historically underrepresented in these fields and students who are veterans, who pursue undergraduate or master's degrees in fields related to computer and network security, and to provide students with experience in government or industry related to their computer and network security studies.

(2) Merit review

Grants shall be awarded under this subsection on a merit-reviewed competitive basis.

(3) Use of funds

Grants awarded under this subsection shall be used for activities that enhance the ability of an institution of higher education (or consortium thereof) to provide high-quality undergraduate and master's degree programs in computer and network security and to recruit and retain increased numbers of students to such programs. Activities may include—

(A) revising curriculum to better prepare undergraduate and master's degree students for careers in computer and network security;

(B) establishing degree and certificate programs in computer and network security;

(C) creating opportunities for undergraduate students to participate in computer and network security research projects;

(D) acquiring equipment necessary for student instruction in computer and network security, including the installation of testbed networks for student use;

(E) providing opportunities for faculty to work with local or Federal Government agencies, private industry, nonprofit research institutions, or other academic institutions to develop new expertise or to formulate new research directions in computer and network security;

(F) establishing collaborations with other academic institutions or academic departments that seek to establish, expand, or enhance programs in computer and network security;

(G) establishing student internships in computer and network security at government agencies or in private industry;

(H) establishing collaborations with other academic institutions to establish or enhance a web-based collection of computer and network security courseware and laboratory exercises for sharing with other institutions of higher education, including community colleges;

(I) establishing or enhancing bridge programs in computer and network security between community colleges and universities;

(J) creating opportunities for veterans to transition to careers in computer and network security; and

(K) any other activities the Director determines will accomplish the goals of this subsection.

(4) Selection process

(A) Application

An institution of higher education (or a consortium thereof) seeking funding under this subsection shall submit an application to the Director at such time, in such manner, and

containing such information as the Director may require. The application shall include, at a minimum—

(i) a description of the applicant's computer and network security research and instructional capacity, and in the case of an application from a consortium of institutions of higher education, a description of the role that each member will play in implementing the proposal;

(ii) a comprehensive plan by which the institution or consortium will build instructional capacity in computer and information security;

(iii) a description of relevant collaborations with government agencies or private industry that inform the instructional program in computer and network security;

(iv) a survey of the applicant's historic student enrollment and placement data in fields related to computer and network security and a study of potential enrollment and placement for students enrolled in the proposed computer and network security program; and

(v) a plan to evaluate the success of the proposed computer and network security program, including post-graduation assessment of graduate school and job placement and retention rates as well as the relevance of the instructional program to graduate study and to the workplace.

(B) Awards

(i) The Director shall ensure, to the extent practicable, that grants are awarded under this subsection in a wide range of geographic areas and categories of institutions of higher education, including minority serving institutions.

(ii) The Director shall award grants under this subsection for a period not to exceed 5 years.

(5) Assessment required

The Director shall evaluate the program established under this subsection no later than 6 years after the establishment of the program. At a minimum, the Director shall evaluate the extent to which the program achieved its objectives of increasing the quality and quantity of students, including students from groups historically underrepresented in computer and network security related disciplines, pursuing undergraduate or master's degrees in computer and network security.

(6) Authorization of appropriations

There are authorized to be appropriated to the National Science Foundation to carry out this subsection—

(A) $15,000,000 for fiscal year 2003;
(B) $20,000,000 for fiscal year 2004;
(C) $20,000,000 for fiscal year 2005;
(D) $20,000,000 for fiscal year 2006; and
(E) $20,000,000 for fiscal year 2007.

(b) Scientific and Advanced Technology Act of 1992

(1) Grants

The Director shall provide grants under the Scientific and Advanced Technology Act of 1992 (42 U.S.C. 1862i) [42 U.S.C. 1862h et seq.] for the purposes of section 3(a) and (b) of that Act [42 U.S.C. 1862i(a), (b)], except that the activities supported pursuant to this subsection shall be limited to improving education in fields related to computer and network security.

(2) Authorization of appropriations

There are authorized to be appropriated to the National Science Foundation to carry out this subsection—

(A) $1,000,000 for fiscal year 2003;
(B) $1,250,000 for fiscal year 2004;
(C) $1,250,000 for fiscal year 2005;
(D) $1,250,000 for fiscal year 2006; and
(E) $1,250,000 for fiscal year 2007.

(c) Graduate traineeships in computer and network security research

(1) In general

The Director shall establish a program to award grants to institutions of higher education to establish traineeship programs for graduate students who pursue computer and network security research leading to a doctorate degree by providing funding and other assistance, and by providing graduate students with research experience in government or industry related to the students' computer and network security studies.

(2) Merit review

Grants shall be provided under this subsection on a merit-reviewed competitive basis.

(3) Use of funds

An institution of higher education shall use grant funds for the purposes of—

(A) providing traineeships to students who are citizens, nationals, or lawfully admitted permanent resident aliens of the United States and are pursuing research in computer or network security leading to a doctorate degree;

(B) paying tuition and fees for students receiving traineeships under subparagraph (A);

(C) establishing scientific internship programs for students receiving traineeships under subparagraph (A) in computer and network security at for-profit institutions, nonprofit research institutions, or government laboratories; and

(D) other costs associated with the administration of the program.

(4) Traineeship amount

Traineeships provided under paragraph (3)(A) shall be in the amount of $25,000 per year, or the level of the National Science Foundation Graduate Research Fellowships, whichever is greater, for up to 3 years.

(5) Selection process

An institution of higher education seeking funding under this subsection shall submit an application to the Director at such time, in such manner, and containing such information as the Director may require. The application shall include, at a minimum, a description of—

(A) the instructional program and research opportunities in computer and network security available to graduate students at the applicant's institution; and

(B) the internship program to be established, including the opportunities that will be made available to students for internships at for-profit institutions, nonprofit research institutions, and government laboratories.

(6) Review of applications

In evaluating the applications submitted under paragraph (5), the Director shall consider—

(A) the ability of the applicant to effectively carry out the proposed program;

(B) the quality of the applicant's existing research and education programs;

(C) the likelihood that the program will recruit increased numbers of students, including students from groups historically underrepresented in computer and network security related disciplines or veterans, to pursue and earn doctorate degrees in computer and network security;

(D) the nature and quality of the internship program established through collaborations with government laboratories, nonprofit research institutions, and for-profit institutions;

(E) the integration of internship opportunities into graduate students' research; and

(F) the relevance of the proposed program to current and future computer and network security needs.

(7) Authorization of appropriations

There are authorized to be appropriated to the National Science Foundation to carry out this subsection—

(A) $10,000,000 for fiscal year 2003;

(B) $20,000,000 for fiscal year 2004;

(C) $20,000,000 for fiscal year 2005;
(D) $20,000,000 for fiscal year 2006; and
(E) $20,000,000 for fiscal year 2007.

(d) Graduate Research Fellowships program support

Computer and network security shall be included among the fields of specialization supported by the National Science Foundation's Graduate Research Fellowships program under section 1869 of title 42.

(e) Cyber security faculty development traineeship program

(1) In general

The Director shall establish a program to award grants to institutions of higher education to establish traineeship programs to enable graduate students to pursue academic careers in cyber security upon completion of doctoral degrees.

(2) Merit review; competition

Grants shall be awarded under this section on a merit-reviewed competitive basis.

(3) Application

Each institution of higher education desiring to receive a grant under this subsection shall submit an application to the Director at such time, in such manner, and containing such information as the Director shall require.

(4) Use of funds

Funds received by an institution of higher education under this paragraph shall—

(A) be made available to individuals on a merit-reviewed competitive basis and in accordance with the requirements established in paragraph (7);

(B) be in an amount that is sufficient to cover annual tuition and fees for doctoral study at an institution of higher education for the duration of the graduate traineeship, and shall include, in addition, an annual living stipend of $25,000; and

(C) be provided to individuals for a duration of no more than 5 years, the specific duration of each graduate traineeship to be determined by the institution of higher education, on a case-by-case basis.

(5) Repayment

Each graduate traineeship shall—

(A) subject to paragraph (5)(B), be subject to full repayment upon completion of the doctoral degree according to a repayment schedule established and administered by the institution of higher education;

(B) be forgiven at the rate of 20 percent of the total amount of the graduate traineeship assistance received under this section for each academic year that a recipient is employed as a full-time faculty member at an institution of higher education for a period not to exceed 5 years; and

(C) be monitored by the institution of higher education receiving a grant under this subsection to ensure compliance with this subsection.

(6) Exceptions

The Director may provide for the partial or total waiver or suspension of any service obligation or payment by an individual under this section whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be unconscionable.

(7) Eligibility

To be eligible to receive a graduate traineeship under this section, an individual shall—

(A) be a citizen, national, or lawfully admitted permanent resident alien of the United States; and

(B) demonstrate a commitment to a career in higher education.

(8) Consideration

In making selections for graduate traineeships under this paragraph, an institution receiving a grant under this subsection shall consider, to the extent possible, a diverse pool of applicants whose interests are of an interdisciplinary nature, encompassing the social scientific as well as the technical dimensions of cyber security.

(9) Authorization of appropriations

There are authorized to be appropriated to the National Science Foundation to carry out this paragraph $5,000,000 for each of fiscal years 2003 through 2007.

(Pub. L. 107–305, §5, Nov. 27, 2002, 116 Stat. 2370; Pub. L. 116–115, §3(f), (g), Feb. 11, 2020, 134 Stat. 107.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Scientific and Advanced Technology Act of 1992, referred to in subsec. (b)(1), is Pub. L. 102–476, Oct. 23, 1992, 106 Stat. 2297, which enacted sections 1862h to 1862j of Title 42, The Public Health and Welfare, and amended section 1862 of Title 42. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 1861 of Title 42 and Tables.

AMENDMENTS

2020—Subsec. (a)(1). Pub. L. 116–115, §3(f)(1), inserted "and students who are veterans" after "these fields".

Subsec. (a)(3)(J), (K). Pub. L. 116–115, §3(f)(2), added subpar. (J) and redesignated former subpar. (J) as (K).

Subsec. (c)(6)(C). Pub. L. 116–115, §3(g), inserted "or veterans" after "disciplines".

§7405. Consultation

In carrying out sections 7403 and 7404 of this title, the Director shall consult with other Federal agencies.

(Pub. L. 107–305, §6, Nov. 27, 2002, 116 Stat. 2374.)

§7406. National Institute of Standards and Technology programs

(a), (b) Omitted

(c) Security automation and checklists for Government systems

(1) In general

The Director of the National Institute of Standards and Technology shall, as necessary, develop and revise security automation standards, associated reference materials (including protocols), and checklists providing settings and option selections that minimize the security risks associated with each information technology hardware or software system and security tool that is, or is likely to become, widely used within the Federal Government, thereby enabling standardized and interoperable technologies, architectures, and frameworks for continuous monitoring of information security within the Federal Government.

(2) Priorities for development

The Director of the National Institute of Standards and Technology shall establish priorities for the development of standards, reference materials, and checklists under this subsection on the basis of—

(A) the security risks associated with the use of the system;

(B) the number of agencies that use a particular system or security tool;

(C) the usefulness of the standards, reference materials, or checklists to Federal agencies that are users or potential users of the system;

(D) the effectiveness of the associated standard, reference material, or checklist in creating or enabling continuous monitoring of information security; or

(E) such other factors as the Director of the National Institute of Standards and Technology determines to be appropriate.

(3) Excluded systems

The Director of the National Institute of Standards and Technology may exclude from the application of paragraph (1) any information technology hardware or software system or security tool for which such Director determines that the development of a standard, reference material, or checklist is inappropriate because of the infrequency of use of the system, the obsolescence of the system, or the lack of utility or impracticability of developing a standard, reference material, or checklist for the system.

(4) Dissemination of standards and related materials

The Director of the National Institute of Standards and Technology shall ensure that Federal agencies are informed of the availability of any standard, reference material, checklist, or other item developed under this subsection.

(5) Agency use requirements

The development of standards, reference materials, and checklists under paragraph (1) for an information technology hardware or software system or tool does not—

(A) require any Federal agency to select the specific settings or options recommended by the standard, reference material, or checklist for the system;

(B) establish conditions or prerequisites for Federal agency procurement or deployment of any such system;

(C) imply an endorsement of any such system by the Director of the National Institute of Standards and Technology; or

(D) preclude any Federal agency from procuring or deploying other information technology hardware or software systems for which no such standard, reference material, or checklist has been developed or identified under paragraph (1).

(d) Federal agency information security programs

(1) In general

In developing the agencywide information security program required by section 3554(b) of title 44, an agency that deploys a computer hardware or software system for which the Director of the National Institute of Standards and Technology has developed a checklist under subsection (c) of this section—

(A) shall include in that program an explanation of how the agency has considered such checklist in deploying that system; and

(B) may treat the explanation as if it were a portion of the agency's annual performance plan properly classified under criteria established by an Executive Order (within the meaning of section 1115(d) of title 31).

(2) Limitation

Paragraph (1) does not apply to any computer hardware or software system for which the National Institute of Standards and Technology does not have responsibility under section 278g–3(a)(3) of this title.

(Pub. L. 107–305, §8, Nov. 27, 2002, 116 Stat. 2375; Pub. L. 113–274, title II, §203, Dec. 18, 2014, 128 Stat. 2979; Pub. L. 113–283, §2(e)(2), Dec. 18, 2014, 128 Stat. 3086.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of section 8 of Pub. L. 107–305. Subsec. (a) of section 8 of Pub. L. 107–305 enacted section 278h of this title and renumbered former section 278h of this title as section 278q of this title. Subsec. (b) of section 8 of Pub. L. 107–305 amended section 278g–3 of this title.

AMENDMENTS

2014—Subsec. (c). Pub. L. 113–274 amended subsec. (c) generally. Prior to amendment, text related to checklists setting forth settings and option selections that minimize the security risks associated with computer hardware or software systems likely to become widely used within the Federal Government.

Subsec. (d)(1). Pub. L. 113–283, which directed amendment of section 8 of the Cybersecurity Research and Development Act by substituting "section 3554" for "section 3534" in subsec. (d)(1), was executed to this section, which is section 8 of the Cyber Security Research and Development Act, to reflect the probable intent of Congress.

§7407. Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce for the National Institute of Standards and Technology—

(1) for activities under section 278h of this title—
- (A) $25,000,000 for fiscal year 2003;
- (B) $40,000,000 for fiscal year 2004;
- (C) $55,000,000 for fiscal year 2005;
- (D) $70,000,000 for fiscal year 2006;
- (E) $85,000,000 for fiscal year 2007; and

(2) for activities under section 278g–3(f) [1] of this title—
- (A) $6,000,000 for fiscal year 2003;
- (B) $6,200,000 for fiscal year 2004;
- (C) $6,400,000 for fiscal year 2005;
- (D) $6,600,000 for fiscal year 2006; and
- (E) $6,800,000 for fiscal year 2007.

(Pub. L. 107–305, §11, Nov. 27, 2002, 116 Stat. 2379.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 278g–3 of this title, referred to in par. (2), was amended by Pub. L. 107–347, title III, §303, Dec. 17, 2002, 116 Stat. 2957, and, as so amended, did not contain a subsec. (f). A later amendment by Pub. L. 113–274, title II, §204(1), Dec. 18, 2014, 128 Stat. 2980, redesignated subsec. (e) of section 278g–3 of this title, relating to definitions, as (f).

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

§7408. National Academy of Sciences study on computer and network security in critical infrastructures

(a) Study

Not later than 3 months after November 27, 2002, the Director of the National Institute of Standards and Technology shall enter into an arrangement with the National Research Council of the National Academy of Sciences to conduct a study of the vulnerabilities of the Nation's network infrastructure and make recommendations for appropriate improvements. The National Research Council shall—

(1) review existing studies and associated data on the architectural, hardware, and software vulnerabilities and interdependencies in United States critical infrastructure networks;

(2) identify and assess gaps in technical capability for robust critical infrastructure network security and make recommendations for research priorities and resource requirements; and

(3) review any and all other essential elements of computer and network security, including security of industrial process controls, to be determined in the conduct of the study.

(b) Report

The Director of the National Institute of Standards and Technology shall transmit a report containing the results of the study and recommendations required by subsection (a) to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science not later than 21 months after November 27, 2002.

(c) Security

The Director of the National Institute of Standards and Technology shall ensure that no information that is classified is included in any publicly released version of the report required by this section.

(d) Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce for the National Institute of Standards and Technology for the purposes of carrying out this section, $700,000.

(Pub. L. 107–305, §12, Nov. 27, 2002, 116 Stat. 2380.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§7409. Coordination of Federal cyber security research and development

The Director of the National Science Foundation and the Director of the National Institute of Standards and Technology shall coordinate the research programs authorized by this chapter or pursuant to amendments made by this chapter. The Director of the Office of Science and Technology Policy shall work with the Director of the National Science Foundation and the Director of the National Institute of Standards and Technology to ensure that programs authorized by this chapter or pursuant to amendments made by this chapter are taken into account in any government-wide cyber security research effort.

(Pub. L. 107–305, §13, Nov. 27, 2002, 116 Stat. 2380.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–305, Nov. 27, 2002, 116 Stat. 2367, known as the Cyber Security Research and Development Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title.

§7410. Grant eligibility requirements and compliance with immigration laws

(a) Immigration status

No grant or fellowship may be awarded under this chapter, directly or indirectly, to any individual who is in violation of the terms of his or her status as a nonimmigrant under section 1101(a)(15)(F), (M), or (J) of title 8.

(b) Aliens from certain countries

No grant or fellowship may be awarded under this chapter, directly or indirectly, to any alien from a country that is a state sponsor of international terrorism, as defined under section 1735(b) of title 8, unless the Secretary of State determines, in consultation with the Attorney General and the heads of other appropriate agencies, that such alien does not pose a threat to the safety or national security of the United States.

(c) Non-complying institutions

No grant or fellowship may be awarded under this chapter, directly or indirectly, to any institution of higher education or non-profit institution (or consortia thereof) that has—

(1) materially failed to comply with the recordkeeping and reporting requirements to receive nonimmigrant students or exchange visitor program participants under section 1101(a)(15)(F), (M), or (J) of title 8, or section 1372 of title 8, as required by section 1762 of title 8; or

(2) been suspended or terminated pursuant to section 1762(c) of title 8.

(Pub. L. 107–305, §16, Nov. 27, 2002, 116 Stat. 2381.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–305, Nov. 27, 2002, 116 Stat. 2367, known as the Cyber Security Research and Development Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

§7411. Report on grant and fellowship programs

Within 24 months after November 27, 2002, the Director, in consultation with the Assistant to the President for National Security Affairs, shall submit to Congress a report reviewing this chapter to ensure that the programs and fellowships are being awarded under this chapter to individuals and institutions of higher education who are in compliance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) in order to protect our national security.

(Pub. L. 107–305, §17, Nov. 27, 2002, 116 Stat. 2381.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 107–305, Nov. 27, 2002, 116 Stat. 2367, known as the Cyber Security Research and Development Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Immigration and Nationality Act, referred to in text, is act June 27, 1952, ch. 477, 66 Stat. 163, which is classified principally to chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

CHAPTER 100A—CYBERSECURITY ENHANCEMENT

Sec.

§7421. Definitions

In this chapter:

(1) Cybersecurity mission

The term "cybersecurity mission" means activities that encompass the full range of threat reduction, vulnerability reduction, deterrence, international engagement, incident response, resiliency, and recovery policies and activities, including computer network operations, information assurance, law enforcement, diplomacy, military, and intelligence missions as such activities relate to the security and stability of cyberspace.

(2) Information system

The term "information system" has the meaning given that term in section 3502 of title 44.

(Pub. L. 113–274, §2, Dec. 18, 2014, 128 Stat. 2971.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 113–274, Dec. 18, 2014, 128 Stat. 2971, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 113–274, §1(a), Dec. 18, 2014, 128 Stat. 2971, provided that: "This Act [enacting this chapter and amending sections 272, 278g–3, 7403, and 7406 of this title] may be cited as the 'Cybersecurity Enhancement Act of 2014'."

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13984. TAKING ADDITIONAL STEPS TO ADDRESS THE NATIONAL EMERGENCY WITH RESPECT TO SIGNIFICANT MALICIOUS CYBER-ENABLED ACTIVITIES

Ex. Ord. No. 13984, Jan. 19, 2021, 86 F.R. 6837, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq*.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq*.) (NEA), and section 301 of title 3, United States Code:

I, DONALD J. TRUMP, President of the United States of America, find that additional steps must be taken to deal with the national emergency related to significant malicious cyber-enabled activities declared in Executive Order 13694 of April 1, 2015 (Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities), as amended [50 U.S.C. 1701 note], to address the use of United States Infrastructure as a Service (IaaS) products by foreign malicious cyber actors. IaaS products provide persons the ability to run software and store data on servers offered for rent or lease without responsibility for the maintenance and operating costs of those servers. Foreign malicious cyber actors aim to harm the United States economy through the theft of intellectual property and sensitive data and to threaten national security by targeting United States critical infrastructure for malicious cyber-enabled activities. Foreign actors use United States IaaS products for a variety of tasks in carrying out malicious cyber-enabled activities, which makes it extremely difficult for United States officials to track and obtain information through legal process before these foreign actors transition to replacement infrastructure and destroy evidence of their prior activities; foreign resellers of United States IaaS products make it easier for foreign actors to access these products and evade detection. This order provides authority to impose record-keeping obligations with respect to foreign transactions. To address these threats, to deter foreign malicious cyber actors' use of United States IaaS products, and to assist in the investigation of transactions involving foreign malicious cyber actors, the United States must ensure that providers offering United States IaaS products verify the identity of persons obtaining an IaaS account ("Account") for the provision of these products and maintain records of those transactions. In appropriate circumstances, to further protect against malicious cyber-enabled activities, the United States must also limit certain foreign actors' access to United States IaaS products. Further, the United States must encourage more robust cooperation among United States IaaS providers, including by increasing voluntary information sharing, to bolster efforts to thwart the actions of foreign malicious cyber actors.

Accordingly, I hereby order:

SECTION 1. *Verification of Identity*. Within 180 days of the date of this order [Jan. 19, 2021], the Secretary of Commerce (Secretary) shall propose for notice and comment regulations that require United States IaaS providers to verify the identity of a foreign person that obtains an Account. These regulations shall, at a minimum:

(a) set forth the minimum standards that United States IaaS providers must adopt to verify the identity of a foreign person in connection with the opening of an Account or the maintenance of an existing Account, including:

(i) the types of documentation and procedures required to verify the identity of any foreign person acting as a lessee or sub-lessee of these products or services;

(ii) records that United States IaaS providers must securely maintain regarding a foreign person that obtains an Account, including information establishing:

(A) the identity of such foreign person and the person's information, including name, national identification number, and address;

(B) means and source of payment (including any associated financial institution and other identifiers such as credit card number, account number, customer identifier, transaction identifiers, or virtual currency wallet or wallet address identifier);

(C) electronic mail address and telephonic contact information, used to verify a foreign person's identity; and

(D) internet Protocol addresses used for access or administration and the date and time of each such access or administrative action, related to ongoing verification of such foreign person's ownership of such an Account; and

(iii) methods for limiting all third-party access to the information described in this subsection, except insofar as such access is otherwise consistent with this order and allowed under applicable law;

(b) take into consideration the type of Account maintained by United States IaaS providers, methods of opening an Account, and types of identifying information available to accomplish the objectives of identifying foreign malicious cyber actors using any such products and avoiding the imposition of an undue burden on such providers; and

(c) permit the Secretary, in accordance with such standards and procedures as the Secretary may delineate and in consultation with the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, to exempt any United States IaaS provider, or any specific type of

Account or lessee, from the requirements of any regulation issued pursuant to this section. Such standards and procedures may include a finding by the Secretary that a provider, Account, or lessee complies with security best practices to otherwise deter abuse of IaaS products.

SEC. 2. *Special Measures for Certain Foreign Jurisdictions or Foreign Persons*. (a) Within 180 days of the date of this order, the Secretary shall propose for notice and comment regulations that require United States IaaS providers to take any of the special measures described in subsection (d) of this section if the Secretary, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence and, as the Secretary deems appropriate, the heads of other executive departments and agencies (agencies), finds:

(i) that reasonable grounds exist for concluding that a foreign jurisdiction has any significant number of foreign persons offering United States IaaS products that are used for malicious cyber-enabled activities or any significant number of foreign persons directly obtaining United States IaaS products for use in malicious cyber-enabled activities, in accordance with subsection (b) of this section; or

(ii) that reasonable grounds exist for concluding that a foreign person has established a pattern of conduct of offering United States IaaS products that are used for malicious cyber-enabled activities or directly obtaining United States IaaS products for use in malicious cyber-enabled activities.

(b) In making findings under subsection (a) of this section on the use of United States IaaS products in malicious cyber-enabled activities, the Secretary shall consider any information the Secretary determines to be relevant, as well as information pertaining to the following factors:

(i) Factors related to a particular foreign jurisdiction, including:

(A) evidence that foreign malicious cyber actors have obtained United States IaaS products from persons offering United States IaaS products in that foreign jurisdiction, including whether such actors obtained such IaaS products through Reseller Accounts;

(B) the extent to which that foreign jurisdiction is a source of malicious cyber-enabled activities; and

(C) Whether [sic] the United States has a mutual legal assistance treaty with that foreign jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about activities involving United States IaaS products originating in or routed through such foreign jurisdiction; and

(ii) Factors related to a particular foreign person, including:

(A) the extent to which a foreign person uses United States IaaS products to conduct, facilitate, or promote malicious cyber-enabled activities;

(B) the extent to which United States IaaS products offered by a foreign person are used to facilitate or promote malicious cyber-enabled activities;

(C) the extent to which United States IaaS products offered by a foreign person are used for legitimate business purposes in the jurisdiction; and

(D) the extent to which actions short of the imposition of special measures pursuant to subsection (d) of this section are sufficient, with respect to transactions involving the foreign person offering United States IaaS products, to guard against malicious cyber-enabled activities.

(c) In selecting which special measure or measures to take under this section, the Secretary shall consider:

(i) whether the imposition of any special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for United States IaaS providers;

(ii) the extent to which the imposition of any special measure or the timing of the special measure would have a significant adverse effect on legitimate business activities involving the particular foreign jurisdiction or foreign person; and

(iii) the effect of any special measure on United States national security, law enforcement investigations, or foreign policy.

(d) The special measures referred to in subsections (a), (b), and (c) of this section are as follows:

(i) Prohibitions or Conditions on Accounts within Certain Foreign Jurisdictions: The Secretary may prohibit or impose conditions on the opening or maintaining with any United States IaaS provider of an Account, including a Reseller Account, by any foreign person located in a foreign jurisdiction found to have any significant number of foreign persons offering United States IaaS products used for malicious cyber-enabled activities, or by any United States IaaS provider for or on behalf of a foreign person; and

(ii) Prohibitions or Conditions on Certain Foreign Persons: The Secretary may prohibit or impose conditions on the opening or maintaining in the United States of an Account, including a Reseller Account, by any United States IaaS provider for or on behalf of a foreign person, if such an Account involves any such foreign person found to be offering United States IaaS products used in malicious cyber-enabled activities or directly obtaining United States IaaS products for use in malicious cyber-enabled activities.

(e) The Secretary shall not impose requirements for United States IaaS providers to take any of the special

measures described in subsection (d) of this section earlier than 180 days following the issuance of final regulations described in section 1 of this order.

SEC. 3. *Recommendations for Cooperative Efforts to Deter the Abuse of United States IaaS Products*. (a) Within 120 days of the date of this order, the Attorney General and the Secretary of Homeland Security, in coordination with the Secretary and, as the Attorney General and the Secretary of Homeland Security deem appropriate, the heads of other agencies, shall engage and solicit feedback from industry on how to increase information sharing and collaboration among IaaS providers and between IaaS providers and the agencies to inform recommendations under subsection (b) of this section.

(b) Within 240 days of the date of this order, the Attorney General and the Secretary of Homeland Security, in coordination with the Secretary, and, as the Attorney General and Secretary of Homeland Security deem appropriate, the heads of other agencies, shall develop and submit to the President a report containing recommendations to encourage:

(i) voluntary information sharing and collaboration, among United States IaaS providers; and

(ii) information sharing between United States IaaS providers and appropriate agencies, including the reporting of incidents, crimes, and other threats to national security, for the purpose of preventing further harm to the United States.

(c) The report and recommendations provided under subsection (b) of this section shall consider existing mechanisms for such sharing and collaboration, including the Cybersecurity Information Sharing Act [of 2015] (6 U.S.C. 1503 [probably should be "1501"] *et seq*.), and shall identify any gaps in current law, policy, or procedures. The report shall also include:

(i) information related to the operations of foreign malicious cyber actors, the means by which such actors use IaaS products within the United States, malicious capabilities and tradecraft, and the extent to which persons in the United States are compromised or unwittingly involved in such activity;

(ii) recommendations for liability protections beyond those in existing law that may be needed to encourage United States IaaS providers to share information among each other and with the United States Government; and

(iii) recommendations for facilitating the detection and identification of Accounts and activities that involve foreign malicious cyber actors.

SEC. 4. *Ensuring Sufficient Resources for Implementation*. The Secretary, in consultation with the heads of such agencies as the Secretary deems appropriate, shall identify funding requirements to support the efforts described in this order and incorporate such requirements into its annual budget submissions to the Office of Management and Budget.

SEC. 5. *Definitions*. For the purposes of this order, the following definitions apply:

(a) The term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) The term "foreign jurisdiction" means any country, subnational territory, or region, other than those subject to the civil or military jurisdiction of the United States, in which any person or group of persons exercises sovereign de facto or de jure authority, including any such country, subnational territory, or region in which a person or group of persons is assuming to exercise governmental authority whether such a person or group of persons has or has not been recognized by the United States;

(c) The term "foreign person" means a person that is not a United States person;

(d) The term "Infrastructure as a Service Account" or "Account" means a formal business relationship established to provide IaaS products to a person in which details of such transactions are recorded.

(e) The term "Infrastructure as a Service Product" means any product or service offered to a consumer, including complimentary or "trial" offerings, that provides processing, storage, networks, or other fundamental computing resources, and with which the consumer is able to deploy and run software that is not predefined, including operating systems and applications. The consumer typically does not manage or control most of the underlying hardware but has control over the operating systems, storage, and any deployed applications. The term is inclusive of "managed" products or services, in which the provider is responsible for some aspects of system configuration or maintenance, and "unmanaged" products or services, in which the provider is only responsible for ensuring that the product is available to the consumer. The term is also inclusive of "virtualized" products and services, in which the computing resources of a physical machine are split between virtualized computers accessible over the internet (e.g., "virtual private servers"), and "dedicated" products or services in which the total computing resources of a physical machine are provided to a single person (e.g., "bare-metal" servers);

(f) The term "malicious cyber-enabled activities" refers to activities, other than those authorized by or in accordance with United States law that seek to compromise or impair the confidentiality, integrity, or availability of computer, information, or communications systems, networks, physical or virtual infrastructure

controlled by computers or information systems, or information resident thereon;

(g) The term "person" means an individual or entity;

(h) The term "Reseller Account" means an Infrastructure as a Service Account established to provide IaaS products to a person who will then offer those products subsequently, in whole or in part, to a third party.

(i) The term "United States Infrastructure as a Service Product" means any Infrastructure as a Service Product owned by any United States person or operated within the territory of the United States of America;

(j) The term "United States Infrastructure as a Service Provider" means any United States Person that offers any Infrastructure as a Service Product;

(k) The term "United States person" means any United States citizen, lawful permanent resident of the United States as defined by the Immigration and Nationality Act, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person located in the United States;

SEC. 6. *Amendment to Reporting Authorizations*. [Amended Ex. Ord. No. 13694, listed in a table under section 1701 of Title 50, War and National Defense.]

SEC. 7. *General Provisions*. (a) The Secretary, in consultation with the heads of such other agencies as the Secretary deems appropriate, is hereby authorized to take such actions, including the promulgation of rules and regulations, and employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary may redelegate any of these functions to other officers within the Department of Commerce, consistent with applicable law. All departments and agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) Nothing in this order prohibits or otherwise restricts authorized intelligence, military, law enforcement, or other activities in furtherance of national security or public safety activities.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§7422. No regulatory authority

Nothing in this chapter shall be construed to confer any regulatory authority on any Federal, State, tribal, or local department or agency.

(Pub. L. 113–274, §3, Dec. 18, 2014, 128 Stat. 2972.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 113–274, Dec. 18, 2014, 128 Stat. 2971, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7421 of this title and Tables.

§7423. No additional funds authorized

No additional funds are authorized to carry out this Act, and the amendments made by this Act. This Act, and the amendments made by this Act, shall be carried out using amounts otherwise authorized or appropriated.

(Pub. L. 113–274, §4, Dec. 18, 2014, 128 Stat. 2972.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, and the amendments made by this Act, referred to in text, is Pub. L. 113–274, Dec. 18, 2014, 128 Stat. 2971, which enacted this chapter and amended sections 272, 278g–3, 7403, and 7406 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7421 of this title and Tables.

SUBCHAPTER I—CYBERSECURITY RESEARCH AND DEVELOPMENT

§7431. Federal cybersecurity research and development

(a) Fundamental cybersecurity research

(1) Federal cybersecurity research and development strategic plan

The heads of the applicable agencies and departments, working through the National Science and Technology Council and the Networking and Information Technology Research and Development Program, shall develop and update every 4 years a Federal cybersecurity research and development strategic plan (referred to in this subsection as the "strategic plan") based on an assessment of cybersecurity risk to guide the overall direction of Federal cybersecurity and information assurance research and development for information technology and networking systems. The heads of the applicable agencies and departments shall build upon existing programs and plans to develop the strategic plan to meet objectives in cybersecurity, such as—

(A) how to design and build complex software-intensive systems that are secure and reliable when first deployed;

(B) how to test and verify that software and hardware, whether developed locally or obtained from a third party, is free of significant known security flaws;

(C) how to test and verify that software and hardware obtained from a third party correctly implements stated functionality, and only that functionality;

(D) how to guarantee the privacy of an individual, including that individual's identity, information, and lawful transactions when stored in distributed systems or transmitted over networks;

(E) how to build new protocols to enable the Internet to have robust security as one of the key capabilities of the Internet;

(F) how to determine the origin of a message transmitted over the Internet;

(G) how to support privacy in conjunction with improved security;

(H) how to address the problem of insider threats;

(I) how improved consumer education and digital literacy initiatives can address human factors that contribute to cybersecurity;

(J) how to protect information processed, transmitted, or stored using cloud computing or transmitted through wireless services;

(K) implementation of section 7432 of this title through research and development on the topics identified under subsection (a) of such section; and

(L) any additional objectives the heads of the applicable agencies and departments, in coordination with the head of any relevant Federal agency and with input from stakeholders, including appropriate national laboratories, industry, and academia, determine appropriate.

(2) Requirements

(A) Contents of plan

The strategic plan shall—

(i) specify and prioritize near-term, mid-term, and long-term research objectives, including objectives associated with the research identified in section 7403(a)(1) of this title;

(ii) specify how the near-term objectives described in clause (i) complement research and development areas in which the private sector is actively engaged;

(iii) describe how the heads of the applicable agencies and departments will focus on innovative, transformational technologies with the potential to enhance the security, reliability, resilience, and trustworthiness of the digital infrastructure, and to protect consumer privacy;

(iv) describe how the heads of the applicable agencies and departments will foster the rapid transfer of research and development results into new cybersecurity technologies and applications for the timely benefit of society and the national interest, including through the dissemination of best practices and other outreach activities;

(v) describe how the heads of the applicable agencies and departments will establish and maintain a national research infrastructure for creating, testing, and evaluating the next generation of secure networking and information technology systems; and

(vi) describe how the heads of the applicable agencies and departments will facilitate access by academic researchers to the infrastructure described in clause (v), as well as to relevant data, including event data.

(B) Private sector efforts

In developing, implementing, and updating the strategic plan, the heads of the applicable agencies and departments, working through the National Science and Technology Council and Networking and Information Technology Research and Development Program, shall work in close cooperation with industry, academia, and other interested stakeholders to ensure, to the extent possible, that Federal cybersecurity research and development is not duplicative of private sector efforts.

(C) Recommendations

In developing and updating the strategic plan the heads of the applicable agencies and departments shall solicit recommendations and advice from—

(i) the advisory committee established under section 5511(b)(1) of this title; and

(ii) a wide range of stakeholders, including industry, academia, including representatives of minority serving institutions and community colleges, National Laboratories, and other relevant organizations and institutions.

(D) Implementation roadmap

The heads of the applicable agencies and departments, working through the National Science and Technology Council and Networking and Information Technology Research and Development Program, shall develop and annually update an implementation roadmap for the strategic plan. The implementation roadmap shall—

(i) specify the role of each Federal agency in carrying out or sponsoring research and development to meet the research objectives of the strategic plan, including a description of how progress toward the research objectives will be evaluated;

(ii) specify the funding allocated to each major research objective of the strategic plan and the source of funding by agency for the current fiscal year;

(iii) estimate the funding required for each major research objective of the strategic plan for the following 3 fiscal years; and

(iv) track ongoing and completed Federal cybersecurity research and development projects.

(3) Reports to Congress

The heads of the applicable agencies and departments, working through the National Science and Technology Council and Networking and Information Technology Research and Development Program, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives—

(A) the strategic plan not later than 1 year after December 18, 2014;

(B) each quadrennial update to the strategic plan; and

(C) the implementation roadmap under subparagraph (D), and its annual updates, which shall

be appended to the annual report required under section 5511(a)(2)(D) of this title.

(4) Definition of applicable agencies and departments

In this subsection, the term "applicable agencies and departments" means the agencies and departments identified in clauses (i) through (xi) of section 5511(a)(3)(B) [1] of this title or designated under clause (xii) of that section.

(b) Cybersecurity practices research

The Director of the National Science Foundation shall support research that—

(1) develops, evaluates, disseminates, and integrates new cybersecurity practices and concepts into the core curriculum of computer science programs and of other programs where graduates of such programs have a substantial probability of developing software after graduation, including new practices and concepts relating to secure coding education and improvement programs; and

(2) develops new models for professional development of faculty in cybersecurity education, including secure coding development.

(c) Cybersecurity modeling and test beds

(1) Review

Not later than 1 year after December 18, 2014, the Director of the National Science Foundation, in coordination with the Director of the Office of Science and Technology Policy, shall conduct a review of cybersecurity test beds in existence on December 18, 2014, to inform the grants under paragraph (2). The review shall include an assessment of whether a sufficient number of cybersecurity test beds are available to meet the research needs under the Federal cybersecurity research and development strategic plan. Upon completion, the Director shall submit the review to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

(2) Additional cybersecurity modeling and test beds

(A) In general

If the Director of the National Science Foundation, after the review under paragraph (1), determines that the research needs under the Federal cybersecurity research and development strategic plan require the establishment of additional cybersecurity test beds, the Director of the National Science Foundation, in coordination with the Secretary of Commerce and the Secretary of Homeland Security, may award grants to institutions of higher education or research and development non-profit institutions to establish cybersecurity test beds.

(B) Requirement

The cybersecurity test beds under subparagraph (A) shall be sufficiently robust in order to model the scale and complexity of real-time cyber attacks and defenses on real world networks and environments.

(C) Assessment required

The Director of the National Science Foundation, in coordination with the Secretary of Commerce and the Secretary of Homeland Security, shall evaluate the effectiveness of any grants awarded under this subsection in meeting the objectives of the Federal cybersecurity research and development strategic plan not later than 2 years after the review under paragraph (1) of this subsection, and periodically thereafter.

(d) Coordination with other research initiatives

In accordance with the responsibilities under section 5511 of this title, the Director of the Office of Science and Technology Policy shall coordinate, to the extent practicable, Federal research and development activities under this section with other ongoing research and development security-related initiatives, including research being conducted by—

(1) the National Science Foundation;

(2) the National Institute of Standards and Technology;

(3) the Department of Homeland Security;
(4) other Federal agencies;
(5) other Federal and private research laboratories, research entities, and universities;
(6) institutions of higher education;
(7) relevant nonprofit organizations; and
(8) international partners of the United States.

(e) Omitted

(f) Research on the science of cybersecurity

The head of each agency and department identified under section 5511(a)(3)(B) [1] of this title, through existing programs and activities, shall support research that will lead to the development of a scientific foundation for the field of cybersecurity, including research that increases understanding of the underlying principles of securing complex networked systems, enables repeatable experimentation, and creates quantifiable security metrics.

(Pub. L. 113–274, title II, §201, Dec. 18, 2014, 128 Stat. 2974; Pub. L. 114–329, title I, §105(t), Jan. 6, 2017, 130 Stat. 2985; Pub. L. 116–283, div. H, title XCIV, §9407(b), Jan. 1, 2021, 134 Stat. 4814.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 5511(a)(3)(B) of this title, referred to in subsecs. (a)(4) and (f), was redesignated section 5511(a)(3)(C) of this title by Pub. L. 114–329, title I, §105(f)(2)(D)(i), Jan. 6, 2017, 130 Stat. 2979.

CODIFICATION

Section is comprised of section 201 of Pub. L. 113–274. Subsec. (e) of section 201 of Pub. L. 113–274 amended section 7403 of this title.

AMENDMENTS

2021—Subsec. (a)(1)(K), (L). Pub. L. 116–283 added subpar. (K) and redesignated former subpar. (K) as (L).

2017—Subsec. (a)(4). Pub. L. 114–329 substituted "clauses (i) through (xi)" for "clauses (i) through (x)" and "under clause (xii)" for "under clause (xi)".

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

§7432. National cybersecurity challenges

(a) Establishment of national cybersecurity challenges

(1) In general

To achieve high-priority breakthroughs in cybersecurity by 2028, the Secretary of Commerce shall establish the following national cybersecurity challenges:

(A) Economics of a cyber attack

Building more resilient systems that measurably and exponentially raise adversary costs of carrying out common cyber attacks.

(B) Cyber training

(i) Empowering the people of the United States with an appropriate and measurably sufficient level of digital literacy to make safe and secure decisions online.

(ii) Developing a cybersecurity workforce with measurable skills to protect and maintain information systems.

(C) Emerging technology

Advancing cybersecurity efforts in response to emerging technology, such as artificial intelligence, quantum science, next generation communications, autonomy, data science, and computational technologies.

(D) Reimagining digital identity

Maintaining a high sense of usability while improving the privacy, security, and safety of online activity of individuals in the United States.

(E) Federal agency resilience

Reducing cybersecurity risks to Federal networks and systems, and improving the response of Federal agencies to cybersecurity incidents on such networks and systems.

(2) Coordination

In establishing the challenges under paragraph (1), the Secretary shall coordinate with the Secretary of Homeland Security on the challenges under subparagraphs (B) and (E) of such paragraph.

(b) Pursuit of national cybersecurity challenges

(1) In general

Not later than 180 days after January 1, 2021, the Secretary, acting through the Under Secretary of Commerce for Standards and Technology, shall commence efforts to pursue the national cybersecurity challenges established under subsection (a).

(2) Competitions

The efforts required by paragraph (1) shall include carrying out programs to award prizes, including cash and noncash prizes, competitively pursuant to the authorities and processes established under section 3719 of this title or any other applicable provision of law.

(3) Additional authorities

In carrying out paragraph (1), the Secretary may enter into and perform such other transactions as the Secretary considers necessary and on such terms as the Secretary considers appropriate.

(4) Coordination

In pursuing national cybersecurity challenges under paragraph (1), the Secretary shall coordinate with the following:

(A) The Director of the National Science Foundation.
(B) The Secretary of Homeland Security.
(C) The Director of the Defense Advanced Research Projects Agency.
(D) The Director of the Office of Science and Technology Policy.
(E) The Director of the Office of Management and Budget.
(F) The Administrator of the General Services Administration.
(G) The Federal Trade Commission.
(H) The heads of such other Federal agencies as the Secretary of Commerce considers appropriate for purposes of this section.

(5) Solicitation of acceptance of funds

(A) In general

Pursuant to section 3719 of this title, the Secretary shall request and accept funds from other Federal agencies, State, United States territory, local, or Tribal government agencies, private sector for-profit entities, and nonprofit entities to support efforts to pursue a national cybersecurity challenge under this section.

(B) Rule of construction

Nothing in subparagraph (A) may be construed to require any person or entity to provide funds or otherwise participate in an effort or competition under this section.

(c) Recommendations

(1) In general

In carrying out this section, the Secretary of Commerce shall designate an advisory council to seek recommendations.

(2) Elements

The recommendations required by paragraph (1) shall include the following:

(A) A scope for efforts carried out under subsection (b).

(B) Metrics to assess submissions for prizes under competitions carried out under subsection (b) as the submissions pertain to the national cybersecurity challenges established under subsection (a).

(3) No additional compensation

The Secretary may not provide any additional compensation, except for travel expenses, to a member of the advisory council designated under paragraph (1) for participation in the advisory council.

(Pub. L. 113–274, title II, §205, as added Pub. L. 116–283, div. H, title XCIV, §9407(a), Jan. 1, 2021, 134 Stat. 4813.)

SUBCHAPTER II—EDUCATION AND WORKFORCE DEVELOPMENT

§7441. Cybersecurity competitions and challenges

(a) In general

The Secretary of Commerce, Director of the National Science Foundation, and Secretary of Homeland Security, in consultation with the Director of the Office of Personnel Management, shall—

(1) support competitions and challenges under section 3719 of this title (as amended by section 105 of the America COMPETES Reauthorization Act of 2010 (124 Stat. 3989)) or any other provision of law, as appropriate—

(A) to identify, develop, and recruit talented individuals to perform duties relating to the security of information technology in Federal, State, local, and tribal government agencies, and the private sector; or

(B) to stimulate innovation in basic and applied cybersecurity research, technology development, and prototype demonstration that has the potential for application to the information technology activities of the Federal Government; and

(2) ensure the effective operation of the competitions and challenges under this section.

(b) Participation

Participants in the competitions and challenges under subsection (a)(1) may include—

(1) students enrolled in grades 9 through 12;

(2) students enrolled in a postsecondary program of study leading to a baccalaureate degree at an institution of higher education;

(3) students enrolled in a postbaccalaureate program of study at an institution of higher education;

(4) institutions of higher education and research institutions;

(5) veterans; and

(6) other groups or individuals that the Secretary of Commerce, Director of the National Science Foundation, and Secretary of Homeland Security determine appropriate.

(c) Affiliation and cooperative agreements

Competitions and challenges under this section may be carried out through affiliation and cooperative agreements with—

(1) Federal agencies;
(2) regional, State, or school programs supporting the development of cyber professionals;
(3) State, local, and tribal governments; or
(4) other private sector organizations.

(d) Areas of skill

Competitions and challenges under subsection (a)(1)(A) shall be designed to identify, develop, and recruit exceptional talent relating to—

(1) ethical hacking;
(2) penetration testing;
(3) vulnerability assessment;
(4) continuity of system operations;
(5) security in design;
(6) cyber forensics;
(7) offensive and defensive cyber operations; and
(8) other areas the Secretary of Commerce, Director of the National Science Foundation, and Secretary of Homeland Security consider necessary to fulfill the cybersecurity mission.

(e) Topics

In selecting topics for competitions and challenges under subsection (a)(1), the Secretary of Commerce, Director of the National Science Foundation, and Secretary of Homeland Security—

(1) shall consult widely both within and outside the Federal Government; and
(2) may empanel advisory committees.

(f) Internships

The Director of the Office of Personnel Management may support, as appropriate, internships or other work experience in the Federal Government to the winners of the competitions and challenges under this section.

(Pub. L. 113–274, title III, §301, Dec. 18, 2014, 128 Stat. 2981.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 3719 of this title (as amended by section 105 of the America COMPETES Reauthorization Act of 2010 (124 Stat. 3989)), referred to in subsec. (a)(1), probably means section 3719 of this title as enacted by section 105(a) of Pub. L. 111–358.

§7442. Federal Cyber Scholarship-for-Service Program

(a) In general

The Director of the National Science Foundation, in coordination with the Director of the Office of Personnel Management and Secretary of Homeland Security, shall continue a Federal cyber scholarship-for-service program to recruit and train the next generation of information technology professionals, industrial control system security professionals, and security managers to meet the needs of the cybersecurity mission for Federal, State, local, and tribal governments.

(b) Program description and components

The Federal Cyber Scholarship-for-Service Program shall—

(1) provide scholarships through qualified institutions of higher education, including community colleges, to students who are enrolled in programs of study at institutions of higher education leading to degrees or specialized program certifications in the cybersecurity field and

cybersecurity-related aspects of other related fields as appropriate, including artificial intelligence, quantum computing and aerospace;

(2) provide the scholarship recipients with summer internship opportunities or other meaningful temporary appointments in the Federal information technology and cybersecurity workforce;

(3) prioritize the placement of scholarship recipients fulfilling the post-award employment obligation under this section to ensure that—

(A) not less than 70 percent of such recipients are placed in an executive agency (as defined in section 105 of title 5);

(B) not more than 10 percent of such recipients are placed as educators in the field of cybersecurity at qualified institutions of higher education that provide scholarships under this section; and

(C) not more than 20 percent of such recipients are placed in positions described in paragraphs (2) through (5) of subsection (d); and

(4) provide awards to improve cybersecurity education, including by seeking to provide awards in coordination with other relevant agencies for summer cybersecurity camp or other experiences, including teacher training, in each of the 50 States, at the kindergarten through grade 12 level—

(A) to increase interest in cybersecurity careers;

(B) to help students practice correct and safe online behavior and understand the foundational principles of cybersecurity;

(C) to improve teaching methods for delivering cybersecurity content for kindergarten through grade 12 computer science curricula; and

(D) to promote teacher recruitment in the field of cybersecurity.

(c) Scholarship amounts

Each scholarship under subsection (b) shall be in an amount that covers the student's tuition and fees at the institution under subsection (b)(1) for not more than 3 years and provides the student with an additional stipend.

(d) Post-award employment obligations

Each scholarship recipient, as a condition of receiving a scholarship under the program, shall enter into an agreement under which the recipient agrees to work for a period equal to the length of the scholarship, following receipt of the student's degree, in the cybersecurity mission of—

(1) an executive agency (as defined in section 105 of title 5);

(2) Congress, including any agency, entity, office, or commission established in the legislative branch;

(3) an interstate agency;

(4) a State, local, or Tribal government;

(5) a State, local, or Tribal government-affiliated non-profit that is considered to be critical infrastructure (as defined in section 5195c(e) of title 42); or

(6) as provided by subsection (b)(3)(B), a qualified institution of higher education.

(e) Hiring authority

(1) Appointment in excepted service

Notwithstanding any provision of chapter 33 of title 5 governing appointments in the competitive service, an agency shall appoint in the excepted service an individual who has completed the eligible degree program for which a scholarship was awarded.

(2) Noncompetitive conversion

Except as provided in paragraph (4), upon fulfillment of the service term, an employee appointed under paragraph (1) may be converted noncompetitively to term, career-conditional or career appointment.

(3) Timing of conversion

An agency may noncompetitively convert a term employee appointed under paragraph (2) to a

career-conditional or career appointment before the term appointment expires.

(4) Authority to decline conversion

An agency may decline to make the noncompetitive conversion or appointment under paragraph (2) for cause.

(f) Eligibility

To be eligible to receive a scholarship under this section, an individual shall—

(1) be a citizen or lawful permanent resident of the United States;

(2) demonstrate a commitment to a career in improving the security of information technology;

(3) have demonstrated a high level of competency in relevant knowledge, skills, and abilities, as defined by the national cybersecurity awareness and education program under section 7443 of this title;

(4) be a full-time student in an eligible degree program at a qualified institution of higher education, as determined by the Director of the National Science Foundation, except that in the case of a student who is enrolled in a community college, be a student pursuing a degree on a less than full-time basis, but not less than half-time basis;

(5) enter into an agreement accepting and acknowledging the post award employment obligations, pursuant to section [1] (d);

(6) accept and acknowledge the conditions of support under section [1] (g); and

(7) accept all terms and conditions of a scholarship under this section.

(g) Conditions of support

(1) In general

As a condition of receiving a scholarship under this section, a recipient shall agree to provide the Office of Personnel Management (in coordination with the National Science Foundation) and the qualified institution of higher education with annual verifiable documentation of post-award employment and up-to-date contact information.

(2) Terms

A scholarship recipient under this section shall be liable to the United States as provided in subsection (i) if the individual—

(A) fails to maintain an acceptable level of academic standing at the applicable institution of higher education, as determined by the Director of the National Science Foundation;

(B) is dismissed from the applicable institution of higher education for disciplinary reasons;

(C) withdraws from the eligible degree program before completing the program;

(D) declares that the individual does not intend to fulfill the post-award employment obligation under this section;

(E) fails to maintain or fulfill any of the post-graduation or post-award obligations or requirements of the individual; or

(F) fails to fulfill the requirements of paragraph (1).

(h) Monitoring compliance

As a condition of participating in the program, a qualified institution of higher education shall—

(1) enter into an agreement with the Director of the National Science Foundation, to monitor the compliance of scholarship recipients with respect to their post-award employment obligations; and

(2) provide to the Director of the National Science Foundation and the Director of the Office of Personnel Management, on an annual basis, the post-award employment documentation required under subsection (g)(1) for scholarship recipients through the completion of their post-award employment obligations.

(i) Amount of repayment

(1) Less than 1 year of service

If a circumstance described in subsection (g)(2) occurs before the completion of 1 year of a

post-award employment obligation under this section, the total amount of scholarship awards received by the individual under this section shall—

(A) be repaid; or

(B) be treated as a loan to be repaid in accordance with subsection (j).

(2) 1 or more years of service

If a circumstance described in subparagraph (D) or (E) of subsection (g)(2) occurs after the completion of 1 or more years of a post-award employment obligation under this section, the total amount of scholarship awards received by the individual under this section, reduced by the ratio of the number of years of service completed divided by the number of years of service required, shall—

(A) be repaid; or

(B) be treated as a loan to be repaid in accordance with subsection (j).

(j) Repayments

A loan described subsection (i) shall—

(1) be treated as a Federal Direct Unsubsidized Stafford Loan under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a et seq.); and

(2) be subject to repayment, together with interest thereon accruing from the date of the scholarship award, in accordance with terms and conditions specified by the Director of the National Science Foundation (in consultation with the Secretary of Education) in regulations promulgated to carry out this subsection.

(k) Collection of repayment

(1) In general

In the event that a scholarship recipient is required to repay the scholarship award under this section, the qualified institution of higher education providing the scholarship shall—

(A) determine the repayment amounts and notify the recipient, the Director of the National Science Foundation, and the Director of the Office of Personnel Management of the amounts owed; and

(B) collect the repayment amounts within a period of time as determined by the Director of the National Science Foundation, or the repayment amounts shall be treated as a loan in accordance with subsection (j).

(2) Returned to Treasury

Except as provided in paragraph (3), any repayment under this subsection shall be returned to the Treasury of the United States.

(3) Retain percentage

A qualified institution of higher education may retain a percentage of any repayment the institution collects under this subsection to defray administrative costs associated with the collection. The Director of the National Science Foundation shall establish a single, fixed percentage that will apply to all eligible entities.

(l) Exceptions

The Director of the National Science Foundation may provide for the partial or total waiver or suspension of any service or payment obligation by an individual under this section whenever compliance by the individual with the obligation is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be unconscionable.

(m) Public information

(1) Evaluation

The Director of the National Science Foundation, in coordination with the Director of the Office of Personnel Management, shall periodically evaluate and make public, in a manner that protects

the personally identifiable information of scholarship recipients, information on the success of recruiting individuals for scholarships under this section and on hiring and retaining those individuals in the public sector cybersecurity workforce, including information on—

(A) placement rates;

(B) where students are placed, including job titles and descriptions;

(C) salary ranges for students not released from obligations under this section;

(D) how long after graduation students are placed;

(E) how long students stay in the positions they enter upon graduation;

(F) how many students are released from obligations; and

(G) what, if any, remedial training is required.

(2) Reports

The Director of the National Science Foundation, in coordination with the Office of Personnel Management, shall submit, not less frequently than once every two years, to the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Science, Space, and Technology and the Committee on Oversight and Reform of the House of Representatives a report, including—

(A) the results of the evaluation under paragraph (1);

(B) the disparity in any reporting between scholarship recipients and their respective institutions of higher education; and

(C) any recent statistics regarding the size, composition, and educational requirements of the Federal cyber [2] workforce..[3]

(3) Resources

The Director of the National Science Foundation, in coordination with the Director of the Office of Personnel Management, shall provide consolidated and user-friendly online resources for prospective scholarship recipients, including, to the extent practicable—

(A) searchable, up-to-date, and accurate information about participating institutions of higher education and job opportunities related to the field of cybersecurity; and

(B) a modernized description of cybersecurity careers.

(Pub. L. 113–274, title III, §302, Dec. 18, 2014, 128 Stat. 2982; Pub. L. 115–91, div. A, title XVI, §1649B(a), Dec. 12, 2017, 131 Stat. 1754; Pub. L. 116–283, div. H, title XCIV, §§9401(g)(4)(C), 9403, 9404, Jan. 1, 2021, 134 Stat. 4810, 4811; Pub. L. 117–167, div. B, title III, §10316(b), Aug. 9, 2022, 136 Stat. 1531.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (j)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Part D of title IV of the Act is classified to part D (§1087a et seq.) of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

2022—Subsec. (b)(1). Pub. L. 117–167 substituted "and cybersecurity-related aspects of other related fields as appropriate, including artificial intelligence, quantum computing and aerospace;" for semicolon at end.

2021—Subsec. (b)(2). Pub. L. 116–283, §9403(1)(A), substituted "information technology and cybersecurity" for "information technology".

Subsec. (b)(3). Pub. L. 116–283, §9403(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "prioritize the employment placement of at least 80 percent of scholarship recipients in an executive agency (as defined in section 105 of title 5); and".

Subsec. (b)(4). Pub. L. 116–283, §9403(1)(C), inserted ", including by seeking to provide awards in coordination with other relevant agencies for summer cybersecurity camp or other experiences, including teacher training, in each of the 50 States," after "cybersecurity education" in introductory provisions.

Subsec. (d)(6). Pub. L. 116–283, §9403(2), added par. (6).

Subsec. (f)(3). Pub. L. 116–283, §9401(g)(4)(C), substituted "under section 7443" for "under section 7451".

Subsec. (f)(5) to (7). Pub. L. 116–283, §9404(1), added pars. (5) to (7) and struck out former par. (5) which read as follows: "accept the terms of a scholarship under this section."

Subsec. (g)(1). Pub. L. 116–283, §9404(2)(A), inserted "the Office of Personnel Management (in coordination with the National Science Foundation) and" before "the qualified institution".

Subsec. (g)(2)(E), (F). Pub. L. 116–283, §9404(2)(B), added subpars. (E) and (F) and struck out former subpar. (E) which read as follows: "fails to fulfill the post-award employment obligation of the individual under this section."

Subsec. (h)(2). Pub. L. 116–283, §9404(3), inserted "and the Director of the Office of Personnel Management" after "Foundation".

Subsec. (k)(1)(A). Pub. L. 116–283, §9404(4), substituted ", the Director of the National Science Foundation, and the Director of the Office of Personnel Management of the amounts owed" for "and the Director of the National Science Foundation of the amounts owed".

Subsec. (m)(1). Pub. L. 116–283, §9403(3)(A), substituted "cybersecurity" for "cyber" in introductory provisions.

Subsec. (m)(2). Pub. L. 116–283, §9404(5), substituted "once every two years, to the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Science, Space, and Technology and the Committee on Oversight and Reform of the House of Representatives a report, including—" and subpars. (A) to (C) for "once every 3 years, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report, including the results of the evaluation under paragraph (1) and any recent statistics regarding the size, composition, and educational requirements of the Federal cybersecurity workforce".

Pub. L. 116–283, §9403(3)(B), substituted "cybersecurity" for "cyber". Subsequent amendment by Pub. L. 116–283, §9404(5), reenacted the word "cyber" in subsec. (m)(2)(C).

2017—Subsec. (b)(3), (4). Pub. L. 115–91, §1649B(a)(1), added pars. (3) and (4) and struck out former par. (3) which read as follows: "prioritize the employment placement of scholarship recipients in the Federal Government."

Subsec. (d). Pub. L. 115–91, §1649B(a)(2), amended subsec. (d) generally. Prior to amendment, text read as follows: "Each scholarship recipient, as a condition of receiving a scholarship under the program, shall enter into an agreement under which the recipient agrees to work in the cybersecurity mission of a Federal, State, local, or tribal agency for a period equal to the length of the scholarship following receipt of the student's degree."

Subsec. (f)(3). Pub. L. 115–91, §1649B(a)(3)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "have demonstrated a high level of proficiency in mathematics, engineering, or computer sciences;".

Subsec. (f)(4). Pub. L. 115–91, §1649B(a)(3)(B), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "be a full-time student in an eligible degree program at a qualified institution of higher education, as determined by the Director of the National Science Foundation; and".

Subsec. (m). Pub. L. 115–91, §1649B(a)(4), amended subsec. (m) generally. Prior to amendment, text read as follows: "The Director of the National Science Foundation shall evaluate and report periodically to Congress on the success of recruiting individuals for scholarships under this section and on hiring and retaining those individuals in the public sector workforce."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

SAVINGS PROVISION

Pub. L. 115–91, div. A, title XVI, §1649B(b), Dec. 12, 2017, 131 Stat. 1755, provided that: "Nothing in this section [amending this section], or an amendment made by this section, shall affect any agreement, scholarship, loan, or repayment, under section 302 of the Cybersecurity Enhancement Act of 2014 (15 U.S.C. 7442), in effect on the day before the date of enactment of this subtitle [Dec. 12, 2017]."

COMMUNITY COLLEGE CYBER PILOT PROGRAM AND ASSESSMENT

Pub. L. 115–91, div. A, title XVI, §1649A, Dec. 12, 2017, 131 Stat. 1753, provided that:

"(a) PILOT PROGRAM.—Not later than 1 year after the date of enactment of this subtitle [Dec. 12, 2017], as part of the Federal Cyber Scholarship-for-Service program established under section 302 of the Cybersecurity Enhancement Act of 2014 (15 U.S.C. 7442), the Director of the National Science Foundation, in coordination with the Director of the Office of Personnel Management, shall develop and implement a pilot program at not more than 10, but at least 5, community colleges to provide scholarships to eligible students who—

"(1) are pursuing associate degrees or specialized program certifications in the field of cybersecurity; and

"(2)(A) have bachelor's degrees; or

"(B) are veterans of the Armed Forces.

"(b) ASSESSMENT.—Not later than 1 year after the date of enactment of this subtitle, as part of the Federal Cyber Scholarship-for-Service program established under section 302 of the Cybersecurity Enhancement Act of 2014 (15 U.S.C. 7442), the Director of the National Science Foundation, in coordination with the Director of the Office of Personnel Management, shall assess the potential benefits and feasibility of providing scholarships through community colleges to eligible students who are pursuing associate degrees, but do not have bachelor's degrees."

[1] So in original. Probably should be "subsection".

[2] So in original. Probably should be "cybersecurity". See 2021 Amendment notes below.

[3] So in original.

§7443. National cybersecurity awareness and education program

(a) National cybersecurity awareness and education program

The Director of the National Institute of Standards and Technology (referred to in this section as the "Director"), in consultation with appropriate Federal agencies, industry, educational institutions, National Laboratories, the Networking and Information Technology Research and Development program, and other organizations shall continue to coordinate a national cybersecurity awareness and education program, that includes activities such as—

(1) the widespread dissemination of cybersecurity technical standards and best practices identified by the Director;

(2) efforts to make cybersecurity best practices usable by individuals, small to medium-sized businesses, educational institutions, and State, local, and tribal governments;

(3) increasing public awareness of cybersecurity, cyber safety, and cyber ethics;

(4) increasing the understanding of State, local, and tribal governments, institutions of higher education, and private sector entities of—

(A) the benefits of ensuring effective risk management of information technology versus the costs of failure to do so; and

(B) the methods to mitigate and remediate vulnerabilities;

(5) supporting formal cybersecurity education programs at all education levels to prepare and improve a skilled cybersecurity and computer science workforce for the private sector and Federal, State, local, and tribal government;

(6) supporting efforts to identify cybersecurity workforce skill gaps in public and private sectors;

(7) facilitating Federal programs to advance cybersecurity education, training, and workforce development;

(8) in coordination with the Department of Defense, the Department of Homeland Security, and other appropriate agencies, considering any specific needs of the cybersecurity workforce of critical infrastructure, including cyber physical systems and control systems;

(9) advising the Director of the Office of Management and Budget, as needed, in developing metrics to measure the effectiveness and effect of programs and initiatives to advance the cybersecurity workforce; and

(10) promoting initiatives to evaluate and forecast future cybersecurity workforce needs of the Federal Government and develop strategies for recruitment, training, and retention.

(b) Considerations

In carrying out the authority described in subsection (a), the Director, in consultation with appropriate Federal agencies, shall leverage existing programs designed to inform the public of safety and security of products or services, including self-certifications and independently verified assessments regarding the quantification and valuation of information security risk.

(c) Strategic plan

(1) In general

The Director, in cooperation with relevant Federal agencies and other stakeholders, shall build upon programs and plans in effect as of December 18, 2014, to develop and implement a strategic plan to guide Federal programs and activities in support of the national cybersecurity awareness and education program under subsection (a).

(2) Requirement

The strategic plan developed and implemented under paragraph (1) shall include an indication of how the Director will carry out this section.

(d) Report

Not later than 1 year after December 18, 2014, and every 5 years thereafter, the Director shall transmit the strategic plan under subsection (c) to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives.

(e) Cybersecurity metrics

In carrying out subsection (a), the Director of the Office of Management and Budget may seek input from the Director of the National Institute of Standards and Technology, in coordination with the Department of Homeland Security, the Department of Defense, the Office of Personnel Management, and such agencies as the Director of the National Institute of Standards and Technology considers relevant, to develop quantifiable metrics for evaluating Federally funded cybersecurity workforce programs and initiatives based on the outcomes of such programs and initiatives.

(f) Regional alliances and multistakeholder partnerships

(1) In general

Pursuant to section 272(b)(4) of this title, the Director shall establish cooperative agreements between the National Initiative for Cybersecurity Education (NICE) of the Institute and regional alliances or partnerships for cybersecurity education and workforce.

(2) Agreements

The cooperative agreements established under paragraph (1) shall advance the goals of the National Initiative for Cybersecurity Education Cybersecurity Workforce Framework (NIST Special Publication 800–181), or successor framework, by facilitating local and regional partnerships to—

(A) identify the workforce needs of the local economy and classify such workforce in accordance with such framework;

(B) identify the education, training, apprenticeship, and other opportunities available in the local economy; and

(C) support opportunities to meet the needs of the local economy.

(3) Financial assistance

(A) Financial assistance authorized

The Director may award financial assistance to a regional alliance or partnership with whom the Director enters into a cooperative agreement under paragraph (1) in order to assist the regional alliance or partnership in carrying out the terms of the cooperative agreement.

(B) Amount of assistance

The aggregate amount of financial assistance awarded under subparagraph (A) per cooperative agreement shall not exceed $200,000.

(C) Matching requirement

The Director may not award financial assistance to a regional alliance or partnership under subparagraph (A) unless the regional alliance or partnership agrees that, with respect to the costs to be incurred by the regional alliance or partnership in carrying out the cooperative agreement for which the assistance was awarded, the regional alliance or partnership will make available (directly or through donations from public or private entities) non-Federal contributions, including in-kind contributions, in an amount equal to 50 percent of Federal funds provided under the award.

(4) Application

(A) In general

A regional alliance or partnership seeking to enter into a cooperative agreement under paragraph (1) and receive financial assistance under paragraph (3) shall submit to the Director an application therefore at such time, in such manner, and containing such information as the Director may require.

(B) Requirements

Each application submitted under subparagraph (A) shall include the following:

(i)(I) A plan to establish (or identification of, if it already exists) a multistakeholder workforce partnership that includes—

(aa) at least one institution of higher education or nonprofit training organization; and

(bb) at least one local employer or owner or operator of critical infrastructure.

(II) Participation from academic institutions in the Federal Cyber Scholarships for Service Program, the National Centers of Academic Excellence in Cybersecurity Program, or advanced technological education programs, as well as elementary and secondary schools, training and certification providers, State and local governments, economic development organizations, or other community organizations is encouraged.

(ii) A description of how the workforce partnership would identify the workforce needs of the local economy.

(iii) A description of how the multistakeholder workforce partnership would leverage the programs and objectives of the National Initiative for Cybersecurity Education, such as the Cybersecurity Workforce Framework and the strategic plan of such initiative.

(iv) A description of how employers in the community will be recruited to support internships, externships, apprenticeships, or cooperative education programs in conjunction with providers of education and training. Inclusion of programs that seek to include veterans, Indian Tribes, and underrepresented groups, including women, minorities, persons from rural and underserved areas, and persons with disabilities is encouraged.

(v) A definition of the metrics to be used in determining the success of the efforts of the regional alliance or partnership under the agreement.

(C) Priority consideration

In awarding financial assistance under paragraph (3)(A), the Director shall give priority consideration to a regional alliance or partnership that includes an institution of higher

education that is designated as a National Center of Academic Excellence in Cybersecurity or which received an award under the Federal Cyber Scholarship for Service program located in the State or region of the regional alliance or partnership.

(5) Audits

Each cooperative agreement for which financial assistance is awarded under paragraph (3) shall be subject to audit requirements under part 200 of title 2, Code of Federal Regulations (relating to uniform administrative requirements, cost principles, and audit requirements for Federal awards), or successor regulation.

(6) Reports

(A) In general

Upon completion of a cooperative agreement under paragraph (1), the regional alliance or partnership that participated in the agreement shall submit to the Director a report on the activities of the regional alliance or partnership under the agreement, which may include training and education outcomes.

(B) Contents

Each report submitted under subparagraph (A) by a regional alliance or partnership shall include the following:

(i) An assessment of efforts made by the regional alliance or partnership to carry out paragraph (2).

(ii) The metrics used by the regional alliance or partnership to measure the success of the efforts of the regional alliance or partnership under the cooperative agreement.

(Pub. L. 113–274, title III, §303, formerly title IV, §401, Dec. 18, 2014, 128 Stat. 2985; renumbered title III, §303, and amended Pub. L. 116–283, div. H, title XCIV, §9401(a), (b), (e)–(g)(1), Jan. 1, 2021, 134 Stat. 4805–4807, 4809.)

EDITORIAL NOTES

CODIFICATION

Section was classified to section 7451 of this title prior to renumbering by Pub. L. 116–283.

AMENDMENTS

2021—Subsec. (a)(6) to (10). Pub. L. 116–283, §9401(a), added pars. (6) to (9) and redesignated former par. (6) as (10).

Subsec. (c). Pub. L. 116–283, §9401(b), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (e). Pub. L. 116–283, §9401(e), added subsec. (e).

Subsec. (f). Pub. L. 116–283, §9401(f), added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

CYBERSECURITY CAREER PATHWAYS

Pub. L. 116–283, div. H, title XCIV, §9401(c), Jan. 1, 2021, 134 Stat. 4806, provided that:

"(1) IDENTIFICATION OF MULTIPLE CYBERSECURITY CAREER PATHWAYS.—In carrying out subsection (a) of such section [meaning 15 U.S.C. 7451(a), now 15 U.S.C. 7443(a)] and not later than 540 days after the date of the enactment of this Act [Jan. 1, 2021], the Director of the National Institute of Standards and Technology shall, in coordination with the Secretary of Defense, the Secretary of Homeland Security, the Director of the Office of Personnel Management, and the heads of other appropriate agencies, use a consultative process with other Federal agencies, academia, and industry to identify multiple career pathways for cybersecurity work roles that can be used in the private and public sectors.

"(2) REQUIREMENTS.—The Director shall ensure that the multiple cybersecurity career pathways identified under paragraph (1) indicate the knowledge, skills, and abilities, including relevant education, training, internships, apprenticeships, certifications, and other experiences, that—

"(A) align with employers' cybersecurity skill needs, including proficiency level requirements, for its workforce; and

"(B) prepare an individual to be successful in entering or advancing in a cybersecurity career.

"(3) EXCHANGE PROGRAM.—Consistent with requirements under chapter 37 of title 5, United States Code, the Director of the National Institute of Standards and Technology, in coordination with the Director of the Office of Personnel Management, may establish a voluntary program for the exchange of employees engaged in one of the cybersecurity work roles identified in the National Initiative for Cybersecurity Education (NICE) Cybersecurity Workforce Framework (NIST Special Publication 800–181), or successor framework, between the National Institute of Standards and Technology and private sector institutions, including nonpublic or commercial businesses, research institutions, or institutions of higher education, as the Director of the National Institute of Standards and Technology considers feasible."

PROFICIENCY TO PERFORM CYBERSECURITY TASKS

Pub. L. 116–283, div. H, title XCIV, §9401(d), Jan. 1, 2021, 134 Stat. 4806, provided that: "Not later than 540 days after the date of the enactment of this Act [Jan. 1, 2021], the Director of the National Institute of Standards and Technology shall, in coordination with the Secretary of Defense, the Secretary of Homeland Security, and the heads of other appropriate agencies—

"(1) in carrying out subsection (a) of such section [meaning 15 U.S.C. 7451(a), now 15 U.S.C. 7443(a)], assess the scope and sufficiency of efforts to measure an individual's capability to perform specific tasks found in the National Initiative for Cybersecurity Education (NICE) Cybersecurity Workforce Framework (NIST Special Publication 800–181) at all proficiency levels; and

"(2) submit to Congress a report—

"(A) on the findings of the Director with respect to the assessment carried out under paragraph (1); and

"(B) with recommendations for effective methods for measuring the cybersecurity proficiency of learners."

SUBCHAPTER III—CYBERSECURITY AWARENESS AND PREPAREDNESS

EDITORIAL NOTES

CODIFICATION

This subchapter was comprised of title IV of Pub. L. 113–274, Dec. 18, 2014, 128 Stat. 2985, prior to its repeal by Pub. L. 116–283, div. H, title XCIV, §9401(g)(2), Jan. 1, 2021, 134 Stat. 4809.

§7451. Transferred

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 113–274, title IV, §401, Dec. 18, 2014, 128 Stat. 2985, which related to national cybersecurity awareness and education program, was renumbered §303 of title III of Pub. L. 113–274, by Pub. L. 116–283, div. H, title XCIV, §9401(g)(1), Jan. 1, 2021, 134 Stat. 4809, and transferred to section 7443 of this title.

SUBCHAPTER IV—ADVANCEMENT OF CYBERSECURITY TECHNICAL STANDARDS

§7461. Definitions

In this subchapter:

(1) Director

The term "Director" means the Director of the National Institute of Standards and Technology.

(2) Institute

The term "Institute" means the National Institute of Standards and Technology.

(Pub. L. 113–274, title V, §501, Dec. 18, 2014, 128 Stat. 2986.)

§7462. International cybersecurity technical standards

(a) In general

The Director, in coordination with appropriate Federal authorities, shall—

(1) as appropriate, ensure coordination of Federal agencies engaged in the development of international technical standards related to information system security; and

(2) not later than 1 year after December 18, 2014, develop and transmit to Congress a plan for ensuring such Federal agency coordination.

(b) Consultation with the private sector

In carrying out the activities specified in subsection (a)(1), the Director shall ensure consultation with appropriate private sector stakeholders.

(Pub. L. 113–274, title V, §502, Dec. 18, 2014, 128 Stat. 2986.)

§7463. Cloud computing strategy

(a) In general

The Director, in coordination with the Office of Management and Budget, in collaboration with the Federal Chief Information Officers Council, and in consultation with other relevant Federal agencies and stakeholders from the private sector, shall continue to develop and encourage the implementation of a comprehensive strategy for the use and adoption of cloud computing services by the Federal Government.

(b) Activities

In carrying out the strategy described under subsection (a), the Director shall give consideration to activities that—

(1) accelerate the development, in collaboration with the private sector, of standards that address interoperability and portability of cloud computing services;

(2) advance the development of conformance testing performed by the private sector in support of cloud computing standardization; and

(3) support, in coordination with the Office of Management and Budget, and in consultation with the private sector, the development of appropriate security frameworks and reference materials, and the identification of best practices, for use by Federal agencies to address security and privacy requirements to enable the use and adoption of cloud computing services, including activities—

(A) to ensure the physical security of cloud computing data centers and the data stored in such centers;

(B) to ensure secure access to the data stored in cloud computing data centers;

(C) to develop security standards as required under section 278g–3 of this title; and

(D) to support the development of the automation of continuous monitoring systems.

(Pub. L. 113–274, title V, §503, Dec. 18, 2014, 128 Stat. 2986.)

§7464. Identity management research and development

(a) In general

The Director shall carry out a program of research to support the development of voluntary, consensus-based technical standards, best practices, benchmarks, methodologies, metrology, testbeds, and conformance criteria for identity management, taking into account appropriate user concerns to—

(1) improve interoperability and portability among identity management technologies;

(2) strengthen identity proofing and verification methods used in identity management systems commensurate with the level of risk, including identity and attribute validation services provided by Federal, State, and local governments;

(3) improve privacy protection in identity management systems; and

(4) improve the accuracy, usability, and inclusivity of identity management systems.

(b) Digital identity technical roadmap

The Director, in consultation with other relevant Federal agencies and stakeholders from the private sector, shall develop and maintain a technical roadmap for digital identity management research and development focused on enabling the voluntary use and adoption of modern digital identity solutions that align with the four criteria in subsection (a).

(c) Digital identity management guidance

(1) In general

The Director shall develop, and periodically update, in collaboration with other public and private sector organizations, common definitions and voluntary guidance for digital identity management systems, including identity and attribute validation services provided by Federal, State, and local governments.

(2) Guidance

The Guidance shall—

(A) align with the four criteria in subsection (a), as practicable;

(B) provide case studies of implementation of guidance;

(C) incorporate voluntary technical standards and industry best practices; and

(D) not prescribe or otherwise require the use of specific technology products or services.

(3) Consultation

In carrying out this subsection, the Director shall consult with—

(A) Federal and State agencies;

(B) industry;

(C) potential end-users and individuals that will use services related to digital identity verification; and

(D) experts with relevant experience in the systems that enable digital identity verification, as determined by the Director.

(Pub. L. 113–274, title V, §504, Dec. 18, 2014, 128 Stat. 2987; Pub. L. 117–167, div. B, title II, §10225, Aug. 9, 2022, 136 Stat. 1478.)

EDITORIAL NOTES

AMENDMENTS

2022—Pub. L. 117–167 amended section generally. Prior to amendment, section related to Director's continuance of program to support development of voluntary and cost-effective technical standards, metrology, testbeds, and conformance criteria, taking into account appropriate user concerns.

CHAPTER 101—NANOTECHNOLOGY RESEARCH AND DEVELOPMENT

Sec.

§7501. National Nanotechnology Program

(a) National Nanotechnology Program

The President shall implement a National Nanotechnology Program. Through appropriate agencies, councils, and the National Nanotechnology Coordination Office established in section 7502 of this title, the Program shall—

(1) establish the goals, priorities, and metrics for evaluation for Federal nanotechnology research, development, and other activities;

(2) invest in Federal research and development programs in nanotechnology and related sciences to achieve those goals; and

(3) provide for interagency coordination of Federal nanotechnology research, development, and other activities undertaken pursuant to the Program.

(b) Program activities

The activities of the Program shall include—

(1) developing a fundamental understanding of matter that enables control and manipulation at the nanoscale;

(2) providing grants to individual investigators and interdisciplinary teams of investigators;

(3) establishing a network of advanced technology user facilities and centers;

(4) establishing, on a merit-reviewed and competitive basis, interdisciplinary nanotechnology research centers, which shall—

(A) interact and collaborate to foster the exchange of technical information and best practices;

(B) involve academic institutions or national laboratories and other partners, which may include States and industry;

(C) make use of existing expertise in nanotechnology in their regions and nationally;

(D) make use of ongoing research and development at the micrometer scale to support their work in nanotechnology; and

(E) to the greatest extent possible, be established in geographically diverse locations, encourage the participation of Historically Black Colleges and Universities that are part B institutions as defined in section 1061(2) of title 20 and minority institutions (as defined in section 1067k(3) of title 20), and include institutions located in States participating in the Experimental Program to Stimulate Competitive Research (EPSCoR);

(5) ensuring United States global leadership in the development and application of nanotechnology;

(6) advancing the United States productivity and industrial competitiveness through stable, consistent, and coordinated investments in long-term scientific and engineering research in nanotechnology;

(7) accelerating the deployment and application of nanotechnology research and development in the private sector, including startup companies;

(8) encouraging interdisciplinary research, and ensuring that processes for solicitation and evaluation of proposals under the Program encourage interdisciplinary projects and collaborations;

(9) providing effective education and training for researchers and professionals skilled in the interdisciplinary perspectives necessary for nanotechnology so that a true interdisciplinary research culture for nanoscale science, engineering, and technology can emerge;

(10) ensuring that ethical, legal, environmental, and other appropriate societal concerns, including the potential use of nanotechnology in enhancing human intelligence and in developing artificial intelligence which exceeds human capacity, are considered during the development of nanotechnology by—

(A) establishing a research program to identify ethical, legal, environmental, and other appropriate societal concerns related to nanotechnology, and ensuring that the results of such research are widely disseminated;

(B) requiring that interdisciplinary nanotechnology research centers established under paragraph (4) include activities that address societal, ethical, and environmental concerns;

(C) insofar as possible, integrating research on societal, ethical, and environmental concerns with nanotechnology research and development, and ensuring that advances in nanotechnology bring about improvements in quality of life for all Americans; and

(D) providing, through the National Nanotechnology Coordination Office established in section 7502 of this title, for public input and outreach to be integrated into the Program by the convening of regular and ongoing public discussions, through mechanisms such as citizens' panels, consensus conferences, and educational events, as appropriate; and

(11) encouraging research on nanotechnology advances that utilize existing processes and technologies.

(c) Program management

The National Science and Technology Council shall oversee the planning, management, and coordination of the Program. The Council, itself or through an appropriate subgroup it designates or establishes, shall—

(1) establish goals and priorities for the Program, based on national needs for a set of broad applications of nanotechnology;

(2) establish program component areas, with specific priorities and technical goals, that reflect the goals and priorities established for the Program;

(3) oversee interagency coordination of the Program, including with the activities of the Defense Nanotechnology Research and Development Program established under section 246 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314) and the National Institutes of Health;

(4) develop, not later than 5 years after the date of the release of the most-recent strategic plan, and update every 5 years thereafter, a strategic plan to guide the activities described under subsection (b) that describes—

(A) the near-term and long-term objectives for the Program;

(B) the anticipated schedule for achieving the near-term objectives; and [1]

(C) the metrics that will be used to assess progress toward the near-term and long-term objectives;

(D) how the Program will move results out of the laboratory and into application for the benefit of society;

(E) the Program's support for long-term funding for interdisciplinary research and development in nanotechnology; and

(F) the allocation of funding for interagency nanotechnology projects;

(5) propose a coordinated interagency budget for the Program to the Office of Management and Budget to ensure the maintenance of a balanced nanotechnology research portfolio and an appropriate level of research effort;

(6) exchange information with academic, industry, State and local government (including State and regional nanotechnology programs), and other appropriate groups conducting research on and using nanotechnology;

(7) develop a plan to utilize Federal programs, such as the Small Business Innovation Research Program and the Small Business Technology Transfer Research Program, in support of the activity stated in subsection (b)(7);

(8) identify research areas that are not being adequately addressed by the agencies' current research programs and address such research areas;

(9) encourage progress on Program activities through the utilization of existing manufacturing facilities and industrial infrastructures such as, but not limited to, the employment of underutilized manufacturing facilities in areas of high unemployment as production engineering and research testbeds; and

(10) in carrying out its responsibilities under paragraphs (1) through (9), take into consideration the recommendations of the Advisory Panel, suggestions or recommendations developed pursuant to subsection (b)(10)(D), and the views of academic, State, industry, and other appropriate groups conducting research on and using nanotechnology.

(d) Annual report

The Council shall prepare an annual report, to be submitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science, and other appropriate committees, at the time of the President's budget request to Congress, that includes—

(1) the Program budget, for the current fiscal year, for each agency that participates in the Program, including a breakout of spending for the development and acquisition of research facilities and instrumentation, for each program component area, and for all activities pursuant to subsection (b)(10);

(2) the proposed Program budget for the next fiscal year, for each agency that participates in the Program, including a breakout of spending for the development and acquisition of research facilities and instrumentation, for each program component area, and for all activities pursuant to subsection (b)(10);

(3) an analysis of the progress made toward achieving the goals and priorities established for the Program;

(4) an analysis of the extent to which the Program has incorporated the recommendations of the Advisory Panel; and

(5) an assessment of how Federal agencies are implementing the plan described in subsection (c)(7), and a description of the amount of Small Business Innovative Research and Small Business Technology Transfer Research funds supporting the plan.

(Pub. L. 108–153, §2, Dec. 3, 2003, 117 Stat. 1923; Pub. L. 114–329, title II, §204(b)(1), Jan. 6, 2017, 130 Stat. 2999.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 246 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003, referred to in subsec. (c)(3), is section 246 of Pub. L. 107–314, which is set out as a note under section 2358 of Title 10, Armed Forces.

AMENDMENTS

2017—Subsec. (c)(4). Pub. L. 114–329 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "develop, within 12 months after December 3, 2003, and update every 3 years thereafter, a strategic plan to guide the activities described under subsection (b), meet the goals, priorities, and anticipated outcomes of the participating agencies, and describe—

"(A) how the Program will move results out of the laboratory and into application for the benefit of society;

"(B) the Program's support for long-term funding for interdisciplinary research and development in nanotechnology; and

"(C) the allocation of funding for interagency nanotechnology projects;".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

SHORT TITLE

Pub. L. 108–153, §1, Dec. 3, 2003, 117 Stat. 1923, provided that: "This Act [enacting this chapter] may be cited as the '21st Century Nanotechnology Research and Development Act'."

[1] *So in original. The word "and" probably should not appear.*

§7502. Program coordination

(a) In general

The President shall establish a National Nanotechnology Coordination Office, with a Director and full-time staff, which shall—

(1) provide technical and administrative support to the Council and the Advisory Panel;

(2) serve as the point of contact on Federal nanotechnology activities for government organizations, academia, industry, professional societies, State nanotechnology programs, interested citizen groups, and others to exchange technical and programmatic information;

(3) conduct public outreach, including dissemination of findings and recommendations of the Advisory Panel, as appropriate; and

(4) promote access to and early application of the technologies, innovations, and expertise derived from Program activities to agency missions and systems across the Federal Government, and to United States industry, including startup companies.

(b) Funding

The National Nanotechnology Coordination Office shall be funded through interagency funding in accordance with section 631 of Public Law 108–7.

(c) Report

Within 90 days after December 3, 2003, the Director of the Office of Science and Technology Policy shall report to the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Science on the funding of the National Nanotechnology Coordination Office. The report shall include—

(1) the amount of funding required to adequately fund the Office;

(2) the adequacy of existing mechanisms to fund this Office; and

(3) the actions taken by the Director to ensure stable funding of this Office.

(Pub. L. 108–153, §3, Dec. 3, 2003, 117 Stat. 1926.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 631 of Public Law 108–7, referred to in subsec. (b), is section 631 of Pub. L. 108–7, div. J, title VI, Feb. 20, 2003, 117 Stat. 471, which is not classified to the Code.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§7503. Advisory Panel

(a) In general

The President shall establish or designate a National Nanotechnology Advisory Panel.

(b) Qualifications

The Advisory Panel established or designated by the President under subsection (a) shall consist primarily of members from academic institutions and industry. Members of the Advisory Panel shall be qualified to provide advice and information on nanotechnology research, development, demonstrations, education, technology transfer, commercial application, or societal and ethical concerns. In selecting or designating an Advisory Panel, the President may also seek and give consideration to recommendations from the Congress, industry, the scientific community (including the National Academy of Sciences, scientific professional societies, and academia), the defense community, State and local governments, regional nanotechnology programs, and other appropriate organizations.

(c) Duties

The Advisory Panel shall advise the President and the Council on matters relating to the Program, including assessing—

(1) trends and developments in nanotechnology science and engineering;

(2) progress made in implementing the Program;

(3) the need to revise the Program;

(4) the balance among the components of the Program, including funding levels for the program component areas;

(5) whether the program component areas, priorities, and technical goals developed by the Council are helping to maintain United States leadership in nanotechnology;

(6) the management, coordination, implementation, and activities of the Program; and

(7) whether societal, ethical, legal, environmental, and workforce concerns are adequately addressed by the Program.

(d) Reports

Not later than 4 years after the date of the most recent assessment under subsection (c), and quadrennially thereafter, the Advisory Panel shall submit to the President, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Science, Space, and Technology of the House of Representatives a report its [1] assessments under subsection (c) and its recommendations for ways to improve the Program.

(e) Travel expenses of non-Federal members

Non-Federal members of the Advisory Panel, while attending meetings of the Advisory Panel or while otherwise serving at the request of the head of the Advisory Panel away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the government serving without pay.

Nothing in this subsection shall be construed to prohibit members of the Advisory Panel who are officers or employees of the United States from being allowed travel expenses, including per diem in lieu of subsistence, in accordance with existing law.

(f) Exemption from sunset

Section 1013 of title 5 shall not apply to the Advisory Panel.

(Pub. L. 108–153, §4, Dec. 3, 2003, 117 Stat. 1927; Pub. L. 114–329, title II, §204(b)(2), Jan. 6, 2017, 130 Stat. 2999; Pub. L. 117–286, §4(a)(78), Dec. 27, 2022, 136 Stat. 4314.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (f). Pub. L. 117–286 substituted "Section 1013 of title 5" for "Section 14 of the Federal Advisory Committee Act".

2017—Subsec. (d). Pub. L. 114–329 amended subsec. (d) generally. Prior to amendment, text read as follows: "The Advisory Panel shall report, not less frequently than once every 2 fiscal years, to the President on its assessments under subsection (c) and its recommendations for ways to improve the Program. The first report under this subsection shall be submitted within 1 year after December 3, 2003. The Director of the Office of Science and Technology Policy shall transmit a copy of each report under this subsection to the Senate Committee on Commerce, Science, and Technology, the House of Representatives Committee on Science, and other appropriate committees of the Congress."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

President's Council of Advisors on Science and Technology to serve as the advisory panel identified in this section and to be known as the National Nanotechnology Advisory Panel when performing the functions of such advisory committee, see section 3(b)(iv) of Ex. Ord. No. 14007, set out in a note under section 6601 of Title 42, The Public Health and Welfare.

[1] *So in original.*

§7504. Quadrennial external review of the National Nanotechnology Program

(a) In general

The Director of the National Nanotechnology Coordination Office shall enter into an arrangement with the National Research Council of the National Academy of Sciences to conduct a quadrennial evaluation of the Program, including—

(1) an evaluation of the technical accomplishments of the Program, including a review of whether the Program has achieved the goals under the metrics established by the Council;

(2) a review of the Program's management and coordination across agencies and disciplines;

(3) a review of the funding levels at each agency for the Program's activities and the ability of each agency to achieve the Program's stated goals with that funding;

(4) an evaluation of the Program's success in transferring technology to the private sector;

(5) an evaluation of whether the Program has been successful in fostering interdisciplinary research and development;

(6) an evaluation of the extent to which the Program has adequately considered ethical, legal, environmental, and other appropriate societal concerns;

(7) recommendations for new or revised Program goals;

(8) recommendations for new research areas, partnerships, coordination and management mechanisms, or programs to be established to achieve the Program's stated goals;

(9) recommendations on policy, program, and budget changes with respect to nanotechnology research and development activities;

(10) recommendations for improved metrics to evaluate the success of the Program in accomplishing its stated goals;

(11) a review of the performance of the National Nanotechnology Coordination Office and its efforts to promote access to and early application of the technologies, innovations, and expertise derived from Program activities to agency missions and systems across the Federal Government and to United States industry;

(12) an analysis of the relative position of the United States compared to other nations with respect to nanotechnology research and development, including the identification of any critical research areas where the United States should be the world leader to best achieve the goals of the Program; and

(13) an analysis of the current impact of nanotechnology on the United States economy and recommendations for increasing its future impact.

(b) Study on molecular self-assembly

As part of the first quadrennial review conducted in accordance with subsection (a), the National Research Council shall conduct a one-time study to determine the technical feasibility of molecular self-assembly for the manufacture of materials and devices at the molecular scale.

(c) Study on the responsible development of nanotechnology

As part of the first quadrennial review conducted in accordance with subsection (a), the National Research Council shall conduct a one-time study to assess the need for standards, guidelines, or strategies for ensuring the responsible development of nanotechnology, including, but not limited to—

(1) self-replicating nanoscale machines or devices;

(2) the release of such machines in natural environments;

(3) encryption;

(4) the development of defensive technologies;

(5) the use of nanotechnology in the enhancement of human intelligence; and

(6) the use of nanotechnology in developing artificial intelligence.

(d) Report

(1) In general

Not later than 30 days after the date the first evaluation under subsection (a) is received, and quadrennially thereafter, the Director of the National Nanotechnology Coordination Office shall report to the President its assessments under subsection (c) and its recommendations for ways to improve the Program.

(2) Congress

Not later than 30 days after the date the President receives the report under paragraph (1), the Director of the Office of Science and Technology Policy shall transmit a copy of the report to Congress.

(Pub. L. 108–153, §5, Dec. 3, 2003, 117 Stat. 1928; Pub. L. 114–329, title II, §204(b)(3), Jan. 6, 2017, 130 Stat. 2999.)

EDITORIAL NOTES

AMENDMENTS

2017—Pub. L. 114–329, §204(b)(3)(A)–(D), substituted "Quadrennial" for "Triennial" in section catchline and "quadrennial" for "triennial" in subsecs. (a) to (c).

Subsec. (d). Pub. L. 114–329, §204(b)(3)(E), amended subsec. (d) generally. Prior to amendment, text read as follows: "The Director of the National Nanotechnology Coordination Office shall transmit the results of any evaluation for which it made arrangements under subsection (a) to the Advisory Panel, the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science upon receipt. The first such evaluation shall be transmitted no later than June 10, 2005, with subsequent evaluations transmitted to the Committees every 3 years thereafter."

§7505. Authorization of appropriations

(a) National Science Foundation

There are authorized to be appropriated to the Director of the National Science Foundation to carry out the Director's responsibilities under this chapter—

(1) $385,000,000 for fiscal year 2005;
(2) $424,000,000 for fiscal year 2006;
(3) $449,000,000 for fiscal year 2007; and
(4) $476,000,000 for fiscal year 2008.

(b) Department of Energy

There are authorized to be appropriated to the Secretary of Energy to carry out the Secretary's responsibilities under this chapter—

(1) $317,000,000 for fiscal year 2005;
(2) $347,000,000 for fiscal year 2006;
(3) $380,000,000 for fiscal year 2007; and
(4) $415,000,000 for fiscal year 2008.

(c) National Aeronautics and Space Administration

There are authorized to be appropriated to the Administrator of the National Aeronautics and Space Administration to carry out the Administrator's responsibilities under this chapter—

(1) $34,100,000 for fiscal year 2005;
(2) $37,500,000 for fiscal year 2006;
(3) $40,000,000 for fiscal year 2007; and
(4) $42,300,000 for fiscal year 2008.

(d) National Institute of Standards and Technology

There are authorized to be appropriated to the Director of the National Institute of Standards and Technology to carry out the Director's responsibilities under this chapter—

(1) $68,200,000 for fiscal year 2005;
(2) $75,000,000 for fiscal year 2006;
(3) $80,000,000 for fiscal year 2007; and
(4) $84,000,000 for fiscal year 2008.

(e) Environmental Protection Agency

There are authorized to be appropriated to the Administrator of the Environmental Protection Agency to carry out the Administrator's responsibilities under this chapter—

(1) $5,500,000 for fiscal year 2005;
(2) $6,050,000 for fiscal year 2006;
(3) $6,413,000 for fiscal year 2007; and
(4) $6,800,000 for fiscal year 2008.

(Pub. L. 108–153, §6, Dec. 3, 2003, 117 Stat. 1929.)

§7506. Department of Commerce programs

(a) NIST programs

The Director of the National Institute of Standards and Technology shall—

(1) as part of the Program activities under section 7501(b)(7) of this title, establish a program to conduct basic research on issues related to the development and manufacture of nanotechnology, including metrology; reliability and quality assurance; processes control; and manufacturing best practices; and

(2) utilize the Manufacturing Extension Partnership program [1] to the extent possible to ensure

that the research conducted under paragraph (1) reaches small- and medium-sized manufacturing companies.

(b) Clearinghouse

The Secretary of Commerce or his designee, in consultation with the National Nanotechnology Coordination Office and, to the extent possible, utilizing resources at the National Technical Information Service, shall establish a clearinghouse of information related to commercialization of nanotechnology research, including information relating to activities by regional, State, and local commercial nanotechnology initiatives; transition of research, technologies, and concepts from Federal nanotechnology research and development programs into commercial and military products; best practices by government, universities and private sector laboratories transitioning technology to commercial use; examples of ways to overcome barriers and challenges to technology deployment; and use of manufacturing infrastructure and workforce.

(Pub. L. 108–153, §7, Dec. 3, 2003, 117 Stat. 1930.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

The Manufacturing Extension Partnership Program, referred to in subsec. (a), redesignated the Hollings Manufacturing Partnership Program by a provision of title II of div. B of Pub. L. 108–447, formerly set out as a note under section 278k of this title. Program subsequently designated the Hollings Manufacturing Extension Partnership by former section 278k(i) of this title, as added by Pub. L. 111–358, and by section 278k of this title, as generally amended by Pub. L. 114–329.

[1] *See Change of Name note below.*

§7507. Department of Energy programs

(a) Research consortia

(1) Department of Energy program

The Secretary of Energy shall establish a program to support, on a merit-reviewed and competitive basis, consortia to conduct interdisciplinary nanotechnology research and development designed to integrate newly developed nanotechnology and microfluidic tools with systems biology and molecular imaging.

(2) Authorization of appropriations

Of the sums authorized for the Department of Energy under section 7505(b) of this title, $25,000,000 shall be used for each fiscal year 2005 through 2008 to carry out this section. Of these amounts, not less than $10,000,000 shall be provided to at least 1 consortium for each fiscal year.

(b) Research centers and major instrumentation

The Secretary of Energy shall carry out projects to develop, plan, construct, acquire, operate, or support special equipment, instrumentation, or facilities for investigators conducting research and development in nanotechnology.

(Pub. L. 108–153, §8, Dec. 3, 2003, 117 Stat. 1930.)

§7508. Additional centers

(a) American Nanotechnology Preparedness Center

The Program shall provide for the establishment, on a merit-reviewed and competitive basis, of an

American Nanotechnology Preparedness Center which shall—

(1) conduct, coordinate, collect, and disseminate studies on the societal, ethical, environmental, educational, legal, and workforce implications of nanotechnology; and

(2) identify anticipated issues related to the responsible research, development, and application of nanotechnology, as well as provide recommendations for preventing or addressing such issues.

(b) Center for nanomaterials manufacturing

The Program shall provide for the establishment, on a merit reviewed and competitive basis, of a center to—

(1) encourage, conduct, coordinate, commission, collect, and disseminate research on new manufacturing technologies for materials, devices, and systems with new combinations of characteristics, such as, but not limited to, strength, toughness, density, conductivity, flame resistance, and membrane separation characteristics; and

(2) develop mechanisms to transfer such manufacturing technologies to United States industries.

(c) Reports

The Council, through the Director of the National Nanotechnology Coordination Office, shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science—

(1) within 6 months after December 3, 2003, a report identifying which agency shall be the lead agency and which other agencies, if any, will be responsible for establishing the Centers described in this section; and

(2) within 18 months after December 3, 2003, a report describing how the Centers described in this section have been established.

(Pub. L. 108–153, §9, Dec. 3, 2003, 117 Stat. 1930.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Science of House of Representatives changed to Committee on Science and Technology of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007. Committee on Science and Technology of House of Representatives changed to Committee on Science, Space, and Technology of House of Representatives by House Resolution No. 5, One Hundred Twelfth Congress, Jan. 5, 2011.

§7509. Definitions

In this chapter:

(1) Advisory Panel

The term "Advisory Panel" means the President's National Nanotechnology Advisory Panel established or designated under section 7503 of this title.

(2) Nanotechnology

The term "nanotechnology" means the science and technology that will enable one to understand, measure, manipulate, and manufacture at the atomic, molecular, and supramolecular levels, aimed at creating materials, devices, and systems with fundamentally new molecular organization, properties, and functions.

(3) Program

The term "Program" means the National Nanotechnology Program established under section 7501 of this title.

(4) Council

The term "Council" means the National Science and Technology Council or an appropriate subgroup designated by the Council under section 7501(c) of this title.

(5) Advanced technology user facility

The term "advanced technology user facility" means a nanotechnology research and development facility supported, in whole or in part, by Federal funds that is open to all United States researchers on a competitive, merit-reviewed basis.

(6) Program component area

The term "program component area" means a major subject area established under section 7501(c)(2) of this title under which is [1] grouped related individual projects and activities carried out under the Program.

(Pub. L. 108–153, §10, Dec. 3, 2003, 117 Stat. 1931.)

[1] *So in original. Probably should be "are".*

CHAPTER 102—FAIRNESS TO CONTACT LENS CONSUMERS

Sec.

§7601. Availability of contact lens prescriptions to patients

(a) In general

When a prescriber completes a contact lens fitting, the prescriber—

(1) whether or not requested by the patient, shall provide to the patient a copy of the contact lens prescription; and

(2) shall, as directed by any person designated to act on behalf of the patient, provide or verify the contact lens prescription by electronic or other means.

(b) Limitations

A prescriber may not—

(1) require purchase of contact lenses from the prescriber or from another person as a condition of providing a copy of a prescription under subsection (a)(1) or (a)(2) or verification of a prescription under subsection (a)(2);

(2) require payment in addition to, or as part of, the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription under subsection (a)(1) or (a)(2) or verification of a prescription under subsection (a)(2); or

(3) require the patient to sign a waiver or release as a condition of verifying or releasing a prescription.

(Pub. L. 108–164, §2, Dec. 6, 2003, 117 Stat. 2024.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 108–164, §12, Dec. 6, 2003, 117 Stat. 2028, provided that: "This Act [enacting this chapter and provisions set out as a note below] shall take effect 60 days after the date of the enactment of this Act [Dec. 6, 2003]."

SHORT TITLE

Pub. L. 108–164, §1, Dec. 6, 2003, 117 Stat. 2024, provided that: "This Act [enacting this chapter and provisions set out as a note above] may be cited as the 'Fairness to Contact Lens Consumers Act'."

§7602. Immediate payment of fees in limited circumstances

A prescriber may require payment of fees for an eye examination, fitting, and evaluation before the release of a contact lens prescription, but only if the prescriber requires immediate payment in the case of an examination that reveals no requirement for ophthalmic goods. For purposes of the preceding sentence, presentation of proof of insurance coverage for that service shall be deemed to be a payment.

(Pub. L. 108–164, §3, Dec. 6, 2003, 117 Stat. 2024.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 60 days after Dec. 6, 2003, see section 12 of Pub. L. 108–164, set out as a note under section 7601 of this title.

§7603. Prescriber verification

(a) Prescription requirement

A seller may sell contact lenses only in accordance with a contact lens prescription for the patient that is—

(1) presented to the seller by the patient or prescriber directly or by facsimile; or

(2) verified by direct communication.

(b) Record requirement

A seller shall maintain a record of all direct communications referred to in subsection (a).

(c) Information

When seeking verification of a contact lens prescription, a seller shall provide the prescriber with the following information:

(1) Patient's full name and address.

(2) Contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate.

(3) Quantity of lenses ordered.

(4) Date of patient request.

(5) Date and time of verification request.

(6) Name of contact person at seller's company, including facsimile and telephone number.

(d) Verification events

A prescription is verified under this chapter only if one of the following occurs:

(1) The prescriber confirms the prescription is accurate by direct communication with the seller.

(2) The prescriber informs the seller that the prescription is inaccurate and provides the accurate prescription.

(3) The prescriber fails to communicate with the seller within 8 business hours, or a similar time as defined by the Federal Trade Commission, after receiving from the seller the information

described in subsection (c).

(e) Invalid prescription

If a prescriber informs a seller before the deadline under subsection (d)(3) that the contact lens prescription is inaccurate, expired, or otherwise invalid, the seller shall not fill the prescription. The prescriber shall specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the seller to the prescriber is inaccurate, the prescriber shall correct it.

(f) No alteration

A seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, if the same contact lens is manufactured by the same company and sold under multiple labels to individual providers, the seller may fill the prescription with a contact lens manufactured by that company under another label.

(g) Direct communication

As used in this section, the term "direct communication" includes communication by telephone, facsimile, or electronic mail.

(Pub. L. 108–164, §4, Dec. 6, 2003, 117 Stat. 2024.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 60 days after Dec. 6, 2003, see section 12 of Pub. L. 108–164, set out as a note under section 7601 of this title.

§7604. Expiration of contact lens prescriptions

(a) In general

A contact lens prescription shall expire—

(1) on the date specified by the law of the State in which the prescription was written, if that date is one year or more after the issue date of the prescription;

(2) not less than one year after the issue date of the prescription if such State law specifies no date or a date that is less than one year after the issue date of the prescription; or

(3) notwithstanding paragraphs (1) and (2), on the date specified by the prescriber, if that date is based on the medical judgment of the prescriber with respect to the ocular health of the patient.

(b) Special rules for prescriptions of less than 1 year

If a prescription expires in less than 1 year, the reasons for the judgment referred to in subsection (a)(3) shall be documented in the patient's medical record. In no circumstance shall the prescription expiration date be less than the period of time recommended by the prescriber for a reexamination of the patient that is medically necessary.

(c) Definition

As used in this section, the term "issue date" means the date on which the patient receives a copy of the prescription.

(Pub. L. 108–164, §5, Dec. 6, 2003, 117 Stat. 2025.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 60 days after Dec. 6, 2003, see section 12 of Pub. L. 108–164, set out as a note under section 7601 of this title.

§7605. Content of advertisements and other representations

Any person that engages in the manufacture, processing, assembly, sale, offering for sale, or distribution of contact lenses may not represent, by advertisement, sales presentation, or otherwise, that contact lenses may be obtained without a prescription.

(Pub. L. 108–164, §6, Dec. 6, 2003, 117 Stat. 2026.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 60 days after Dec. 6, 2003, see section 12 of Pub. L. 108–164, set out as a note under section 7601 of this title.

§7606. Prohibition of certain waivers

A prescriber may not place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination. The preceding sentence does not impose liability on a prescriber for the ophthalmic goods and services dispensed by another seller pursuant to the prescriber's correctly verified prescription.

(Pub. L. 108–164, §7, Dec. 6, 2003, 117 Stat. 2026.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 60 days after Dec. 6, 2003, see section 12 of Pub. L. 108–164, set out as a note under section 7601 of this title.

§7607. Rulemaking by Federal Trade Commission

The Federal Trade Commission shall prescribe rules pursuant to section 57a of this title to carry out this chapter. Rules so prescribed shall be exempt from the requirements of the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act (15 U.S.C. 2301 et seq.). Any such regulations shall be issued in accordance with section 553 of title 5. The first rules under this section shall take effect not later than 180 days after the effective date of this chapter.

(Pub. L. 108–164, §8, Dec. 6, 2003, 117 Stat. 2026.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, referred to in text, is Pub. L. 93–637, Jan. 4, 1975, 88 Stat. 2183. Title I of the Act is classified generally to chapter 50 (§2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

For effective date of this chapter, referred to in text, see section 12 of Pub. L. 108–164, set out as an Effective Date note under section 7601 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 60 days after Dec. 6, 2003, see section 12 of Pub. L. 108–164, set out as a note under section 7601 of this title.

§7608. Violations

(a) In general

Any violation of this chapter or the rules required under section 7607 of this title shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

(b) Actions by the Commission

The Federal Trade Commission shall enforce this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter.

(Pub. L. 108–164, §9, Dec. 6, 2003, 117 Stat. 2026.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 60 days after Dec. 6, 2003, see section 12 of Pub. L. 108–164, set out as a note under section 7601 of this title.

§7609. Study and report

(a) Study

The Federal Trade Commission shall undertake a study to examine the strength of competition in the sale of prescription contact lenses. The study shall include an examination of the following issues:

(1) Incidence of exclusive relationships between prescribers or sellers and contact lens manufacturers and the impact of such relationships on competition.

(2) Difference between online and offline sellers of contact lenses, including price, access, and availability.

(3) Incidence, if any, of contact lens prescriptions that specify brand name or custom labeled contact lenses, the reasons for the incidence, and the effect on consumers and competition.

(4) The impact of the Federal Trade Commission eyeglasses rule (16 CFR 456 et seq.) on competition, the nature of the enforcement of the rule, and how such enforcement has impacted competition.

(5) Any other issue that has an impact on competition in the sale of prescription contact lenses.

(b) Report

Not later than 12 months after the effective date of this chapter, the Chairman of the Federal Trade Commission shall submit to the Congress a report of the study required by subsection (a).

(Pub. L. 108–164, §10, Dec. 6, 2003, 117 Stat. 2026.)

EDITORIAL NOTES

REFERENCES IN TEXT

For effective date of this chapter, referred to in subsec. (b), see section 12 of Pub. L. 108–164, set out as an Effective Date note under section 7601 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 60 days after Dec. 6, 2003, see section 12 of Pub. L. 108–164, set out as a note under section 7601 of this title.

§7610. Definitions

As used in this chapter:

(1) Contact lens fitting

The term "contact lens fitting" means the process that begins after the initial eye examination and ends when a successful fit has been achieved or, in the case of a renewal prescription, ends when the prescriber determines that no change in prescription is required, and such term may include—

(A) an examination to determine lens specifications;

(B) except in the case of a renewal of a prescription, an initial evaluation of the fit of the lens on the eye; and

(C) medically necessary follow up examinations.

(2) Prescriber

The term "prescriber" means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration.

(3) Contact lens prescription

The term "contact lens prescription" means a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription, including the following:

(A) Name of the patient.

(B) Date of examination.

(C) Issue date and expiration date of prescription.

(D) Name, postal address, telephone number, and facsimile telephone number of prescriber.

(E) Power, material or manufacturer or both.

(F) Base curve or appropriate designation.

(G) Diameter, when appropriate.

(H) In the case of a private label contact lens, name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name.

(Pub. L. 108–164, §11, Dec. 6, 2003, 117 Stat. 2027.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 60 days after Dec. 6, 2003, see section 12 of Pub. L. 108–164, set out as a note under section 7601 of this title.

CHAPTER 103—CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING

Sec.

§7701. Congressional findings and policy

(a) Findings

The Congress finds the following:

(1) Electronic mail has become an extremely important and popular means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes. Its low cost and global reach make it extremely convenient and efficient, and offer unique opportunities for the development and growth of frictionless commerce.

(2) The convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail. Unsolicited commercial electronic mail is currently estimated to account for over half of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise. Most of these messages are fraudulent or deceptive in one or more respects.

(3) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(4) The receipt of a large number of unwanted messages also decreases the convenience of electronic mail and creates a risk that wanted electronic mail messages, both commercial and noncommercial, will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient.

(5) Some commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

(6) The growth in unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

(7) Many senders of unsolicited commercial electronic mail purposefully disguise the source of such mail.

(8) Many senders of unsolicited commercial electronic mail purposefully include misleading information in the messages' subject lines in order to induce the recipients to view the messages.

(9) While some senders of commercial electronic mail messages provide simple and reliable ways for recipients to reject (or "opt-out" of) receipt of commercial electronic mail from such senders in the future, other senders provide no such "opt-out" mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(10) Many senders of bulk unsolicited commercial electronic mail use computer programs to gather large numbers of electronic mail addresses on an automated basis from Internet websites or online services where users must post their addresses in order to make full use of the website or service.

(11) Many States have enacted legislation intended to regulate or reduce unsolicited commercial electronic mail, but these statutes impose different standards and requirements. As a result, they do not appear to have been successful in addressing the problems associated with unsolicited commercial electronic mail, in part because, since an electronic mail address does not specify a geographic location, it can be extremely difficult for law-abiding businesses to know with which of these disparate statutes they are required to comply.

(12) The problems associated with the rapid growth and abuse of unsolicited commercial electronic mail cannot be solved by Federal legislation alone. The development and adoption of technological approaches and the pursuit of cooperative efforts with other countries will be necessary as well.

(b) Congressional determination of public policy

On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of commercial electronic mail on a nationwide basis;

(2) senders of commercial electronic mail should not mislead recipients as to the source or content of such mail; and

(3) recipients of commercial electronic mail have a right to decline to receive additional commercial electronic mail from the same source.

(Pub. L. 108–187, §2, Dec. 16, 2003, 117 Stat. 2699.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 108–187, §16, Dec. 16, 2003, 117 Stat. 2719, provided that: "The provisions of this Act [see Short Title note below], other than section 9 [enacting section 7708 of this title], shall take effect on January 1, 2004."

SHORT TITLE

Pub. L. 108–187, §1, Dec. 16, 2003, 117 Stat. 2699, provided that: "This Act [enacting this chapter and section 1037 of Title 18, Crimes and Criminal Procedure, amending section 227 of Title 47, Telecommunications, and enacting provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003', or the 'CAN-SPAM Act of 2003'."

§7702. Definitions

In this chapter:

(1) Affirmative consent

The term "affirmative consent", when used with respect to a commercial electronic mail message, means that—

(A) the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and

(B) if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.

(2) Commercial electronic mail message

(A) In general

The term "commercial electronic mail message" means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial

purpose).

(B) Transactional or relationship messages

The term "commercial electronic mail message" does not include a transactional or relationship message.

(C) Regulations regarding primary purpose

Not later than 12 months after December 16, 2003, the Commission shall issue regulations pursuant to section 7711 of this title defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.

(D) Reference to company or website

The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this chapter if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) Commission

The term "Commission" means the Federal Trade Commission.

(4) Domain name

The term "domain name" means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) Electronic mail address

The term "electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and a reference to an Internet domain (commonly referred to as the "domain part"), whether or not displayed, to which an electronic mail message can be sent or delivered.

(6) Electronic mail message

The term "electronic mail message" means a message sent to a unique electronic mail address.

(7) FTC Act

The term "FTC Act" means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(8) Header information

The term "header information" means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

(9) Initiate

The term "initiate", when used with respect to a commercial electronic mail message, means to originate or transmit such message or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than one person may be considered to have initiated a message.

(10) Internet

The term "Internet" has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

(11) Internet access service

The term "Internet access service" has the meaning given that term in section 231(e)(4) of title 47.

(12) Procure

The term "procure", when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf.

(13) Protected computer

The term "protected computer" has the meaning given that term in section 1030(e)(2)(B) of title 18.

(14) Recipient

The term "recipient", when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has one or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

(15) Routine conveyance

The term "routine conveyance" means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(16) Sender

(A) In general

Except as provided in subparagraph (B), the term "sender", when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

(B) Separate lines of business or divisions

If an entity operates through separate lines of business or divisions and holds itself out to the recipient throughout the message as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the sender of such message for purposes of this chapter.

(17) Transactional or relationship message

(A) In general

The term "transactional or relationship message" means an electronic mail message the primary purpose of which is—

(i) to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(ii) to provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(iii) to provide—

(I) notification concerning a change in the terms or features of;

(II) notification of a change in the recipient's standing or status with respect to; or

(III) at regular periodic intervals, account balance information or other type of account statement with respect to,

a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

(iv) to provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(v) to deliver goods or services, including product updates or upgrades, that the recipient is

entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(B) Modification of definition

The Commission by regulation pursuant to section 7711 of this title may modify the definition in subparagraph (A) to expand or contract the categories of messages that are treated as transactional or relationship messages for purposes of this chapter to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of this chapter.

(Pub. L. 108–187, §3, Dec. 16, 2003, 117 Stat. 2700.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

The Federal Trade Commission Act, referred to in par. (7), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Internet Tax Freedom Act, referred to in par. (10), is title XI of Pub. L. 105–277, div. C, Oct. 21, 1998, 112 Stat. 2681–719, which is set out as a note under section 151 of Title 47, Telecommunications.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

§7703. Prohibition against predatory and abusive commercial e-mail

(a) Omitted

(b) United States Sentencing Commission

(1) Directive

Pursuant to its authority under section 994(p) of title 28 and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the sentencing guidelines and policy statements to provide appropriate penalties for violations of section 1037 of title 18, as added by this section, and other offenses that may be facilitated by the sending of large quantities of unsolicited electronic mail.

(2) Requirements

In carrying out this subsection, the Sentencing Commission shall consider providing sentencing enhancements for—

(A) those convicted under section 1037 of title 18 who—

(i) obtained electronic mail addresses through improper means, including—

(I) harvesting electronic mail addresses of the users of a website, proprietary service, or other online public forum operated by another person, without the authorization of such person; and

(II) randomly generating electronic mail addresses by computer; or

(ii) knew that the commercial electronic mail messages involved in the offense contained or advertised an Internet domain for which the registrant of the domain had provided false registration information; and

(B) those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of electronic mail.

(c) Sense of Congress

It is the sense of Congress that—

(1) Spam has become the method of choice for those who distribute pornography, perpetrate fraudulent schemes, and introduce viruses, worms, and Trojan horses into personal and business computer systems; and

(2) the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk commercial e-mail to facilitate the commission of Federal crimes, including the tools contained in chapters 47 and 63 of title 18 (relating to fraud and false statements); chapter 71 of title 18 (relating to obscenity); chapter 110 of title 18 (relating to the sexual exploitation of children); and chapter 95 of title 18 (relating to racketeering), as appropriate.

(Pub. L. 108–187, §4, Dec. 16, 2003, 117 Stat. 2703.)

EDITORIAL NOTES

CODIFICATION

Section is comprised of section 4 of Pub. L. 108–187. Subsec. (a) of section 4 of Pub. L. 108–187 enacted section 1037 of Title 18, Crimes and Criminal Procedure, and amended analysis for chapter 47 of Title 18. The provisions of subsec. (b) of section 4 of Pub. L. 108–187 are also listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

§7704. Other protections for users of commercial electronic mail

(a) Requirements for transmission of messages

(1) Prohibition of false or misleading transmission information

It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading. For purposes of this paragraph—

(A) header information that is technically accurate but includes an originating electronic mail address, domain name, or Internet Protocol address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading;

(B) a "from" line (the line identifying or purporting to identify a person initiating the message) that accurately identifies any person who initiated the message shall not be considered materially false or materially misleading; and

(C) header information shall be considered materially misleading if it fails to identify accurately a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin.

(2) Prohibition of deceptive subject headings

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section 45 of this title).

(3) Inclusion of return address or comparable mechanism in commercial electronic mail

(A) In general

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

(B) More detailed options possible

The person initiating a commercial electronic mail message may comply with subparagraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any commercial electronic mail messages from the sender.

(C) Temporary inability to receive messages or process requests

A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to a technical problem beyond the control of the sender if the problem is corrected within a reasonable time period.

(4) Prohibition of transmission of commercial electronic mail after objection

(A) In general

If a recipient makes a request using a mechanism provided pursuant to paragraph (3) not to receive some or any commercial electronic mail messages from such sender, then it is unlawful—

(i) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of a commercial electronic mail message that falls within the scope of the request;

(ii) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message falls within the scope of the request;

(iii) for any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message would violate clause (i) or (ii); or

(iv) for the sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the electronic mail address of the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this chapter or other provision of law.

(B) Subsequent affirmative consent

A prohibition in subparagraph (A) does not apply if there is affirmative consent by the recipient subsequent to the request under subparagraph (A).

(5) Inclusion of identifier, opt-out, and physical address in commercial electronic mail

(A) It is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides—

(i) clear and conspicuous identification that the message is an advertisement or solicitation;

(ii) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further commercial electronic mail messages from the sender; and

(iii) a valid physical postal address of the sender.

(B) Subparagraph (A)(i) does not apply to the transmission of a commercial electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(6) Materially

For purposes of paragraph (1), the term "materially", when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.

(b) Aggravated violations relating to commercial electronic mail

(1) Address harvesting and dictionary attacks

(A) In general

It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such message through the provision or selection of addresses to which the message will be transmitted, if such person had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that—

(i) the electronic mail address of the recipient was obtained using an automated means from an Internet website or proprietary online service operated by another person, and such website or online service included, at the time the address was obtained, a notice stating that the operator of such website or online service will not give, sell, or otherwise transfer addresses maintained by such website or online service to any other party for the purposes of initiating, or enabling others to initiate, electronic mail messages; or

(ii) the electronic mail address of the recipient was obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(B) Disclaimer

Nothing in this paragraph creates an ownership or proprietary interest in such electronic mail addresses.

(2) Automated creation of multiple electronic mail accounts

It is unlawful for any person to use scripts or other automated means to register for multiple electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, a commercial electronic mail message that is unlawful under subsection (a).

(3) Relay or retransmission through unauthorized access

It is unlawful for any person knowingly to relay or retransmit a commercial electronic mail message that is unlawful under subsection (a) from a protected computer or computer network that

such person has accessed without authorization.

(c) Supplementary rulemaking authority

The Commission shall by regulation, pursuant to section 7711 of this title—

(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or both, if the Commission determines that a different period would be more reasonable after taking into account—

(A) the purposes of subsection (a);

(B) the interests of recipients of commercial electronic mail; and

(C) the burdens imposed on senders of lawful commercial electronic mail; and

(2) specify additional activities or practices to which subsection (b) applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a).

(d) Requirement to place warning labels on commercial electronic mail containing sexually oriented material

(1) In general

No person may initiate in or affecting interstate commerce the transmission, to a protected computer, of any commercial electronic mail message that includes sexually oriented material and—

(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or

(B) fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only—

(i) to the extent required or authorized pursuant to paragraph (2), any such marks or notices;

(ii) the information required to be included in the message pursuant to subsection (a)(5); and

(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.

(2) Prior affirmative consent

Paragraph (1) does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(3) Prescription of marks and notices

Not later than 120 days after December 16, 2003, the Commission in consultation with the Attorney General shall prescribe clearly identifiable marks or notices to be included in or associated with commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to facilitate filtering of such electronic mail. The Commission shall publish in the Federal Register and provide notice to the public of the marks or notices prescribed under this paragraph.

(4) Definition

In this subsection, the term "sexually oriented material" means any material that depicts sexually explicit conduct (as that term is defined in section 2256 of title 18), unless the depiction constitutes a small and insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.

(5) Penalty

Whoever knowingly violates paragraph (1) shall be fined under title 18, or imprisoned not more than 5 years, or both.

(Pub. L. 108–187, §5, Dec. 16, 2003, 117 Stat. 2706.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(4)(A)(iv), was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

§7705. Businesses knowingly promoted by electronic mail with false or misleading transmission information

(a) In general

It is unlawful for a person to promote, or allow the promotion of, that person's trade or business, or goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business, in a commercial electronic mail message the transmission of which is in violation of section 7704(a)(1) of this title if that person—

(1) knows, or should have known in the ordinary course of that person's trade or business, that the goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business were being promoted in such a message;

(2) received or expected to receive an economic benefit from such promotion; and

(3) took no reasonable action—

(A) to prevent the transmission; or

(B) to detect the transmission and report it to the Commission.

(b) Limited enforcement against third parties

(1) In general

Except as provided in paragraph (2), a person (hereinafter referred to as the "third party") that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation.

(2) Exception

Liability for a violation of subsection (a) shall be imputed to a third party that provides goods, products, property, or services to another person that violates subsection (a) if that third party—

(A) owns, or has a greater than 50 percent ownership or economic interest in, the trade or business of the person that violated subsection (a); or

(B)(i) has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of section 7704(a)(1) of this title; and

(ii) receives, or expects to receive, an economic benefit from such promotion.

(c) Exclusive enforcement by FTC

Subsections (f) and (g) of section 7706 of this title do not apply to violations of this section.

(d) Savings provision

Except as provided in section 7706(f)(8) of this title, nothing in this section may be construed to limit or prevent any action that may be taken under this chapter with respect to any violation of any other section of this chapter.

(Pub. L. 108–187, §6, Dec. 16, 2003, 117 Stat. 2710.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

§7706. Enforcement generally

(a) Violation is unfair or deceptive act or practice

Except as provided in subsection (b), this chapter shall be enforced by the Commission as if the violation of this chapter were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) Enforcement by certain other agencies

Compliance with this chapter shall be enforced—

(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies, by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision;

(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union;

(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

(4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) by the Securities and Exchange Commission with respect to investment companies;

(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;

(6) under State insurance law in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701), except that in any State in which the State insurance authority elects not to exercise this power, the enforcement authority pursuant to this chapter shall be exercised by the Commission in accordance with subsection (a);

(7) under part A of subtitle VII of title 49 by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(8) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act;

(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

(c) Exercise of certain powers

For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this chapter is deemed to be a violation of a Federal Trade Commission trade regulation rule. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this chapter, any other authority conferred on it by law.

(d) Actions by the Commission

The Commission shall prevent any person from violating this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter. Any entity that violates any provision of that subtitle [1] is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.[1]

(e) Availability of cease-and-desist orders and injunctive relief without showing of knowledge

Notwithstanding any other provision of this chapter, in any proceeding or action pursuant to subsection (a), (b), (c), or (d) of this section to enforce compliance, through an order to cease and desist or an injunction, with section 7704(a)(1)(C) of this title, section 7704(a)(2) of this title, clause (ii), (iii), or (iv) of section 7704(a)(4)(A) of this title, section 7704(b)(1)(A) of this title, or section 7704(b)(3) of this title, neither the Commission nor the Federal Communications Commission shall be required to allege or prove the state of mind required by such section or subparagraph.

(f) Enforcement by States

(1) Civil action

In any case in which the attorney general of a State, or an official or agency of a State, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates paragraph (1) or (2) of section 7704(a), who violates section 7704(d), or who engages in a pattern or practice that violates paragraph (3), (4), or (5) of section 7704(a), of this title, the attorney general, official, or agency of the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—

(A) to enjoin further violation of section 7704 of this title by the defendant; or

(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—

(i) the actual monetary loss suffered by such residents; or

(ii) the amount determined under paragraph (3).

(2) Availability of injunctive relief without showing of knowledge

Notwithstanding any other provision of this chapter, in a civil action under paragraph (1)(A) of this subsection, the attorney general, official, or agency of the State shall not be required to allege or prove the state of mind required by section 7704(a)(1)(C) of this title, section 7704(a)(2) of this

title, clause (ii), (iii), or (iv) of section 7704(a)(4)(A) of this title, section 7704(b)(1)(A) of this title, or section 7704(b)(3) of this title.

(3) Statutory damages

(A) In general

For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message received by or addressed to such residents treated as a separate violation) by up to $250.

(B) Limitation

For any violation of section 7704 of this title (other than section 7704(a)(1) of this title), the amount determined under subparagraph (A) may not exceed $2,000,000.

(C) Aggravated damages

The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravating violations set forth in section 7704(b) of this title.

(D) Reduction of damages

In assessing damages under subparagraph (A), the court may consider whether—

(i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or

(ii) the violation occurred despite commercially reasonable efforts to maintain compliance the practices and procedures to which reference is made in clause (i).

(4) Attorney fees

In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

(5) Rights of Federal regulators

The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(6) Construction

For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(7) Venue; service of process

(A) Venue

Any action brought under paragraph (1) may be brought in the district court of the United

States that meets applicable requirements relating to venue under section 1391 of title 28.

(B) Service of process

In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or

(ii) maintains a physical place of business.

(8) Limitation on State action while Federal action is pending

If the Commission, or other appropriate Federal agency under subsection (b), has instituted a civil action or an administrative action for violation of this chapter, no State attorney general, or official or agency of a State, may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this chapter alleged in the complaint.

(9) Requisite scienter for certain civil actions

Except as provided in section 7704(a)(1)(C) of this title, section 7704(a)(2) of this title, clause (ii), (iii), or (iv) of section 7704(a)(4)(A) of this title, section 7704(b)(1)(A) of this title, or section 7704(b)(3) of this title, in a civil action brought by a State attorney general, or an official or agency of a State, to recover monetary damages for a violation of this chapter, the court shall not grant the relief sought unless the attorney general, official, or agency establishes that the defendant acted with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, of the act or omission that constitutes the violation.

(g) Action by provider of Internet access service

(1) Action authorized

A provider of Internet access service adversely affected by a violation of section 7704(a)(1), (b), or (d) of this title, or a pattern or practice that violates paragraph (2), (3), (4), or (5) of section 7704(a) of this title, may bring a civil action in any district court of the United States with jurisdiction over the defendant—

(A) to enjoin further violation by the defendant; or

(B) to recover damages in an amount equal to the greater of—

(i) actual monetary loss incurred by the provider of Internet access service as a result of such violation; or

(ii) the amount determined under paragraph (3).

(2) Special definition of "procure"

In any action brought under paragraph (1), this chapter shall be applied as if the definition of the term "procure" in section 7702(12) of this title contained, after "behalf" the words "with actual knowledge, or by consciously avoiding knowing, whether such person is engaging, or will engage, in a pattern or practice that violates this chapter".

(3) Statutory damages

(A) In general

For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message that is transmitted or attempted to be transmitted over the facilities of the provider of Internet access service, or that is transmitted or attempted to be transmitted to an electronic mail address obtained from the provider of Internet access service in violation of section 7704(b)(1)(A)(i) of this title, treated as a separate violation) by—

(i) up to $100, in the case of a violation of section 7704(a)(1) of this title; or

(ii) up to $25, in the case of any other violation of section 7704 of this title.

(B) Limitation

For any violation of section 7704 of this title (other than section 7704(a)(1) of this title), the

amount determined under subparagraph (A) may not exceed $1,000,000.

(C) Aggravated damages

The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravated violations set forth in section 7704(b) of this title.

(D) Reduction of damages

In assessing damages under subparagraph (A), the court may consider whether—

(i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or

(ii) the violation occurred despite commercially reasonable efforts to maintain compliance with the practices and procedures to which reference is made in clause (i).

(4) Attorney fees

In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

(Pub. L. 108–187, §7, Dec. 16, 2003, 117 Stat. 2711.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (b)(1)(B), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of Title 12, Banks and Banking.

The Federal Credit Union Act, referred to in subsec. (b)(2), is act June 26, 1934, ch. 750, 48 Stat. 1216, which is classified generally to chapter 14 (§1751 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b)(3), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Investment Company Act of 1940, referred to in subsec. (b)(4), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§80a–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Investment Advisers Act of 1940, referred to in subsec. (b)(5), is title II of act Aug. 22, 1940, ch. 686, 54 Stat. 847, which is classified generally to subchapter II (§80b–1 et seq.) of chapter 2D of this title. For complete classification of this Act to the Code, see section 80b–20 of this title and Tables.

The Packers and Stockyards Act, 1921, referred to in subsec. (b)(8), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified generally to chapter 9 (§181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

The Farm Credit Act of 1971, referred to in subsec. (b)(9), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of Title 12 and Tables.

The Communications Act of 1934, referred to in subsec. (b)(10), is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

[1] *So in original.*

§7707. Effect on other laws

(a) Federal law

(1) Nothing in this chapter shall be construed to impair the enforcement of section 223 or 231 of title 47, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) Nothing in this chapter shall be construed to affect in any way the Commission's authority to bring enforcement actions under FTC Act for materially false or deceptive representations or unfair practices in commercial electronic mail messages.

(b) State law

(1) In general

This chapter supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly regulates the use of electronic mail to send commercial messages, except to the extent that any such statute, regulation, or rule prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto.

(2) State law not specific to electronic mail

This chapter shall not be construed to preempt the applicability of—

(A) State laws that are not specific to electronic mail, including State trespass, contract, or tort law; or

(B) other State laws to the extent that those laws relate to acts of fraud or computer crime.

(c) No effect on policies of providers of Internet access service

Nothing in this chapter shall be construed to have any effect on the lawfulness or unlawfulness, under any other provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

(Pub. L. 108–187, §8, Dec. 16, 2003, 117 Stat. 2716.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

§7708. Do-Not-E-Mail registry

(a) In general

Not later than 6 months after December 16, 2003, the Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report that—

(1) sets forth a plan and timetable for establishing a nationwide marketing Do-Not-E-Mail registry;

(2) includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the Commission has regarding such a registry; and

(3) includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

(b) Authorization to implement

The Commission may establish and implement the plan, but not earlier than 9 months after December 16, 2003.

(Pub. L. 108–187, §9, Dec. 16, 2003, 117 Stat. 2716.)

§7709. Study of effects of commercial electronic mail

(a) In general

Not later than 24 months after December 16, 2003, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this chapter and the need (if any) for the Congress to modify such provisions.

(b) Required analysis

The Commission shall include in the report required by subsection (a)—

(1) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this chapter;

(2) analysis and recommendations concerning how to address commercial electronic mail that originates in or is transmitted through or to facilities or computers in other nations, including initiatives or policy positions that the Federal Government could pursue through international negotiations, fora, organizations, or institutions; and

(3) analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of commercial electronic mail that is obscene or pornographic.

(Pub. L. 108–187, §10, Dec. 16, 2003, 117 Stat. 2716.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(1), was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

§7710. Improving enforcement by providing rewards for information about violations; labeling

The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—

(1) a report, within 9 months after December 16, 2003, that sets forth a system for rewarding those who supply information about violations of this chapter, including—

(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this chapter to the first person that—

(i) identifies the person in violation of this chapter; and

(ii) supplies information that leads to the successful collection of a civil penalty by the Commission; and

(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this chapter, including procedures to allow the electronic submission of complaints to the Commission; and

(2) a report, within 18 months after December 16, 2003, that sets forth a plan for requiring commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force Standards, the use of the characters "ADV" in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.

(Pub. L. 108–187, §11, Dec. 16, 2003, 117 Stat. 2717.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in par. (1), was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

§7711. Regulations

(a) In general

The Commission may issue regulations to implement the provisions of this Act (not including the amendments made by sections 4 and 12). Any such regulations shall be issued in accordance with section 553 of title 5.

(b) Limitation

Subsection (a) may not be construed to authorize the Commission to establish a requirement pursuant to section 7704(a)(5)(A) of this title to include any specific words, characters, marks, or labels in a commercial electronic mail message, or to include the identification required by section 7704(a)(5)(A) of this title in any particular part of such a mail message (such as the subject line or body).

(Pub. L. 108–187, §13, Dec. 16, 2003, 117 Stat. 2717.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act (not including the amendments made by sections 4 and 12), referred to in subsec. (a), is Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. Section 4 enacted section 7703 of this title, section 1037 of Title 18, Crimes and Criminal Procedure, and provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure. Section 12 amended section 227 of Title 47, Telecommunications. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

§7712. Application to wireless

(a) Effect on other law

Nothing in this chapter shall be interpreted to preclude or override the applicability of section 227 of title 47 or the rules prescribed under section 6102 of this title.

(b) FCC rulemaking

The Federal Communications Commission, in consultation with the Federal Trade Commission, shall promulgate rules within 270 days to protect consumers from unwanted mobile service commercial messages. The Federal Communications Commission, in promulgating the rules, shall, to the extent consistent with subsection (c)—

(1) provide subscribers to commercial mobile services the ability to avoid receiving mobile service commercial messages unless the subscriber has provided express prior authorization to the sender, except as provided in paragraph (3);

(2) allow recipients of mobile service commercial messages to indicate electronically a desire not to receive future mobile service commercial messages from the sender;

(3) take into consideration, in determining whether to subject providers of commercial mobile services to paragraph (1), the relationship that exists between providers of such services and their subscribers, but if the Commission determines that such providers should not be subject to paragraph (1), the rules shall require such providers, in addition to complying with the other provisions of this chapter, to allow subscribers to indicate a desire not to receive future mobile service commercial messages from the provider—

(A) at the time of subscribing to such service; and

(B) in any billing mechanism; and

(4) determine how a sender of mobile service commercial messages may comply with the provisions of this chapter, considering the unique technical aspects, including the functional and character limitations, of devices that receive such messages.

(c) Other factors considered

The Federal Communications Commission shall consider the ability of a sender of a commercial electronic mail message to reasonably determine that the message is a mobile service commercial message.

(d) Mobile service commercial message defined

In this section, the term "mobile service commercial message" means a commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service (as such term is defined in section 332(d) of title 47) in connection with

such service.

(Pub. L. 108–187, §14, Dec. 16, 2003, 117 Stat. 2718.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(3), (4), was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

§7713. Separability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected.

(Pub. L. 108–187, §15, Dec. 16, 2003, 117 Stat. 2718.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

CHAPTER 104—SPORTS AGENT RESPONSIBILITY AND TRUST

Sec.

§7801. Definitions

As used in this chapter, the following definitions apply:

(1) Agency contract

The term "agency contract" means an oral or written agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional sports contract or an endorsement contract.

(2) Athlete agent

The term "athlete agent" means an individual who enters into an agency contract with a student athlete, or directly or indirectly recruits or solicits a student athlete to enter into an agency contract, and does not include a spouse, parent, sibling, grandparent, or guardian of such student athlete, any legal counsel for purposes other than that of representative agency, or an individual acting solely on behalf of a professional sports team or professional sports organization.

(3) Athletic director

The term "athletic director" means an individual responsible for administering the athletic program of an educational institution or, in the case that such program is administered separately, the athletic program for male students or the athletic program for female students, as appropriate.

(4) Commission

The term "Commission" means the Federal Trade Commission.

(5) Endorsement contract

The term "endorsement contract" means an agreement under which a student athlete is employed or receives consideration for the use by the other party of that individual's person, name, image, or likeness in the promotion of any product, service, or event.

(6) Intercollegiate sport

The term "intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of college athletics.

(7) Professional sports contract

The term "professional sports contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete.

(8) State

The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(9) Student athlete

The term "student athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. An individual who is permanently ineligible to participate in a particular intercollegiate sport is not a student athlete for purposes of that sport.

(Pub. L. 108–304, §2, Sept. 24, 2004, 118 Stat. 1125.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 108–304, §1, Sept. 24, 2004, 118 Stat. 1125, provided that: "This Act [enacting this chapter] may be cited as the 'Sports Agent Responsibility and Trust Act'."

§7802. Regulation of unfair and deceptive acts and practices in connection with

the contact between an athlete agent and a student athlete

(a) Conduct prohibited

It is unlawful for an athlete agent to—

(1) directly or indirectly recruit or solicit a student athlete to enter into an agency contract, by—

(A) giving any false or misleading information or making a false promise or representation; or

(B) providing anything of value to a student athlete or anyone associated with the student athlete before the student athlete enters into an agency contract, including any consideration in the form of a loan, or acting in the capacity of a guarantor or co-guarantor for any debt;

(2) enter into an agency contract with a student athlete without providing the student athlete with the disclosure document described in subsection (b); or

(3) predate or postdate an agency contract.

(b) Required disclosure by athlete agents to student athletes

(1) In general

In conjunction with the entering into of an agency contract, an athlete agent shall provide to the student athlete, or, if the student athlete is under the age of 18, to such student athlete's parent or legal guardian, a disclosure document that meets the requirements of this subsection. Such disclosure document is separate from and in addition to any disclosure which may be required under State law.

(2) Signature of student athlete

The disclosure document must be signed by the student athlete, or, if the student athlete is under the age of 18, by such student athlete's parent or legal guardian, prior to entering into the agency contract.

(3) Required language

The disclosure document must contain, in close proximity to the signature of the student athlete, or, if the student athlete is under the age of 18, the signature of such student athlete's parent or legal guardian, a conspicuous notice in boldface type stating: "Warning to Student Athlete: If you agree orally or in writing to be represented by an agent now or in the future you may lose your eligibility to compete as a student athlete in your sport. Within 72 hours after entering into this contract or before the next athletic event in which you are eligible to participate, whichever occurs first, both you and the agent by whom you are agreeing to be represented must notify the athletic director of the educational institution at which you are enrolled, or other individual responsible for athletic programs at such educational institution, that you have entered into an agency contract."

(Pub. L. 108–304, §3, Sept. 24, 2004, 118 Stat. 1126.)

§7803. Enforcement

(a) Unfair or deceptive act or practice

A violation of this chapter shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) Actions by the Commission

The Commission shall enforce this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter.

(Pub. L. 108–304, §4, Sept. 24, 2004, 118 Stat. 1127.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

§7804. Actions by States

(a) In general

(1) Civil actions

In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by the engagement of any athlete agent in a practice that violates section 7802 of this title, the State may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction to—

(A) enjoin that practice;

(B) enforce compliance with this chapter; or

(C) obtain damage, restitution, or other compensation on behalf of residents of the State.

(2) Notice

(A) In general

Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that action.

(B) Exemption

Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before filing of the action. In such case, the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) Intervention

(1) In general

On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) Effect of intervention

If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(c) Construction

For purposes of bringing any civil action under subsection (a), nothing in this chapter [1] shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) Actions by the Commission

In any case in which an action is instituted by or on behalf of the Commission for a violation of

section 7802 of this title, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action.

(e) Venue

Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(f) Service of process

In an action brought under subsection (a), process may be served in any district in which the defendant—

(1) is an inhabitant; or

(2) may be found.

(Pub. L. 108–304, §5, Sept. 24, 2004, 118 Stat. 1127.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in subsec. (c), was in the original "this title" and was translated as reading "this Act", meaning Pub. L. 108–304, to reflect the probable intent of Congress, because Pub. L. 108–304 does not contain titles.

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

§7805. Protection of educational institution

(a) Notice required

Within 72 hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the athlete agent and the student athlete shall each inform the athletic director of the educational institution at which the student athlete is enrolled, or other individual responsible for athletic programs at such educational institution, that the student athlete has entered into an agency contract, and the athlete agent shall provide the athletic director with notice in writing of such a contract.

(b) Civil remedy

(1) In general

An educational institution has a right of action against an athlete agent for damages caused by a violation of this chapter.

(2) Damages

Damages of an educational institution may include and are limited to actual losses and expenses incurred because, as a result of the conduct of the athlete agent, the educational institution was injured by a violation of this chapter or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate actions likely to be imposed by such an association or conference.

(3) Costs and attorneys fees

In an action taken under this section, the court may award to the prevailing party costs and reasonable attorneys fees.

(4) Effect on other rights, remedies and defenses

This section does not restrict the rights, remedies, or defenses of any person under law or equity.

(Pub. L. 108–304, §6, Sept. 24, 2004, 118 Stat. 1128.)

§7806. Limitation

Nothing in this chapter shall be construed to prohibit an individual from seeking any remedies available under existing Federal or State law or equity.

(Pub. L. 108–304, §7, Sept. 24, 2004, 118 Stat. 1128.)

§7807. Sense of Congress

It is the sense of Congress that States should enact the Uniform Athlete Agents Act of 2000 drafted by the National Conference of Commissioners on Uniform State Laws, to protect student athletes and the integrity of amateur sports from unscrupulous sports agents. In particular, it is the sense of Congress that States should enact the provisions relating to the registration of sports agents, the required form of contract, the right of the student athlete to cancel an agency contract, the disclosure requirements relating to record maintenance, reporting, renewal, notice, warning, and security, and the provisions for reciprocity among the States.

(Pub. L. 108–304, §8, Sept. 24, 2004, 118 Stat. 1129.)

CHAPTER 105—PROTECTION OF LAWFUL COMMERCE IN ARMS

Sec.

§7901. Findings; purposes

(a) Findings

Congress finds the following:

(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

(2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act [26 U.S.C. 5801 et seq.], and the Arms Export Control Act [22 U.S.C. 2751 et seq.].

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the

diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) Purposes

The purposes of this chapter are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

(7) To exercise congressional power under article IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

(Pub. L. 109–92, §2, Oct. 26, 2005, 119 Stat. 2095.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Gun Control Act of 1968, referred to in subsec. (a)(4), is Pub. L. 90–618, Oct. 22, 1968, 82 Stat. 1213. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 18, Crimes and Criminal Procedure, and Tables.

The National Firearms Act, referred to in subsec. (a)(4), is classified generally to chapter 53 (§5801 et seq.) of Title 26, Internal Revenue Code. See section 5849 of Title 26.

The Arms Export Control Act, referred to in subsec. (a)(4), is Pub. L. 90–629, Oct. 22, 1968, 82 Stat. 1320, which is classified principally to chapter 39 (§2751 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of Title 22 and

Tables.

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 109–92, Oct. 26, 2005, 119 Stat. 2095, known as the Protection of Lawful Commerce in Arms Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 109–92, §1, Oct. 26, 2005, 119 Stat. 2095, provided that: "This Act [enacting this chapter, amending sections 922 and 924 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under sections 921 and 922 of Title 18] may be cited as the 'Protection of Lawful Commerce in Arms Act'."

§7902. Prohibition on bringing of qualified civil liability actions in Federal or State court

(a) In general

A qualified civil liability action may not be brought in any Federal or State court.

(b) Dismissal of pending actions

A qualified civil liability action that is pending on October 26, 2005, shall be immediately dismissed by the court in which the action was brought or is currently pending.

(Pub. L. 109–92, §3, Oct. 26, 2005, 119 Stat. 2096.)

§7903. Definitions

In this chapter:

(1) Engaged in the business

The term "engaged in the business" has the meaning given that term in section 921(a)(21) of title 18, and, as applied to a seller of ammunition, means a person who devotes time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) Manufacturer

The term "manufacturer" means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18.

(3) Person

The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) Qualified product

The term "qualified product" means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) Qualified civil liability action

(A) In general

The term "qualified civil liability action" means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief,

abatement, restitution, fines, or penalties, or other relief, resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18;

(iv) an action for breach of contract or warranty in connection with the purchase of the product;

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense, then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage; or

(vi) an action or proceeding commenced by the Attorney General to enforce the provisions of chapter 44 of title 18 or chapter 53 of title 26.

(B) Negligent entrustment

As used in subparagraph (A)(ii), the term "negligent entrustment" means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) Rule of construction

The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this chapter shall be construed to create a public or private cause of action or remedy.

(D) Minor child exception

Nothing in this chapter shall be construed to limit the right of a person under 17 years of age to recover damages authorized under Federal or State law in a civil action that meets 1 of the requirements under clauses (i) through (v) of subparagraph (A).

(6) Seller

The term "seller" means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18;

(B) a dealer (as defined in section 921(a)(11) of title 18) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18; or

(C) a person engaged in the business of selling ammunition (as defined in section

921(a)(17)(A) of title 18) in interstate or foreign commerce at the wholesale or retail level.

(7) State

The term "State" includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) Trade association

The term "trade association" means—

(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of title 26 and exempt from tax under section 501(a) of such title; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) Unlawful misuse

The term "unlawful misuse" means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

(Pub. L. 109–92, §4, Oct. 26, 2005, 119 Stat. 2097.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 109–92, Oct. 26, 2005, 119 Stat. 2095, known as the Protection of Lawful Commerce in Arms Act. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of this title and Tables.

CHAPTER 106—POOL AND SPA SAFETY

Sec.

§8001. Findings

Congress finds the following:

(1) Of injury-related deaths, drowning is the second leading cause of death in children aged 1 to 14 in the United States.

(2) In 2004, 761 children aged 14 and under died as a result of unintentional drowning.

(3) Adult supervision at all aquatic venues is a critical safety factor in preventing children from drowning.

(4) Research studies show that the installation and proper use of barriers or fencing, as well as additional layers of protection, could substantially reduce the number of childhood residential swimming pool drownings and near drownings.

(Pub. L. 110–140, title XIV, §1402, Dec. 19, 2007, 121 Stat. 1794.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

SHORT TITLE

Pub. L. 110–140, title XIV, §1401, Dec. 19, 2007, 121 Stat. 1794, provided that: "This title [enacting this chapter] may be cited as the 'Virginia Graeme Baker Pool and Spa Safety Act'."

§8002. Definitions

In this chapter:

(1) ASME/ANSI

The term "ASME/ANSI" as applied to a safety standard means such a standard that is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

(2) Barrier

The term "barrier" includes a natural or constructed topographical feature that prevents unpermitted access by children to a swimming pool, and, with respect to a hot tub, a lockable cover.

(3) Commission

The term "Commission" means the Consumer Product Safety Commission.

(4) Covered entity

The term "covered entity" means—

(A) a State; or

(B) an Indian Tribe.

(5) Indian Tribe

The term "Indian Tribe" has the meaning given that term in section 5304(e) of title 25.

(6) Main drain

The term "main drain" means a submerged suction outlet typically located at the bottom of a pool or spa to conduct water to a recirculating pump.

(7) Safety vacuum release system

The term "safety vacuum release system" means a vacuum release system capable of providing vacuum release at a suction outlet caused by a high vacuum occurrence due to a suction outlet flow blockage.

(8) Swimming pool; spa

The term "swimming pool" or "spa" means any outdoor or indoor structure intended for swimming or recreational bathing, including in-ground and above-ground structures, and includes hot tubs, spas, portable spas, and non-portable wading pools.

(9) Unblockable drain

The term "unblockable drain" means a drain of any size and shape that a human body cannot sufficiently block to create a suction entrapment hazard.

(10) State

The term "State" has the meaning given such term in section 2052(a) of this title, and includes the Northern Mariana Islands. For purposes of eligibility for the grants authorized under section

8004 of this title, such term shall also include any political subdivision of a State.

(Pub. L. 110–140, title XIV, §1403, Dec. 19, 2007, 121 Stat. 1795; Pub. L. 110–314, title II, §238(1), Aug. 14, 2008, 122 Stat. 3076; Pub. L. 112–10, div. B, title V, §1576(a), Apr. 15, 2011, 125 Stat. 139; Pub. L. 117–328, div. BB, title IV, §401, Dec. 29, 2022, 136 Stat. 5562.)

EDITORIAL NOTES

AMENDMENTS

2022—Pars. (4) to (9). Pub. L. 117–328, §401(a), added par. (4) and redesignated former pars. (4) to (8) as (6) to (9), respectively. Former par. (9) redesignated (10).

Par. (10). Pub. L. 117–328, §401(a)(1), (b), redesignated par. (9) as (10) and substituted "section 2052(a) of this title" for "section 2052(10) of this title".

2011—Par. (8). Pub. L. 112–10 inserted at end "For purposes of eligibility for the grants authorized under section 8004 of this title, such term shall also include any political subdivision of a State."

2008—Par. (8). Pub. L. 110–314 added par. (8).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§8003. Federal swimming pool and spa drain cover standard

(a) Consumer product safety rule

The requirements described in subsection (b) shall be treated as a consumer product safety rule issued by the Consumer Product Safety Commission under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

(b) Drain cover standard

Effective 1 year after December 19, 2007, each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard, or any successor standard regulating such swimming pool or drain cover. If a successor standard is proposed, the American Society of Mechanical Engineers shall notify the Commission of the proposed revision. If the Commission determines that the proposed revision is in the public interest, it shall incorporate the revision into the standard after providing 30 days notice to the public.

(c) Public pools

(1) Required equipment

(A) In general

Beginning 1 year after December 19, 2007—

(i) each public pool and spa in the United States shall be equipped with anti-entrapment devices or systems that comply with the ASME/ANSI A112.19.8 performance standard, or any successor standard; and

(ii) each public pool and spa in the United States with a single main drain other than an unblockable drain shall be equipped, at a minimum, with 1 or more of the following devices or systems designed to prevent entrapment by pool or spa drains that meets the requirements of subparagraph (B):

(I) Safety vacuum release system

A safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a

blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387.

(II) Suction-limiting vent system

A suction-limiting vent system with a tamper-resistant atmospheric opening.

(III) Gravity drainage system

A gravity drainage system that utilizes a collector tank.

(IV) Automatic pump shut-off system

An automatic pump shut-off system.

(V) Drain disablement

A device or system that disables the drain.

(VI) Other systems

Any other system determined by the Commission to be equally effective as, or better than, the systems described in subclauses (I) through (V) of this clause at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(B) Applicable standards

Any device or system described in subparagraph (A)(ii) shall meet the requirements of any ASME/ANSI or ASTM performance standard if there is such a standard for such a device or system, or any applicable consumer product safety standard.

(2) Public pool and spa defined

In this subsection, the term "public pool and spa" means a swimming pool or spa that is—

(A) open to the public generally, whether for a fee or free of charge;

(B) open exclusively to—

(i) members of an organization and their guests;

(ii) residents of a multi-unit apartment building, apartment complex, residential real estate development, or other multi-family residential area (other than a municipality, township, or other local government jurisdiction); or

(iii) patrons of a hotel or other public accommodations facility; or

(C) operated by the Federal Government (or by a concessionaire on behalf of the Federal Government) for the benefit of members of the Armed Forces and their dependents or employees of any department or agency and their dependents.

(3) Enforcement

Violation of paragraph (1) shall be considered to be a violation of section 19(a)(1) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(1)) and may also be enforced under section 17 of that Act (15 U.S.C. 2066).

(Pub. L. 110–140, title XIV, §1404, Dec. 19, 2007, 121 Stat. 1795; Pub. L. 110–314, title II, §238(2), Aug. 14, 2008, 122 Stat. 3076.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Consumer Product Safety Act, referred to in subsec. (a), is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, which is classified generally to chapter 47 (§2051 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of this title and Tables.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–314 inserted at end "If a successor standard is proposed, the American Society of Mechanical Engineers shall notify the Commission of the proposed revision. If the Commission determines that the proposed revision is in the public interest, it shall incorporate the revision into the standard

after providing 30 days notice to the public."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§8004. Swimming pool safety grant program

(a) In general

Subject to the availability of appropriations authorized by subsection (e), the Commission shall carry out a grant program to provide assistance to eligible covered entities.

(b) Eligibility

To be eligible for a grant under the program, a covered entity shall—

(1) demonstrate to the satisfaction of the Commission that, as of the date on which the covered entity submits an application to the Commission for a grant under this section, the covered entity has enacted and provides for the enforcement of a statute that—

(A) except as provided in section 8005(a)(1)(A)(i) of this title, applies to all swimming pools constructed in the State or in the jurisdiction of the Indian Tribe (as the case may be) on or after such date; and

(B) meets the minimum State law requirements of section 8005 of this title; and

(2) submit an application to the Commission at such time, in such form, and containing such additional information as the Commission may require.

(c) Amount of grant

The Commission shall determine the amount of a grant awarded under this section, and shall consider—

(1) the population of the covered entity;

(2) the relative enforcement and implementation needs of the covered entity; and

(3) allocation of grant funds in a manner designed to provide the maximum benefit from the program in terms of protecting children from drowning or entrapment.

(d) Use of grant funds

A State or an Indian Tribe receiving a grant under this section shall use—

(1) at least 25 percent of amounts made available—

(A) to hire and train personnel for implementation and enforcement of standards under the swimming pool and spa safety law of the State or Indian Tribe; and

(B) to defray administrative costs associated with the hiring and training programs under subparagraph (A); and

(2) the remainder—

(A) to educate pool owners, pool operators, and other members of the public about the standards under the swimming pool and spa safety law of the State or Indian Tribe and about the prevention of drowning or entrapment of children using swimming pools and spas; and

(B) to defray administrative costs associated with the education programs under subparagraph (A).

(e) Authorization of appropriations

There are authorized to be appropriated to the Commission for fiscal year 2023 $2,500,000 to carry out this section.

(Pub. L. 110–140, title XIV, §1405, Dec. 19, 2007, 121 Stat. 1796; Pub. L. 112–10, div. B, title V,

§1576(b), Apr. 15, 2011, 125 Stat. 139; Pub. L. 112–74, div. C, title V, §502, Dec. 23, 2011, 125 Stat. 908; Pub. L. 113–76, div. E, title V, §501(1), Jan. 17, 2014, 128 Stat. 208; Pub. L. 117–328, div. BB, title IV, §402(a), Dec. 29, 2022, 136 Stat. 5562.)

EDITORIAL NOTES

AMENDMENTS

2022—Pub. L. 117–328 amended section generally. Prior to amendment, section related to State swimming pool safety grant program.

2014—Subsec. (b)(1)(A). Pub. L. 113–76, §501(1)(A), substituted "all swimming pools constructed in the State after the date the State submits an application to the Commission for a grant under this section" for "all swimming pools constructed after the date that is 6 months after December 23, 2011, in the State".

Subsec. (e). Pub. L. 113–76, §501(1)(B), substituted "There is authorized to be appropriated to the Commission such sums as may be necessary to carry out this section through fiscal year 2016." for "There are authorized to be appropriated to the Commission for each of fiscal years 2009 and 2010 $2,000,000 to carry out this section, such sums to remain available until expended." and "the end of fiscal year 2016" for "the end of fiscal year 2012".

2011—Subsec. (b)(1)(A). Pub. L. 112–74, §502(b), inserted "constructed after the date that is 6 months after December 23, 2011," after "swimming pools".

Subsec. (e). Pub. L. 112–74, §502(a), substituted "2012" for "2011".

Pub. L. 112–10, which directed substitution of "2011" for "2010", was executed by making the substitution for "2010" the second place appearing to reflect the probable intent of Congress.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§8005. Minimum State law requirements

(a) In general

(1) Safety standards

A State meets the minimum State law requirements of this section if—

(A) the State requires by statute—

(i) the enclosure of all outdoor residential pools and spas by barriers to entry that will effectively prevent small children from gaining unsupervised and unfettered access to the pool or spa; and

(ii) that pools and spas built more than 1 year after the date of the enactment of such statute have—

(I) more than 1 drain;

(II) 1 or more unblockable drains; or

(III) no main drain; and

(B) the State meets such additional State law requirements for pools and spas as the Commission may establish after public notice and a 30-day public comment period.

(2) Use of minimum State law requirements

The Commission—

(A) shall use the minimum State law requirements under paragraph (1) solely for the purpose of determining the eligibility of a covered entity for a grant under section 8004 of this title; and

(B) may not enforce any requirement under paragraph (1) except for the purpose of determining the eligibility of a covered entity for a grant under section 8004 of this title.

(3) Requirements to reflect national performance standards and Commission guidelines

In establishing minimum State law requirements under paragraph (1)(B), the Commission shall—

(A) consider current or revised national performance standards on pool and spa barrier protection and entrapment prevention; and

(B) ensure that any such requirements are consistent with the guidelines contained in the Commission's publication 362, entitled "Safety Barrier Guidelines for Home Pools", the Commission's publication entitled "Guidelines for Entrapment Hazards: Making Pools and Spas Safer", and any other pool safety guidelines established by the Commission.

(b) Standards

Nothing in this section prevents the Commission from promulgating standards regulating pool and spa safety or from relying on an applicable national performance standard.

(c) Basic access-related safety devices and equipment requirements to be considered

In establishing minimum State law requirements for swimming pools and spas under subsection (a)(1), the Commission shall consider the following requirements:

(1) Covers

A safety pool cover.

(2) Gates

A gate with direct access to the swimming pool or spa that is equipped with a self-closing, self-latching device.

(3) Doors

Any door with direct access to the swimming pool or spa that is equipped with an audible alert device or alarm which sounds when the door is opened.

(4) Pool alarm

A device designed to provide rapid detection of an entry into the water of a swimming pool or spa.

(d) Entrapment, entanglement, and evisceration prevention standards to be required

(1) In general

In establishing additional minimum State law requirements for swimming pools and spas under subsection (a)(1), the Commission shall require, at a minimum, 1 or more of the following (except for pools constructed without a single main drain):

(A) Safety vacuum release system

A safety vacuum release system which ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387, or any successor standard.

(B) Suction-limiting vent system

A suction-limiting vent system with a tamper-resistant atmospheric opening.

(C) Gravity drainage system

A gravity drainage system that utilizes a collector tank.

(D) Automatic pump shut-off system

An automatic pump shut-off system.

(E) Drain disablement

A device or system that disables the drain.

(F) Other systems

Any other system determined by the Commission to be equally effective as, or better than, the systems described in subparagraphs (A) through (E) of this paragraph at preventing or eliminating the risk of injury or death associated with pool drainage systems.

(2) Applicable standards

Any device or system described in subparagraphs (B) through (E) of paragraph (1) shall meet the requirements of any ASME/ANSI or ASTM performance standard if there is such a standard for such a device or system, or any applicable consumer product safety standard.

(e) State defined

In this section, the term "State" includes an Indian Tribe.

(Pub. L. 110–140, title XIV, §1406, Dec. 19, 2007, 121 Stat. 1797; Pub. L. 113–76, div. E, title V, §501(2), Jan. 17, 2014, 128 Stat. 209; Pub. L. 117–328, div. BB, title IV, §402(b), Dec. 29, 2022, 136 Stat. 5563.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (a)(2). Pub. L. 117–328, §402(b)(1), substituted "the eligibility of a covered entity" for "the eligibility of a State" in subpars. (A) and (B).

Subsec. (e). Pub. L. 117–328, §402(b)(2), added subsec. (e).

2014—Subsec. (a)(1)(A). Pub. L. 113–76, §501(2)(A), inserted "and" at end of cl. (i), redesignated cl. (iii) as (ii) and inserted "and" at end, and struck out former cl. (ii) and cls. (iv) and (v) which read as follows:

"(ii) that all pools and spas be equipped with devices and systems designed to prevent entrapment by pool or spa drains;

"(iv) every swimming pool and spa that has a main drain, other than an unblockable drain, be equipped with a drain cover that meets the consumer product safety standard established by section 8003 of this title; and

"(v) that periodic notification is provided to owners of residential swimming pools or spas about compliance with the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard, or any successor standard; and".

Subsec. (a)(2) to (4). Pub. L. 113–76, §501(2)(B), (C), redesignated pars. (3) and (4) as (2) and (3), respectively, substituted "paragraph (1)(B)" for "paragraph (1)" in introductory provisions of par. (3), and struck out former par. (2) which read as follows: "The minimum State law notification requirement under paragraph (1)(A)(v) shall not be construed to imply any liability on the part of a State related to that requirement."

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§8006. Education and awareness program

(a) In general

The Commission shall establish and carry out an education and awareness program to inform the public of methods to prevent drowning and entrapment in swimming pools and spas. In carrying out the program, the Commission shall develop—

(1) educational materials designed for swimming pool and spa manufacturers, service companies, and supply retail outlets, including guidance on barrier and drain cover inspection, maintenance, and replacement;

(2) educational materials designed for swimming pool and spa owners and operators, consumers, States, and Indian Tribes; and

(3) a national media campaign to promote awareness of swimming pool and spa safety.

(b) Authorization of appropriations

There are authorized to be appropriated to the Commission for fiscal year 2023 $2,500,000 to carry out the education and awareness program authorized by subsection (a).

(Pub. L. 110–140, title XIV, §1407, Dec. 19, 2007, 121 Stat. 1799; Pub. L. 117–328, div. BB, title IV, §403, Dec. 29, 2022, 136 Stat. 5563.)

EDITORIAL NOTES

AMENDMENTS

2022—Pub. L. 117–328 amended section generally. Prior to amendment, section related to establishment of a pool and spa safety education program.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§8007. CPSC report

Not later than 1 year after the last day of each fiscal year for which grants are made under section 8004 of this title, the Commission shall submit to Congress a report evaluating the implementation of the grant program authorized by that section.

(Pub. L. 110–140, title XIV, §1408, Dec. 19, 2007, 121 Stat. 1800.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

§8008. Applicability

This chapter [1] is applicable to the United States and its territories, including American Samoa, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the United States Virgin Islands.

(Pub. L. 110–140, title XIV, §1409, as added Pub. L. 110–314, title II, §238(3), Aug. 14, 2008, 122 Stat. 3076.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act" and was translated as reading "this title", meaning title XIV of Pub. L. 110–140, known as the Virginia Graeme Baker Pool and Spa Safety Act, to reflect the probable intent of Congress.

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

CHAPTER 107—PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Sec.

§8101. Definition

In this Act, the term "United States person" means—

(1) any United States resident or national,

(2) any domestic concern (including any permanent domestic establishment of any foreign concern), and

(3) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern that is controlled in fact by such domestic concern,

except that such term does not include an individual who resides outside the United States and is employed by an individual or entity other than an individual or entity described in paragraph (1), (2), or (3).

(Pub. L. 110–403, §3, Oct. 13, 2008, 122 Stat. 4257.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4256, known as the Prioritizing Resources and Organization for Intellectual Property Act of 2008, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 110–403, §1(a), Oct. 13, 2008, 122 Stat. 4256, provided that: "This Act [enacting this chapter, section 2323 of Title 18, Crimes and Criminal Procedure, and sections 3713a to 3713d of Title 42, The Public Health and Welfare, amending sections 1116 and 1117 of this title, sections 109, 111, 115, 119, 122, 411, 412, 503, 506, 601, and 602 of Title 17, Copyrights, sections 1834 and 2318 to 2320 of Title 18, section 1595a of Title 19, Customs Duties, and section 3713 of Title 42, and repealing section 1128 of this title and section 509 of Title 17] may be cited as the 'Prioritizing Resources and Organization for Intellectual Property Act of 2008'."

SUBCHAPTER I—COORDINATION AND STRATEGIC PLANNING OF FEDERAL EFFORT AGAINST COUNTERFEITING AND INFRINGEMENT

§8111. Intellectual Property Enforcement Coordinator

(a) Intellectual Property Enforcement Coordinator

The President shall appoint, by and with the advice and consent of the Senate, an Intellectual Property Enforcement Coordinator (in this subchapter referred to as the "IPEC") to serve within the Executive Office of the President. As an exercise of the rulemaking power of the Senate, any nomination of the IPEC submitted to the Senate for confirmation, and referred to a committee, shall be referred to the Committee on the Judiciary.

(b) Duties of IPEC

(1) In general

The IPEC shall—

(A) chair the interagency intellectual property enforcement advisory committee established under subsection (b)(3)(A);

(B) coordinate the development of the Joint Strategic Plan against counterfeiting and infringement by the advisory committee under section 8113 of this title;

(C) assist, at the request of the departments and agencies listed in subsection (b)(3)(A), in the implementation of the Joint Strategic Plan;

(D) facilitate the issuance of policy guidance to departments and agencies on basic issues of policy and interpretation, to the extent necessary to assure the coordination of intellectual property enforcement policy and consistency with other law;

(E) report to the President and report to Congress, to the extent consistent with law, regarding domestic and international intellectual property enforcement programs;

(F) report to Congress, as provided in section 8114 of this title, on the implementation of the Joint Strategic Plan, and make recommendations, if any and as appropriate, to Congress for improvements in Federal intellectual property laws and enforcement efforts; and

(G) carry out such other functions as the President may direct.

(2) Limitation on authority

The IPEC may not control or direct any law enforcement agency, including the Department of Justice, in the exercise of its investigative or prosecutorial authority.

(3) Advisory committee

(A) Establishment

There is established an interagency intellectual property enforcement advisory committee composed of the IPEC, who shall chair the committee, and the following members:

(i) Senate-confirmed representatives of the following departments and agencies who are involved in intellectual property enforcement, and who are, or are appointed by, the respective heads of those departments and agencies:

(I) The Office of Management and Budget.

(II) Relevant units within the Department of Justice, including the Federal Bureau of Investigation and the Criminal Division.

(III) The United States Patent and Trademark Office and other relevant units of the Department of Commerce.

(IV) The Office of the United States Trade Representative.

(V) The Department of State, the United States Agency for International Development, and the Bureau of International Narcotics Law Enforcement.

(VI) The Department of Homeland Security, United States Customs and Border Protection, and United States Immigration and Customs Enforcement.

(VII) The Food and Drug Administration of the Department of Health and Human Services.

(VIII) The Department of Agriculture.

(IX) Any such other agencies as the President determines to be substantially involved in the efforts of the Federal Government to combat counterfeiting and infringement.

(ii) The Register of Copyrights, or a senior representative of the United States Copyright Office appointed by the Register of Copyrights.

(B) Functions

The advisory committee established under subparagraph (A) shall develop the Joint Strategic Plan against counterfeiting and infringement under section 8113 of this title.

(Pub. L. 110–403, title III, §301, Oct. 13, 2008, 122 Stat. 4264.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original "this title", meaning title III of Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4264, which is classified principally to this subchapter. For complete classification of title III to the Code, see Tables.

EXECUTIVE DOCUMENTS

EX. ORD. NO. 13565. ESTABLISHMENT OF THE INTELLECTUAL PROPERTY ENFORCEMENT ADVISORY COMMITTEES

Ex. Ord. No. 13565, Feb. 8, 2011, 76 F.R. 7681, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including title III of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (Public Law 110–403) (15 U.S.C. 8111–8116) (the "PRO IP Act"), and in order to strengthen the efforts of the Federal Government to encourage innovation through the effective and efficient enforcement of laws protecting copyrights, patents, trademarks, trade secrets, and other forms of intellectual property, both in the United States and abroad, including matters relating to combating infringement, and thereby support efforts to reinvigorate the Nation's global competitiveness, accelerate export growth, promote job creation, and reduce threats posed to national security and to public health and safety, it is hereby ordered as follows:

SECTION 1. *Senior Intellectual Property Enforcement Advisory Committee*.

(a) *Establishment of Committee*. There is established an interagency Senior Intellectual Property Enforcement Advisory Committee (Senior Advisory Committee), which shall be chaired by the Intellectual Property Enforcement Coordinator (Coordinator), Executive Office of the President.

(b) *Membership*. The Senior Advisory Committee shall be composed of the Coordinator, who shall chair it, and the heads of, or the deputies to the heads of:

(i) the Department of State;
(ii) the Department of the Treasury;
(iii) the Department of Justice;
(iv) the Department of Agriculture;
(v) the Department of Commerce;
(vi) the Department of Health and Human Services;
(vii) the Department of Homeland Security;
(viii) the Office of Management and Budget; and
(ix) the Office of the United States Trade Representative.

A member of the Senior Advisory Committee may, in consultation with the Coordinator, designate a senior-level official from the member's department or agency who holds a position for which Senate confirmation is required to perform the Senior Advisory Committee functions of the member.

(c) *Mission and Functions*. Consistent with the authorities assigned to the Coordinator, and other applicable law, the Senior Advisory Committee shall advise the Coordinator and facilitate the formation and implementation of each Joint Strategic Plan required every 3 years under title III of the PRO IP Act (15 U.S.C. 8113), consistent with this order.

(d) *Administration*. The Coordinator shall coordinate and support the work of the Senior Advisory Committee in fulfilling its functions under this order. The Coordinator shall convene the first meeting of the Senior Advisory Committee within 90 days of the date of this order and shall thereafter convene such meetings as appropriate.

SEC. 2. *Intellectual Property Enforcement Advisory Committee*.

(a) *Establishment of Committee*. There is established an interagency Intellectual Property Enforcement Advisory Committee (Enforcement Advisory Committee), which shall be chaired by the Coordinator. The Enforcement Advisory Committee shall serve as the committee established by section 301(b)(3) of the PRO IP Act (15 U.S.C. 8111(b)(3)).

(b) *Membership*. The Enforcement Advisory Committee shall be composed of the Coordinator, who shall chair it, and representatives from the following departments and agencies, or units of departments and agencies, who hold a position for which Senate confirmation is required, who are involved in intellectual property enforcement, and who are, or are designated by, the respective heads of those departments and agencies:

(i) the Office of Management and Budget;

(ii) relevant units within the Department of Justice, including the Criminal Division, the Civil Division, and the Federal Bureau of Investigation;

(iii) the United States Patent and Trademark Office, the International Trade Administration, and other relevant units of the Department of Commerce;

(iv) the Office of the United States Trade Representative;

(v) the Department of State, the Bureau of Economic, Energy, and Business Affairs, the United States Agency for International Development and the Bureau of International Narcotics and Law Enforcement Affairs;

(vi) the Department of Homeland Security, United States Customs and Border Protection, and United States Immigration and Customs Enforcement;

(vii) the Food and Drug Administration of the Department of Health and Human Services;

(viii) the Department of Agriculture;

(ix) the Department of the Treasury; and

(x) such other executive branch departments, agencies, or offices as the President determines to be substantially involved in the efforts of the Federal Government to combat counterfeiting and infringement.

Pursuant to the PRO IP Act (15 U.S.C. 8111), the Coordinator shall also invite the Register of Copyrights, or a senior representative of the United States Copyright Office designated by the Register of Copyrights, to serve as a member of the Enforcement Advisory Committee.

(c) *Mission and Functions*.

(i) Consistent with the authorities assigned to the Coordinator and the Enforcement Advisory Committee, and other applicable law, the Enforcement Advisory Committee shall develop each Joint Strategic Plan as provided for in title III of the PRO IP Act. In the development and implementation of the Joint Strategic Plan, the heads of the departments and agencies identified in section 2(b) of this order shall share with the Coordinator and the other members of the Enforcement Advisory Committee relevant department or agency information, to the extent permitted by law, including requirements relating to confidentiality and privacy, and to the extent that such sharing of information is consistent with law enforcement protocols for handling such information. Such information shall include:

(A) plans for addressing the Joint Strategic Plan;

(B) statistical information on the enforcement activities taken by that department or agency against counterfeiting or infringement; and

(C) recommendations to enhance cooperation among Federal, State, and local authorities responsible for intellectual property enforcement.

(ii) The Coordinator may establish subgroups, consisting exclusively of Enforcement Advisory Committee members or their designees, who must be officials from the designating member's department or agency, to support the functions of the Enforcement Advisory Committee. The subgroups shall be chaired by the Coordinator, or the Coordinator's designee with expertise and experience in intellectual property enforcement matters, and may include:

(A) an Enforcement Subcommittee; and

(B) other subcommittees as the Coordinator deems appropriate, including subcommittees addressing particular enforcement issues, efforts, training, and information sharing among departments and agencies.

(d) *Administration*. The Coordinator shall coordinate and support the work of the Enforcement Advisory Committee in fulfilling its functions under this order and under section 301(b)(3)(B) of the PRO IP Act (15 U.S.C. 8111(b)(3)(B)). The Coordinator shall convene meetings of the Enforcement Advisory Committee as appropriate.

SEC. 3. *General Provisions*.

(a) Nothing in this order shall be construed to impair or otherwise affect the:

(i) authority granted by law to an executive department, agency, or the head thereof, or the status of that department or agency within the Federal Government; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations. Consistent with section 301(b)(2) of the PRO IP Act (15 U.S.C. 8111(b)(2)), the Coordinator may not control or direct any Federal law enforcement agency in the exercise of its investigative or prosecutorial authority.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA.

§8112. Definition

For purposes of this subchapter, the term "intellectual property enforcement" means matters relating to the enforcement of laws protecting copyrights, patents, trademarks, other forms of intellectual property, and trade secrets, both in the United States and abroad, including in particular matters relating to combating counterfeit and infringing goods.

(Pub. L. 110–403, title III, §302, Oct. 13, 2008, 122 Stat. 4266.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title III of Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4264, which is classified principally to this subchapter. For complete classification of title III to the Code, see Tables.

§8113. Joint Strategic Plan

(a) Purpose

The objectives of the Joint Strategic Plan against counterfeiting and infringement that is referred to in section 8111(b)(1)(B) of this title (in this section referred to as the "joint strategic plan") are the following:

(1) Reducing counterfeit and infringing goods in the domestic and international supply chain.

(2) Identifying and addressing structural weaknesses, systemic flaws, or other unjustified impediments to effective enforcement action against the financing, production, trafficking, or sale of counterfeit or infringing goods, including identifying duplicative efforts to enforce, investigate, and prosecute intellectual property crimes across the Federal agencies and Departments that comprise the Advisory Committee and recommending how such duplicative efforts may be minimized. Such recommendations may include recommendations on how to reduce duplication in personnel, materials, technologies, and facilities utilized by the agencies and Departments responsible for the enforcement, investigation, or prosecution of intellectual property crimes.

(3) Ensuring that information is identified and shared among the relevant departments and agencies, to the extent permitted by law, including requirements relating to confidentiality and privacy, and to the extent that such sharing of information is consistent with Department of Justice and other law enforcement protocols for handling such information, to aid in the objective of arresting and prosecuting individuals and entities that are knowingly involved in the financing, production, trafficking, or sale of counterfeit or infringing goods.

(4) Disrupting and eliminating domestic and international counterfeiting and infringement networks.

(5) Strengthening the capacity of other countries to protect and enforce intellectual property rights, and reducing the number of countries that fail to enforce laws preventing the financing, production, trafficking, and sale of counterfeit and infringing goods.

(6) Working with other countries to establish international standards and policies for the effective protection and enforcement of intellectual property rights.

(7) Protecting intellectual property rights overseas by—

(A) working with other countries and exchanging information with appropriate law enforcement agencies in other countries relating to individuals and entities involved in the financing, production, trafficking, or sale of counterfeit and infringing goods;

(B) ensuring that the information referred to in subparagraph (A) is provided to appropriate United States law enforcement agencies in order to assist, as warranted, enforcement activities in cooperation with appropriate law enforcement agencies in other countries; and

(C) building a formal process for consulting with companies, industry associations, labor unions, and other interested groups in other countries with respect to intellectual property enforcement.

(b) Timing

Not later than 12 months after October 13, 2008, and not later than December 31 of every third year thereafter, the IPEC shall submit the joint strategic plan to the Committee on the Judiciary and the Committee on Appropriations of the Senate, and to the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives.

(c) Responsibility of the IPEC

During the development of the joint strategic plan, the IPEC—

(1) shall provide assistance to, and coordinate the meetings and efforts of, the appropriate officers and employees of departments and agencies represented on the advisory committee appointed under section 8111(b)(3) of this title who are involved in intellectual property enforcement; and

(2) may consult with private sector experts in intellectual property enforcement in furtherance of providing assistance to the members of the advisory committee appointed under section 8111(b)(3) of this title.

(d) Responsibilities of other departments and agencies

In the development and implementation of the joint strategic plan, the heads of the departments and agencies identified under section 8111(b)(3) of this title shall—

(1) designate personnel with expertise and experience in intellectual property enforcement matters to work with the IPEC and other members of the advisory committee; and

(2) share relevant department or agency information with the IPEC and other members of the advisory committee, including statistical information on the enforcement activities of the department or agency against counterfeiting or infringement, and plans for addressing the joint strategic plan, to the extent permitted by law, including requirements relating to confidentiality and privacy, and to the extent that such sharing of information is consistent with Department of Justice and other law enforcement protocols for handling such information.

(e) Contents of the joint strategic plan

Each joint strategic plan shall include the following:

(1) A description of the priorities identified for carrying out the objectives in the joint strategic plan, including activities of the Federal Government relating to intellectual property enforcement.

(2) A description of the means to be employed to achieve the priorities, including the means for improving the efficiency and effectiveness of the Federal Government's enforcement efforts against counterfeiting and infringement.

(3) Estimates of the resources necessary to fulfill the priorities identified under paragraph (1).

(4) The performance measures to be used to monitor results under the joint strategic plan during the following year.

(5) An analysis of the threat posed by violations of intellectual property rights, including the costs to the economy of the United States resulting from violations of intellectual property laws, and the threats to public health and safety created by counterfeiting and infringement.

(6) An identification of the departments and agencies that will be involved in implementing

each priority under paragraph (1).

(7) A strategy for ensuring coordination among the departments and agencies identified under paragraph (6), which will facilitate oversight by the executive branch of, and accountability among, the departments and agencies responsible for carrying out the strategy.

(8) Such other information as is necessary to convey the costs imposed on the United States economy by, and the threats to public health and safety created by, counterfeiting and infringement, and those steps that the Federal Government intends to take over the period covered by the succeeding joint strategic plan to reduce those costs and counter those threats.

(f) Enhancing enforcement efforts of foreign governments

The joint strategic plan shall include programs to provide training and technical assistance to foreign governments for the purpose of enhancing the efforts of such governments to enforce laws against counterfeiting and infringement. With respect to such programs, the joint strategic plan shall—

(1) seek to enhance the efficiency and consistency with which Federal resources are expended, and seek to minimize duplication, overlap, or inconsistency of efforts;

(2) identify and give priority to those countries where programs of training and technical assistance can be carried out most effectively and with the greatest benefit to reducing counterfeit and infringing products in the United States market, to protecting the intellectual property rights of United States persons and their licensees, and to protecting the interests of United States persons otherwise harmed by violations of intellectual property rights in those countries;

(3) in identifying the priorities under paragraph (2), be guided by the list of countries identified by the United States Trade Representative under section 2242(a) of title 19; and

(4) develop metrics to measure the effectiveness of the Federal Government's efforts to improve the laws and enforcement practices of foreign governments against counterfeiting and infringement.

(g) Dissemination of the joint strategic plan

The joint strategic plan shall be posted for public access on the website of the White House, and shall be disseminated to the public through such other means as the IPEC may identify.

(Pub. L. 110–403, title III, §303, Oct. 13, 2008, 122 Stat. 4266.)

§8114. Reporting

(a) Annual report

Not later than December 31 of each calendar year beginning in 2009, the IPEC shall submit a report on the activities of the advisory committee during the preceding fiscal year. The annual report shall be submitted to Congress, and disseminated to the people of the United States, in the manner specified in subsections (b) and (g) of section 8113 of this title.

(b) Contents

The report required by this section shall include the following:

(1) The progress made on implementing the strategic plan and on the progress toward fulfillment of the priorities identified under section 8113(e)(1) of this title.

(2) The progress made in efforts to encourage Federal, State, and local government departments and agencies to accord higher priority to intellectual property enforcement.

(3) The progress made in working with foreign countries to investigate, arrest, and prosecute entities and individuals involved in the financing, production, trafficking, and sale of counterfeit and infringing goods.

(4) The manner in which the relevant departments and agencies are working together and sharing information to strengthen intellectual property enforcement.

(5) An assessment of the successes and shortcomings of the efforts of the Federal Government, including departments and agencies represented on the committee established under section

8111(b)(3) of this title.

(6) Recommendations, if any and as appropriate, for any changes in enforcement statutes, regulations, or funding levels that the advisory committee considers would significantly improve the effectiveness or efficiency of the effort of the Federal Government to combat counterfeiting and infringement and otherwise strengthen intellectual property enforcement, including through the elimination or consolidation of duplicative programs or initiatives.

(7) The progress made in strengthening the capacity of countries to protect and enforce intellectual property rights.

(8) The successes and challenges in sharing with other countries information relating to intellectual property enforcement.

(9) The progress made under trade agreements and treaties to protect intellectual property rights of United States persons and their licensees.

(10) The progress made in minimizing duplicative efforts, materials, facilities, and procedures of the Federal agencies and Departments responsible for the enforcement, investigation, or prosecution of intellectual property crimes.

(11) Recommendations, if any and as appropriate, on how to enhance the efficiency and consistency with which Federal funds and resources are expended to enforce, investigate, or prosecute intellectual property crimes, including the extent to which the agencies and Departments responsible for the enforcement, investigation, or prosecution of intellectual property crimes have utilized existing personnel, materials, technologies, and facilities.

(Pub. L. 110–403, title III, §304, Oct. 13, 2008, 122 Stat. 4269.)

§8115. Savings and repeals

(a) Transition from NIPLECC to IPEC

(1) Omitted

(2) Continuity of performance of duties

Upon confirmation by the Senate, and notwithstanding paragraph (1), the IPEC may use the services and personnel of the National Intellectual Property Law Enforcement Coordination Council, for such time as is reasonable, to perform any functions or duties which in the discretion of the IPEC are necessary to facilitate the orderly transition of any functions or duties transferred from the Council to the IPEC pursuant to any provision of this Act or any amendment made by this Act.

(b) Current authorities not affected

Except as provided in subsection (a), nothing in this subchapter shall alter the authority of any department or agency of the United States (including any independent agency) that relates to—

(1) the investigation and prosecution of violations of laws that protect intellectual property rights;

(2) the administrative enforcement, at the borders of the United States, of laws that protect intellectual property rights; or

(3) the United States trade agreements program or international trade.

(c) Rules of construction

Nothing in this subchapter—

(1) shall derogate from the powers, duties, and functions of any of the agencies, departments, or other entities listed or included under section 8111(b)(3)(A) of this title; and

(2) shall be construed to transfer authority regarding the control, use, or allocation of law enforcement resources, or the initiation or prosecution of individual cases or types of cases, from the responsible law enforcement department or agency.

(Pub. L. 110–403, title III, §305, Oct. 13, 2008, 122 Stat. 4270.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(2), is Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4256, known as the Prioritizing Resources and Organization for Intellectual Property Act of 2008, which enacted this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8101 of this title and Tables.

This subchapter, referred to in subsecs. (b) and (c), was in the original "this title", meaning title III of Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4264, which is classified principally to this subchapter. For complete classification of title III to the Code, see Tables.

CODIFICATION

Section is comprised of section 305 of Pub. L. 110–403. Subsec. (a)(1) of section 305 of Pub. L. 110–403 repealed section 1128 of this title.

§8116. Authorization of appropriations

(a) [1] In general

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this subchapter.

(Pub. L. 110–403, title III, §306, Oct. 13, 2008, 122 Stat. 4270.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in subsec. (a), was in the original "this title", meaning title III of Pub. L. 110–403, Oct. 13, 2008, 122 Stat. 4264, which is classified principally to this subchapter. For complete classification of title III to the Code, see Tables.

[1] So in original. No subsec. (b) has been enacted.

SUBCHAPTER II—CYBERSQUATTING PROTECTION

§8131. Cyberpiracy protections for individuals

(1) In general

(A) Civil liability

Any person who registers a domain name that consists of the name of another living person, or a name substantially and confusingly similar thereto, without that person's consent, with the specific intent to profit from such name by selling the domain name for financial gain to that person or any third party, shall be liable in a civil action by such person.

(B) Exception

A person who in good faith registers a domain name consisting of the name of another living person, or a name substantially and confusingly similar thereto, shall not be liable under this paragraph if such name is used in, affiliated with, or related to a work of authorship protected under title 17, including a work made for hire as defined in section 101 of title 17, and if the person registering the domain name is the copyright owner or licensee of the work, the person intends to sell the domain name in conjunction with the lawful exploitation of the work, and such registration is not prohibited by a contract between the registrant and the named person. The

exception under this subparagraph shall apply only to a civil action brought under paragraph (1) and shall in no manner limit the protections afforded under the Trademark Act of 1946 (15 U.S.C. 1051 et seq.) or other provision of Federal or State law.

(2) Remedies

In any civil action brought under paragraph (1), a court may award injunctive relief, including the forfeiture or cancellation of the domain name or the transfer of the domain name to the plaintiff. The court may also, in its discretion, award costs and attorneys fees to the prevailing party.

(3) Definition

In this section, the term "domain name" has the meaning given that term in section 45 of the Trademark Act of 1946 (15 U.S.C. 1127).

(4) Effective date

This section shall apply to domain names registered on or after November 29, 1999.

(Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3002(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–548.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Trademark Act of 1946, referred to in par. (1)(B), is act July 5, 1946, ch. 540, 60 Stat. 427, also popularly known as the Lanham Act, which is classified generally to chapter 22 (§1051 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1051 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1129 of this title.

Section was enacted as part of the Anticybersquatting Consumer Protection Act, and not as part of the Prioritizing Resources and Organization for Intellectual Property Act of 2008, which comprises this chapter.

CHAPTER 108—STATE-BASED INSURANCE REFORM

SUBCHAPTER I—NONADMITTED INSURANCE

SUBCHAPTER I—NONADMITTED INSURANCE

§8201. Reporting, payment, and allocation of premium taxes

(a) Home State's exclusive authority

No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) Allocation of nonadmitted premium taxes

(1) In general

The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State described in subsection (a).

(2) Effective date

Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on July 21, 2010, shall apply to any premium taxes that, on or after July 21, 2010, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) Report

Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) Nationwide system

The Congress intends that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) Allocation based on tax allocation report

To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks, or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

(Pub. L. 111–203, title V, §521, July 21, 2010, 124 Stat. 1589.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 111–203, title V, §512, July 21, 2010, 124 Stat. 1589, provided that: "Except as otherwise specifically provided in this subtitle [see Short Title note below], this subtitle shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this subtitle [July 21, 2010]."

SHORT TITLE

Pub. L. 111–203, title V, §511, July 21, 2010, 124 Stat. 1589, provided that: "This subtitle [subtitle B (§§511–542) of title V of Pub. L. 111–203, enacting this chapter and provisions set out as a note under this section] may be cited as the 'Nonadmitted and Reinsurance Reform Act of 2010'."

§8202. Regulation of nonadmitted insurance by insured's home State

(a) Home State authority

Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) Broker licensing

No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) Enforcement provision

With respect to section 8201 of this title and subsections (a) and (b) of this section, any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) Workers' compensation exception

This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

(Pub. L. 111–203, title V, §522, July 21, 2010, 124 Stat. 1590.)

§8203. Participation in national producer database

After the expiration of the 2-year period beginning on July 21, 2010, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

(Pub. L. 111–203, title V, §523, July 21, 2010, 124 Stat. 1590.)

§8204. Uniform standards for surplus lines eligibility

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in sections 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 8201(b) of this title that include alternative nationwide uniform eligibility requirements; or

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

(Pub. L. 111–203, title V, §524, July 21, 2010, 124 Stat. 1590.)

§8205. Streamlined application for commercial purchasers

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

(Pub. L. 111–203, title V, §525, July 21, 2010, 124 Stat. 1591.)

§8206. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Admitted insurer

The term "admitted insurer" means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) Affiliate

The term "affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

(3) Affiliated group

The term "affiliated group" means any group of entities that are all affiliated.

(4) Control

An entity has "control" over another entity if—

(A) the entity directly or indirectly or acting through 1 or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity; or

(B) the entity controls in any manner the election of a majority of the directors or trustees of the other entity.

(5) Exempt commercial purchaser

The term "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months.

(C)(i) The person meets at least 1 of the following criteria:

(I) The person possesses a net worth in excess of $20,000,000, as such amount is adjusted pursuant to clause (ii).

(II) The person generates annual revenues in excess of $50,000,000, as such amount is adjusted pursuant to clause (ii).

(III) The person employs more than 500 full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate.

(IV) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000, as such amount is adjusted pursuant to clause (ii).

(V) The person is a municipality with a population in excess of 50,000 persons.

(ii) Effective on the fifth January 1 occurring after July 21, 2010, and each fifth January 1 occurring thereafter, the amounts in subclauses (I), (II), and (IV) of clause (i) shall be adjusted to reflect the percentage change for such 5-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(6) Home State

(A) In general

Except as provided in subparagraph (B), the term "home State" means, with respect to an insured—

(i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(ii) if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(B) Affiliated groups

If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home State" means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(7) Independently procured insurance

The term "independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer.

(8) NAIC

The term "NAIC" means the National Association of Insurance Commissioners or any successor entity.

(9) Nonadmitted insurance

The term "nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(10) Non-Admitted Insurance Model Act

The term "Non-Admitted Insurance Model Act" means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(11) Nonadmitted insurer

The term "nonadmitted insurer"—

(A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but

(B) does not include a risk retention group, as that term is defined in section 3901(a)(4) of this title.

(12) Premium tax

The term "premium tax" means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(13) Qualified risk manager

The term "qualified risk manager" means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third-party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person—

(i)(I) has a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate

minimum competence in risk management; and

(II)(aa) has 3 years of experience in risk financing, claims administration, loss prevention, risk and insurance analysis, or purchasing commercial lines of insurance; or

(bb) has—

(AA) a designation as a Chartered Property and Casualty Underwriter (in this subparagraph referred to as "CPCU") issued by the American Institute for CPCU/Insurance Institute of America;

(BB) a designation as an Associate in Risk Management (ARM) issued by the American Institute for CPCU/Insurance Institute of America;

(CC) a designation as Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research;

(DD) a designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute; or

(EE) any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management;

(ii)(I) has at least 7 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; and

(II) has any 1 of the designations specified in subitems (AA) through (EE) of clause (i)(II)(bb);

(iii) has at least 10 years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis, or purchasing commercial lines of insurance; or

(iv) has a graduate degree from an accredited college or university in risk management, business administration, finance, economics, or any other field determined by a State insurance commissioner or other State regulatory official or entity to demonstrate minimum competence in risk management.

(14) Reinsurance

The term "reinsurance" means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(15) Surplus lines broker

The term "surplus lines broker" means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

(16) State

The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(Pub. L. 111–203, title V, §527, July 21, 2010, 124 Stat. 1591.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

SUBCHAPTER II—REINSURANCE

§8221. Regulation of credit for reinsurance and reinsurance agreements

(a) Credit for reinsurance

If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) Additional preemption of extraterritorial application of State law

In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State that is not the domiciliary State of the ceding insurer, except those with respect to taxes and assessments on insurance companies or insurance income, are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this subchapter; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

(Pub. L. 111–203, title V, §531, July 21, 2010, 124 Stat. 1595.)

§8222. Regulation of reinsurer solvency

(a) Domiciliary State regulation

If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) Nondomiciliary States

(1) Limitation on financial information requirements

If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) Receipt of information

No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

(Pub. L. 111–203, title V, §532, July 21, 2010, 124 Stat. 1595.)

§8223. Definitions

For purposes of this subchapter, the following definitions shall apply:

(1) Ceding insurer

The term "ceding insurer" means an insurer that purchases reinsurance.

(2) Domiciliary State

The terms "State of domicile" and "domiciliary State" mean, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and

licensed.

(3) NAIC

The term "NAIC" means the National Association of Insurance Commissioners or any successor entity.

(4) Reinsurance

The term "reinsurance" means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(5) Reinsurer

(A) In general

The term "reinsurer" means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) Determination

A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

(6) State

The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

(Pub. L. 111–203, title V, §533, July 21, 2010, 124 Stat. 1595.)

SUBCHAPTER III—RULE OF CONSTRUCTION

§8231. Rule of construction

Nothing in this chapter or the amendments made by this subtitle [1] shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this chapter and any amendments to this chapter and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

(Pub. L. 111–203, title V, §541, July 21, 2010, 124 Stat. 1596.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle B (§§511–542) of title V of Pub. L. 111–203, which enacted this chapter and provisions set out as notes under section 8201 of this title. Subtitle B did not make any amendments.

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

§8232. Severability

If any section or subsection of this chapter, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this chapter, and the application of the

provision to any other person or circumstance, shall not be affected.

(Pub. L. 111–203, title V, §542, July 21, 2010, 124 Stat. 1596.)

CHAPTER 109—WALL STREET TRANSPARENCY AND ACCOUNTABILITY

SUBCHAPTER I—REGULATION OF OVER-THE-COUNTER SWAPS MARKETS

PART A—REGULATORY AUTHORITY

PART B—REGULATION OF SWAP MARKETS

SUBCHAPTER II—REGULATION OF SECURITY-BASED SWAP MARKETS

SUBCHAPTER I—REGULATION OF OVER-THE-COUNTER SWAPS MARKETS

PART A—REGULATORY AUTHORITY

§8301. Definitions

In this subtitle, the terms "prudential regulator", "swap", "swap dealer", "major swap participant", "swap data repository", "associated person of a swap dealer or major swap participant", "eligible contract participant", "swap execution facility", "security-based swap", "security-based swap dealer", "major security-based swap participant", and "associated person of a security-based swap dealer or major security-based swap participant" have the meanings given the terms in section 1a of title 7, including any modification of the meanings under section 8321(a) of this title.

(Pub. L. 111–203, title VII, §711, July 21, 2010, 124 Stat. 1641.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle A (§§711–754) of title VII of Pub. L. 111–203, July 21, 2010,

124 Stat. 1641, which enacted this subchapter, section 78c–2 of this title, and sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of Title 7, Agriculture, amended sections 78f, 78o, and 78s of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of Title 7, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle A to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Provisions of subchapter effective on the later of 360 days after July 21, 2010, or, to the extent the provision requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision, see section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of Title 7, Agriculture.

SHORT TITLE

Pub. L. 111–203, title VII, §701, July 21, 2010, 124 Stat. 1641, provided that: "This title [enacting this chapter, sections 78c–2 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, and sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of Title 7, Agriculture, amending sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78s, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacting provisions set out as notes under section 77b of this title and sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of Title 7, and amending provisions set out as notes under section 78c of this title] may be cited as the 'Wall Street Transparency and Accountability Act of 2010'."

DEFINITION

For definition of "including" as used in this section, see section 5301 of Title 12, Banks and Banking.

§8302. Review of regulatory authority

(a) Consultation

(1) Commodity Futures Trading Commission

Before commencing any rulemaking or issuing an order regarding swaps, swap dealers, major swap participants, swap data repositories, derivative clearing organizations with regard to swaps, persons associated with a swap dealer or major swap participant, eligible contract participants, or swap execution facilities pursuant to this subtitle, the Commodity Futures Trading Commission shall consult and coordinate to the extent possible with the Securities and Exchange Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

(2) Securities and Exchange Commission

Before commencing any rulemaking or issuing an order regarding security-based swaps, security-based swap dealers, major security-based swap participants, security-based swap data repositories, clearing agencies with regard to security-based swaps, persons associated with a security-based swap dealer or major security-based swap participant, eligible contract participants with regard to security-based swaps, or security-based swap execution facilities pursuant to subtitle B, the Securities and Exchange Commission shall consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.

(3) Procedures and deadline

Such regulations shall be prescribed in accordance with applicable requirements of title 5 and shall be issued in final form not later than 360 days after July 21, 2010.

(4) Applicability

The requirements of paragraphs (1) and (2) shall not apply to an order issued—

(A) in connection with or arising from a violation or potential violation of any provision of the Commodity Exchange Act (7 U.S.C. 1 et seq.);

(B) in connection with or arising from a violation or potential violation of any provision of the securities laws; or

(C) in any proceeding that is conducted on the record in accordance with sections 556 and 557 of title 5.

(5) Effect

Nothing in this subsection authorizes any consultation or procedure for consultation that is not consistent with the requirements of subchapter II of chapter 5, and chapter 7, of title 5 (commonly known as the "Administrative Procedure Act").

(6) Rules; orders

In developing and promulgating rules or orders pursuant to this subsection, each Commission shall consider the views of the prudential regulators.

(7) Treatment of similar products and entities

(A) In general

In adopting rules and orders under this subsection, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner.

(B) Effect

Nothing in this subtitle requires the Commodity Futures Trading Commission or the Securities and Exchange Commission to adopt joint rules or orders that treat functionally or economically similar products or entities described in paragraphs (1) and (2) in an identical manner.

(8) Mixed swaps

The Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors, shall jointly prescribe such regulations regarding mixed swaps, as described in section 1a(47)(D) of the Commodity Exchange Act (7 U.S.C. 1a(47)(D)) and in section 78c(a)(68)(D) of this title, as may be necessary to carry out the purposes of this title.[1]

(b) Limitation

(1) Commodity Futures Trading Commission

Nothing in this title,[1] unless specifically provided, confers jurisdiction on the Commodity Futures Trading Commission to issue a rule, regulation, or order providing for oversight or regulation of—

(A) security-based swaps; or

(B) with regard to its activities or functions concerning security-based swaps—

(i) security-based swap dealers;

(ii) major security-based swap participants;

(iii) security-based swap data repositories;

(iv) associated persons of a security-based swap dealer or major security-based swap participant;

(v) eligible contract participants with respect to security-based swaps; or

(vi) swap execution facilities with respect to security-based swaps.

(2) Securities and Exchange Commission

Nothing in this title,[1] unless specifically provided, confers jurisdiction on the Securities and Exchange Commission or State securities regulators to issue a rule, regulation, or order providing for oversight or regulation of—

(A) swaps; or

(B) with regard to its activities or functions concerning swaps—

(i) swap dealers;

(ii) major swap participants;

(iii) swap data repositories;

(iv) persons associated with a swap dealer or major swap participant;

(v) eligible contract participants with respect to swaps; or

(vi) swap execution facilities with respect to swaps.

(3) Prohibition on certain futures associations and national securities associations

(A) Futures associations

Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title,[1] no futures association registered under section 17 of the Commodity Exchange Act (7 U.S.C. 21) may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any security-based swap, except that this subparagraph shall not limit the authority of a registered futures association to examine for compliance with, and enforce, its rules on capital adequacy.

(B) National securities associations

Notwithstanding any other provision of law (including regulations), unless otherwise authorized by this title,[1] no national securities association registered under section 78o–3 of this title may issue a rule, regulation, or order for the oversight or regulation of, or otherwise assert jurisdiction over, for any purpose, any swap, except that this subparagraph shall not limit the authority of a national securities association to examine for compliance with, and enforce, its rules on capital adequacy.

(c) Objection to Commission regulation

(1) Filing of petition for review

(A) In general

If either Commission referred to in this section determines that a final rule, regulation, or order of the other Commission conflicts with subsection (a)(7) or (b), then the complaining Commission may obtain review of the final rule, regulation, or order in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the final rule, regulation, or order, a written petition requesting that the rule, regulation, or order be set aside.

(B) Expedited proceeding

A proceeding described in subparagraph (A) shall be expedited by the United States Court of Appeals for the District of Columbia Circuit.

(2) Transmittal of petition and record

(A) In general

A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after the date of filing by the complaining Commission to the Secretary of the responding Commission.

(B) Duty of responding Commission

On receipt of the copy of a petition described in paragraph (1), the responding Commission shall file with the United States Court of Appeals for the District of Columbia Circuit—

(i) a copy of the rule, regulation, or order under review (including any documents referred

to therein); and

(ii) any other materials prescribed by the United States Court of Appeals for the District of Columbia Circuit.

(3) Standard of review

The United States Court of Appeals for the District of Columbia Circuit shall—

(A) give deference to the views of neither Commission; and

(B) determine to affirm or set aside a rule, regulation, or order of the responding Commission under this subsection, based on the determination of the court as to whether the rule, regulation, or order is in conflict with subsection (a)(7) or (b), as applicable.

(4) Judicial stay

The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the rule, regulation, or order until the date on which the determination of the United States Court of Appeals for the District of Columbia Circuit is final (including any appeal of the determination).

(d) Joint rulemaking

(1) In general

Notwithstanding any other provision of this title [1] and subsections (b) and (c), the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall further define the terms "swap", "security-based swap", "swap dealer", "security-based swap dealer", "major swap participant", "major security-based swap participant", "eligible contract participant", and "security-based swap agreement" in section 1a(47)(A)(v) of the Commodity Exchange Act (7 U.S.C. 1a(47)(A)(v)) and section 78c(a)(78) of this title.

(2) Authority of the Commissions

(A) In general

Notwithstanding any other provision of this title,[1] the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall jointly adopt such other rules regarding such definitions as the Commodity Futures Trading Commission and the Securities and Exchange Commission determine are necessary and appropriate, in the public interest, and for the protection of investors.

(B) Trade repository recordkeeping

Notwithstanding any other provision of this title,[1] the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall engage in joint rulemaking to jointly adopt a rule or rules governing the books and records that are required to be kept and maintained regarding security-based swap agreements by persons that are registered as swap data repositories under the Commodity Exchange Act, including uniform rules that specify the data elements that shall be collected and maintained by each repository.

(C) Books and records

Notwithstanding any other provision of this title,[1] the Commodity Futures Trading Commission and the Securities and Exchange Commission, in consultation with the Board of Governors, shall engage in joint rulemaking to jointly adopt a rule or rules governing books and records regarding security-based swap agreements, including daily trading records, for swap dealers, major swap participants, security-based swap dealers, and security-based swap participants.

(D) Comparable rules

Rules and regulations prescribed jointly under this title [1] by the Commodity Futures Trading

Commission and the Securities and Exchange Commission shall be comparable to the maximum extent possible, taking into consideration differences in instruments and in the applicable statutory requirements.

(E) Tracking uncleared transactions

Any rules prescribed under subparagraph (A) shall require the maintenance of records of all activities relating to security-based swap agreement transactions defined under subparagraph (A) that are not cleared.

(F) Sharing of information

The Commodity Futures Trading Commission shall make available to the Securities and Exchange Commission information relating to security-based swap agreement transactions defined in subparagraph (A) that are not cleared.

(3) Financial Stability Oversight Council

In the event that the Commodity Futures Trading Commission and the Securities and Exchange Commission fail to jointly prescribe rules pursuant to paragraph (1) or (2) in a timely manner, at the request of either Commission, the Financial Stability Oversight Council shall resolve the dispute—

(A) within a reasonable time after receiving the request;

(B) after consideration of relevant information provided by each Commission; and

(C) by agreeing with 1 of the Commissions regarding the entirety of the matter or by determining a compromise position.

(4) Joint interpretation

Any interpretation of, or guidance by either Commission regarding, a provision of this title,[1] shall be effective only if issued jointly by the Commodity Futures Trading Commission and the Securities and Exchange Commission, after consultation with the Board of Governors, if this title [1] requires the Commodity Futures Trading Commission and the Securities and Exchange Commission to issue joint regulations to implement the provision.

(e) Global rulemaking timeframe

Unless otherwise provided in this title,[1] or an amendment made by this title,[1] the Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, shall individually, and not jointly, promulgate rules and regulations required of each Commission under this title [1] or an amendment made by this title [1] not later than 360 days after July 21, 2010.

(f) Rules and registration before final effective dates

Beginning on July 21, 2010, and notwithstanding the effective date of any provision of this Act, the Commodity Futures Trading Commission and the Securities and Exchange Commission may, in order to prepare for the effective dates of the provisions of this Act—

(1) promulgate rules, regulations, or orders permitted or required by this Act;

(2) conduct studies and prepare reports and recommendations required by this Act;

(3) register persons under the provisions of this Act; and

(4) exempt persons, agreements, contracts, or transactions from provisions of this Act, under the terms contained in this Act,

provided, however, that no action by the Commodity Futures Trading Commission or the Securities and Exchange Commission described in paragraphs (1) through (4) shall become effective prior to the effective date applicable to such action under the provisions of this Act.

(Pub. L. 111–203, title VII, §712, July 21, 2010, 124 Stat. 1641.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in subsec. (a)(1), (7)(B), is subtitle A (§§711–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted this subchapter, section 78c–2 of this title, and sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of Title 7, Agriculture, amended sections 78f, 78o, and 78s of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of Title 7, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle A to the Code, see Tables.

Subtitle B, referred to in subsec. (a)(2), is subtitle B (§§761–774) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which enacted subchapter II of this chapter and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

The Commodity Exchange Act, referred to in subsecs. (a)(4)(A) and (d)(2)(B), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

This title, where footnoted in subsecs. (a)(8), (b), (d)(1), (2)(A)–(D), (4), and (e), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

This Act, referred to in subsec. (f), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12, Banks and Banking, and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

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

§8303. Abusive swaps

The Commodity Futures Trading Commission or the Securities and Exchange Commission, or both, individually may, by rule or order—

(1) collect information as may be necessary concerning the markets for any types of—

(A) swap (as defined in section 1a of title 7); or

(B) security-based swap (as defined in section 1a of title 7); and

(2) issue a report with respect to any types of swaps or security-based swaps that the Commodity Futures Trading Commission or the Securities and Exchange Commission determines to be detrimental to—

(A) the stability of a financial market; or

(B) participants in a financial market.

(Pub. L. 111–203, title VII, §714, July 21, 2010, 124 Stat. 1647.)

§8304. Authority to prohibit participation in swap activities

Except as provided in section 6 of title 7, if the Commodity Futures Trading Commission or the Securities and Exchange Commission determines that the regulation of swaps or security-based

swaps markets in a foreign country undermines the stability of the United States financial system, either Commission, in consultation with the Secretary of the Treasury, may prohibit an entity domiciled in the foreign country from participating in the United States in any swap or security-based swap activities.

(Pub. L. 111–203, title VII, §715, July 21, 2010, 124 Stat. 1647.)

§8305. Prohibition against Federal Government bailouts of swaps entities

(a) Prohibition on Federal assistance

Notwithstanding any other provision of law (including regulations), no Federal assistance may be provided to any swaps entity with respect to any swap, security-based swap, or other activity of the swaps entity.

(b) Definitions

In this section:

(1) Federal assistance

The term "Federal assistance" means the use of any advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 343(3)(A) of title 12, Federal Deposit Insurance Corporation insurance or guarantees for the purpose of—

(A) making any loan to, or purchasing any stock, equity interest, or debt obligation of, any swaps entity;

(B) purchasing the assets of any swaps entity;

(C) guaranteeing any loan or debt issuance of any swaps entity; or

(D) entering into any assistance arrangement (including tax breaks), loss sharing, or profit sharing with any swaps entity.

(2) Swaps entity

(A) In general

The term "swaps entity" means any swap dealer, security-based swap dealer, major swap participant, major security-based swap participant, that is registered under—

(i) the Commodity Exchange Act (7 U.S.C. 1 et seq.); or

(ii) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(B) Exclusion

The term "swaps entity" does not include any major swap participant or major security-based swap participant that is an [1] covered depository institution.

(3) Covered depository institution

The term "covered depository institution" means—

(A) an insured depository institution, as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813); and

(B) a United States uninsured branch or agency of a foreign bank.

(c) Affiliates of covered depository institutions

The prohibition on Federal assistance contained in subsection (a) does not apply to and shall not prevent a covered depository institution from having or establishing an affiliate which is a swaps entity, as long as such covered depository institution is part of a bank holding company, savings and loan holding company, or foreign banking organization (as such term is defined under Regulation K of the Board of Governors of the Federal Reserve System (12 CFR 211.21(o))), that is supervised by the Federal Reserve and such swaps entity affiliate complies with sections 371c and 371c–1 of title

12 and such other requirements as the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, and the Board of Governors of the Federal Reserve System, may determine to be necessary and appropriate.

(d) Only bona fide hedging and traditional bank activities permitted

(1) In general

The prohibition in subsection (a) shall not apply to any covered depository institution that limits its swap and security-based swap activities to the following:

(A) Hedging and other similar risk mitigation activities

Hedging and other similar risk mitigating activities directly related to the covered depository institution's activities.

(B) Non-structured finance swap activities

Acting as a swaps entity for swaps or security-based swaps other than a structured finance swap.

(C) Certain structured finance swap activities

Acting as a swaps entity for swaps or security-based swaps that are structured finance swaps, if—

(i) such structured finance swaps are undertaken for hedging or risk management purposes; or

(ii) each asset-backed security underlying such structured finance swaps is of a credit quality and of a type or category with respect to which the prudential regulators have jointly adopted rules authorizing swap or security-based swap activity by covered depository institutions.

(2) Definitions

For purposes of this subsection:

(A) Structured finance swap

The term "structured finance swap" means a swap or security-based swap based on an asset-backed security (or group or index primarily comprised of asset-backed securities).

(B) Asset-backed security

The term "asset-backed security" has the meaning given such term under section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(e) Existing swaps and security-based swaps

The prohibition in subsection (a) shall only apply to swaps or security-based swaps entered into by a covered depository institution after the end of the transition period described in subsection (f).

(f) Transition period

To the extent a covered depository institution qualifies as a "swaps entity" and would be subject to the Federal assistance prohibition in subsection (a), the appropriate Federal banking agency, after consulting with and considering the views of the Commodity Futures Trading Commission or the Securities Exchange Commission, as appropriate, shall permit the covered depository institution up to 24 months to divest the swaps entity or cease the activities that require registration as a swaps entity. In establishing the appropriate transition period to effect such divestiture or cessation of activities, which may include making the swaps entity an affiliate of the covered depository institution, the appropriate Federal banking agency shall take into account and make written findings regarding the potential impact of such divestiture or cessation of activities on the covered depository institution's (1) mortgage lending, (2) small business lending, (3) job creation, and (4) capital formation versus the potential negative impact on insured depositors and the Deposit Insurance Fund of the Federal Deposit Insurance Corporation. The appropriate Federal banking agency may consider such other factors as may be appropriate. The appropriate Federal banking agency may place such conditions on the covered depository institution's divestiture or ceasing of activities of the swaps

entity as it deems necessary and appropriate. The transition period under this subsection may be extended by the appropriate Federal banking agency, after consultation with the Commodity Futures Trading Commission and the Securities and Exchange Commission, for a period of up to 1 additional year.

(g) Excluded entities

For purposes of this section, the term "swaps entity" shall not include any insured depository institution under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] or a covered financial company under title II which is in a conservatorship, receivership, or a bridge bank operated by the Federal Deposit Insurance Corporation.

(h) Effective date

The prohibition in subsection (a) shall be effective 2 years following the date on which this Act is effective.

(i) Liquidation required

(1) In general

(A) FDIC insured institutions

All swaps entities that are FDIC insured institutions that are put into receivership or declared insolvent as a result of swap or security-based swap activity of the swaps entities shall be subject to the termination or transfer of that swap or security-based swap activity in accordance with applicable law prescribing the treatment of those contracts. No taxpayer funds shall be used to prevent the receivership of any swap entity resulting from swap or security-based swap activity of the swaps entity.

(B) Institutions that pose a systemic risk and are subject to heightened prudential supervision as regulated under section 5323 of title 12

All swaps entities that are institutions that pose a systemic risk and are subject to heightened prudential supervision as regulated under section 5323 of title 12, that are put into receivership or declared insolvent as a result of swap or security-based swap activity of the swaps entities shall be subject to the termination or transfer of that swap or security-based swap activity in accordance with applicable law prescribing the treatment of those contracts. No taxpayer funds shall be used to prevent the receivership of any swap entity resulting from swap or security-based swap activity of the swaps entity.

(C) Non-FDIC insured, non-systemically significant institutions not subject to heightened prudential supervision as regulated under section 5323 of title 12

No taxpayer resources shall be used for the orderly liquidation of any swaps entities that are non-FDIC insured, non-systemically significant institutions not subject to heightened prudential supervision as regulated under section 5323 of title 12.

(2) Recovery of funds

All funds expended on the termination or transfer of the swap or security-based swap activity of the swaps entity shall be recovered in accordance with applicable law from the disposition of assets of such swap entity or through assessments, including on the financial sector as provided under applicable law.

(3) No losses to taxpayers

Taxpayers shall bear no losses from the exercise of any authority under this title.[2]

(j) Prohibition on unregulated combination of swaps entities and banking

At no time following adoption of the rules in subsection (k) may a bank or bank holding company be permitted to be or become a swap entity unless it conducts its swap or security-based swap

activity in compliance with such minimum standards set by its prudential regulator as are reasonably calculated to permit the swaps entity to conduct its swap or security-based swap activities in a safe and sound manner and mitigate systemic risk.

(k) Rules

In prescribing rules, the prudential regulator for a swaps entity shall consider the following factors:

(1) The expertise and managerial strength of the swaps entity, including systems for effective oversight.

(2) The financial strength of the swaps entity.

(3) Systems for identifying, measuring and controlling risks arising from the swaps entity's operations.

(4) Systems for identifying, measuring and controlling the swaps entity's participation in existing markets.

(5) Systems for controlling the swaps entity's participation or entry into in [3] new markets and products.

(l) Authority of the Financial Stability Oversight Council

The Financial Stability Oversight Council may determine that,[4] when other provisions established by this Act are insufficient to effectively mitigate systemic risk and protect taxpayers, that swaps entities may no longer access Federal assistance with respect to any swap, security-based swap, or other activity of the swaps entity. Any such determination by the Financial Stability Oversight Council of a prohibition of federal assistance shall be made on an institution-by-institution basis, and shall require the vote of not fewer than two-thirds of the members of the Financial Stability Oversight Council, which must include the vote by the Chairman of the Council, the Chairman of the Board of Governors of the Federal Reserve System, and the Chairperson of the Federal Deposit Insurance Corporation. Notice and hearing requirements for such determinations shall be consistent with the standards provided in title I.

(m) Ban on proprietary trading in derivatives

An insured depository institution shall comply with the prohibition on proprietary trading in derivatives as required by section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 1851].

(Pub. L. 111–203, title VII, §716, July 21, 2010, 124 Stat. 1648; Pub. L. 113–235, div. E, title VI, §630, Dec. 16, 2014, 128 Stat. 2378.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (b)(2)(A)(i), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b)(2)(A)(ii), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Federal Deposit Insurance Act, referred to in subsec. (g), is act Sept. 21, 1950, ch. 967, §2, 64 Stat. 873, which is classified generally to chapter 16 (§1811 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of Title 12 and Tables.

Title II, referred to in subsec. (g), is title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to subchapter II (§5381 et seq.) of chapter 53 of Title 12, Banks and Banking. For complete classification of title II to the Code, see Tables.

For the date on which this Act is effective, referred to in subsec. (h), see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking, and section 754 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1a of Title 7, Agriculture.

This title, referred to in subsec. (i)(3), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, known

as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

This Act, referred to in subsec. (l), is Pub. L. 111–203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of Title 12, Banks and Banking, and Tables.

Title I, referred to in subsec. (l), is title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1391, known as the Financial Stability Act of 2010, which is classified principally to subchapter I (§5311 et seq.) of chapter 53 of Title 12, Banks and Banking. For complete classification of title I to the Code, see Short Title note set out under section 5301 of Title 12 and Tables.

Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, referred to in subsec. (m), is section 619 of Pub. L. 111–203, which enacted section 1851 of Title 12, Banks and Banking.

AMENDMENTS

2014—Subsec. (b)(2)(B). Pub. L. 113–235, §630(1)(A), substituted "covered depository institution" for "insured depository institution".

Subsec. (b)(3). Pub. L. 113–235, §630(1)(B), added par. (3).

Subsec. (c). Pub. L. 113–235, §630(2), in heading, substituted "covered" for "insured" and, in text, substituted "a covered" for "an insured", "such covered" for "such insured", and "savings and loan holding company, or foreign banking organization (as such term is defined under Regulation K of the Board of Governors of the Federal Reserve System (12 CFR 211.21(o)))" for "or savings and loan holding company".

Subsec. (d). Pub. L. 113–235, §630(3), amended subsec. (d) generally. Prior to amendment, text read as follows: "The prohibition in subsection (a) shall apply to any insured depository institution unless the insured depository institution limits its swap or security-based swap activities to:

"(1) Hedging and other similar risk mitigating activities directly related to the insured depository institution's activities.

"(2) Acting as a swaps entity for swaps or security-based swaps involving rates or reference assets that are permissible for investment by a national bank under the paragraph designated as 'Seventh.' of section 24 of title 12, other than as described in paragraph (3).

"(3) LIMITATION ON CREDIT DEFAULT SWAPS.—Acting as a swaps entity for credit default swaps, including swaps or security-based swaps referencing the credit risk of asset-backed securities as defined in section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)) (as amended by this Act) shall not be considered a bank permissible activity for purposes of subsection (d)(2) unless such swaps or security-based swaps are cleared by a derivatives clearing organization (as such term is defined in section la of the Commodity Exchange Act (7 U.S.C. la)) or a clearing agency (as such term is defined in section 3 of the Securities Exchange Act (15 U.S.C. 78c)) that is registered, or exempt from registration, as a derivatives clearing organization under the Commodity Exchange Act or as a clearing agency under the Securities Exchange Act, respectively."

Subsec. (e). Pub. L. 113–235, §630(4), substituted "a covered" for "an insured".

Subsec. (f). Pub. L. 113–235, §630(5), substituted "a covered depository" for "an insured depository" and substituted "the covered depository" for "the insured depository" wherever appearing.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

[1] So in original. Probably should be "a".

[2] See References in Text note below.

[3] So in original.

[4] So in original. The word "that" probably should not appear.

§8306. Determining status of novel derivative products

(a) Process for determining the status of a novel derivative product

(1) Notice

(A) In general

Any person filing a proposal to list or trade a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) may concurrently provide notice and furnish a copy of such filing with the Securities and Exchange Commission and the Commodity Futures Trading Commission. Any such notice shall state that notice has been made with both Commissions.

(B) Notification

If no concurrent notice is made pursuant to subparagraph (A), within 5 business days after determining that a proposal that seeks to list or trade a novel derivative product may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall notify the other Commission and provide a copy of such filing to the other Commission.

(2) Request for determination

(A) In general

No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Commodity Futures Trading Commission may request that the Securities and Exchange Commission issue a determination as to whether a product is a security, as defined in section 78c(a)(10) of this title.

(B) Request

No later than 21 days after receipt of a notice under paragraph (1), or upon its own initiative if no such notice is received, the Securities and Exchange Commission may request that the Commodity Futures Trading Commission issue a determination as to whether a product is a contract of sale of a commodity for future delivery, an option on such a contract, or an option on a commodity subject to the Commodity Futures Trading Commission's exclusive jurisdiction under section 2(a)(1)(A) of title 7.

(C) Requirement relating to request

A request under subparagraph (A) or (B) shall be made by submitting such request, in writing, to the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable.

(D) Effect

Nothing in this paragraph shall be construed to prevent—

(i) the Commodity Futures Trading Commission from requesting that the Securities and Exchange Commission grant an exemption pursuant to section 78mm(a)(1) of this title with respect to a product that is the subject of a filing under paragraph (1); or

(ii) the Securities and Exchange Commission from requesting that the Commodity Futures Trading Commission grant an exemption pursuant to section 6(c)(1) of title 7 with respect to a product that is the subject of a filing under paragraph (1),

Provided, however, that nothing in this subparagraph shall be construed to require the Commodity Futures Trading Commission or the Securities and Exchange Commission to issue an exemption requested pursuant to this subparagraph; *provided further*, That an order granting or denying an exemption described in this subparagraph and issued under paragraph (3)(B) shall not be subject to judicial review pursuant to subsection (b).

(E) Withdrawal of request

A request under subparagraph (A) or (B) may be withdrawn by the Commission making the request at any time prior to a determination being made pursuant to paragraph (3) for any reason by providing written notice to the head of the other Commission.

(3) Determination

Notwithstanding any other provision of law, no later than 120 days after the date of receipt of a request—

(A) under subparagraph (A) or (B) of paragraph (2), unless such request has been withdrawn pursuant to paragraph (2)(E), the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall, by order, issue the determination requested in subparagraph (A) or (B) of paragraph (2), as applicable, and the reasons therefor; or

(B) under paragraph (2)(D), unless such request has been withdrawn, the Securities and Exchange Commission or the Commodity Futures Trading Commission, as applicable, shall grant an exemption or provide reasons for not granting such exemption, provided that any decision by the Securities and Exchange Commission not to grant such exemption shall not be reviewable under section 78y of this title.

(b) Judicial resolution

(1) In general

The Commodity Futures Trading Commission or the Securities and Exchange Commission may petition the United States Court of Appeals for the District of Columbia Circuit for review of a final order of the other Commission issued pursuant to subsection (a)(3)(A), with respect to a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities) that it believes affects its statutory jurisdiction within 60 days after the date of entry of such order, a written petition requesting a review of the order. Any such proceeding shall be expedited by the Court of Appeals.

(2) Transmittal of petition and record

A copy of a petition described in paragraph (1) shall be transmitted not later than 1 business day after filing by the complaining Commission to the responding Commission. On receipt of the petition, the responding Commission shall file with the court a copy of the order under review and any documents referred to therein, and any other materials prescribed by the court.

(3) Standard of review

The court, in considering a petition filed pursuant to paragraph (1), shall give no deference to, or presumption in favor of, the views of either Commission.

(4) Judicial stay

The filing of a petition by the complaining Commission pursuant to paragraph (1) shall operate as a stay of the order, until the date on which the determination of the court is final (including any appeal of the determination).

(Pub. L. 111–203, title VII, §718, July 21, 2010, 124 Stat. 1652.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITION

For definition of "including" as used in this section, see section 5301 of Title 12, Banks and Banking.

§8307. Studies

(a) Study on effects of position limits on trading on exchanges in the United States

(1) Study

The Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act [7 U.S.C. 1 et seq.], shall conduct a study of the effects (if any) of the position limits imposed pursuant to the other provisions of this title [1] on excessive speculation and on the movement of transactions from exchanges in the United States to trading venues outside the United States.

(2) Report to the Congress

Within 12 months after the imposition of position limits pursuant to the other provisions of this title,[1] the Commodity Futures Trading Commission, in consultation with each entity that is a designated contract market under the Commodity Exchange Act, shall submit to the Congress a report on the matters described in paragraph (1).

(3) Required hearing

Within 30 legislative days after the submission to the Congress of the report described in paragraph (2), the Committee on Agriculture of the House of Representatives shall hold a hearing examining the findings of the report.

(4) Biennial reporting

In addition to the study required in paragraph (1), the Chairman of the Commodity Futures Trading Commission shall prepare and submit to the Congress biennial reports on the growth or decline of the derivatives markets in the United States and abroad, which shall include assessments of the causes of any such growth or decline, the effectiveness of regulatory regimes in managing systemic risk, a comparison of the costs of compliance at the time of the report for market participants subject to regulation by the United States with the costs of compliance in December 2008 for the market participants, and the quality of the available data. In preparing the report, the Chairman shall solicit the views of, consult with, and address the concerns raised by, market participants, regulators, legislators, and other interested parties.

(b) Study on feasibility of requiring use of standardized algorithmic descriptions for financial derivatives

(1) In general

The Securities and Exchange Commission and the Commodity Futures Trading Commission shall conduct a joint study of the feasibility of requiring the derivatives industry to adopt standardized computer-readable algorithmic descriptions which may be used to describe complex and standardized financial derivatives.

(2) Goals

The algorithmic descriptions defined in the study shall be designed to facilitate computerized analysis of individual derivative contracts and to calculate net exposures to complex derivatives. The algorithmic descriptions shall be optimized for simultaneous use by—

(A) commercial users and traders of derivatives;
(B) derivative clearing houses, exchanges and electronic trading platforms;
(C) trade repositories and regulator investigations of market activities; and
(D) systemic risk regulators.

The study will also examine the extent to which the algorithmic description, together with standardized and extensible legal definitions, may serve as the binding legal definition of derivative contracts. The study will examine the logistics of possible implementations of standardized algorithmic descriptions for derivatives contracts. The study shall be limited to electronic formats for exchange of derivative contract descriptions and will not contemplate disclosure of proprietary valuation models.

(3) International coordination

In conducting the study, the Securities and Exchange Commission and the Commodity Futures

Trading Commission shall coordinate the study with international financial institutions and regulators as appropriate and practical.

(4) Report

Within 8 months after July 21, 2010, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall jointly submit to the Committees on Agriculture and on Financial Services of the House of Representatives and the Committees on Agriculture, Nutrition, and Forestry and on Banking, Housing, and Urban Affairs of the Senate a written report which contains the results of the study required by paragraphs (1) through (3).

(c) International swap regulation

(1) In general

The Commodity Futures Trading Commission and the Securities and Exchange Commission shall jointly conduct a study—

(A) relating to—

(i) swap regulation in the United States, Asia, and Europe; and

(ii) clearing house and clearing agency regulation in the United States, Asia, and Europe; and

(B) that identifies areas of regulation that are similar in the United States, Asia and Europe and other areas of regulation that could be harmonized [2]

(2) Report

Not later than 18 months after July 21, 2010, the Commodity Futures Trading Commission and the Securities and Exchange Commission shall submit to the Committee on Agriculture, Nutrition, and Forestry and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Agriculture and the Committee on Financial Services of the House of Representatives a report that includes a description of the results of the study under subsection (a), including—

(A) identification of the major exchanges and their regulator in each geographic area for the trading of swaps and security-based swaps including a listing of the major contracts and their trading volumes and notional values as well as identification of the major swap dealers participating in such markets;

(B) identification of the major clearing houses and clearing agencies and their regulator in each geographic area for the clearing of swaps and security-based swaps, including a listing of the major contracts and the clearing volumes and notional values as well as identification of the major clearing members of such clearing houses and clearing agencies in such markets;

(C) a description of the comparative methods of clearing swaps in the United States, Asia, and Europe; and

(D) a description of the various systems used for establishing margin on individual swaps, security-based swaps, and swap portfolios.

(d) Stable value contracts

(1) Determination

(A) Status

Not later than 15 months after July 21, 2010, the Securities and Exchange Commission and the Commodity Futures Trading Commission shall, jointly, conduct a study to determine whether stable value contracts fall within the definition of a swap. In making the determination required under this subparagraph, the Commissions jointly shall consult with the Department of Labor, the Department of the Treasury, and the State entities that regulate the issuers of stable value contracts.

(B) Regulations

If the Commissions determine that stable value contracts fall within the definition of a swap,

the Commissions jointly shall determine if an exemption for stable value contracts from the definition of swap is appropriate and in the public interest. The Commissions shall issue regulations implementing the determinations required under this paragraph. Until the effective date of such regulations, and notwithstanding any other provision of this title,[1] the requirements of this title [1] shall not apply to stable value contracts.

(C) Legal certainty

Stable value contracts in effect prior to the effective date of the regulations described in subparagraph (B) shall not be considered swaps.

(2) Definition

For purposes of this subsection, the term "stable value contract" means any contract, agreement, or transaction that provides a crediting interest rate and guaranty or financial assurance of liquidity at contract or book value prior to maturity offered by a bank, insurance company, or other State or federally regulated financial institution for the benefit of any individual or commingled fund available as an investment in an employee benefit plan (as defined in section 1002(3) of title 29, including plans described in section 1002(32) of title 29) subject to participant direction, an eligible deferred compensation plan (as defined in section 457(b) of title 26) that is maintained by an eligible employer described in section 457(e)(1)(A) of title 26, an arrangement described in section 403(b) of title 26, or a qualified tuition program (as defined in section 529 of title 26).

(Pub. L. 111–203, title VII, §719, July 21, 2010, 124 Stat. 1654.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (a)(1), (2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

This title, referred to in subsecs. (a)(1), (2), and (d)(1)(B), is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

[1] See References in Text note below.

[2] So in original. Probably should be followed by a period.

§8308. Memorandum

(a)(1) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after July 21, 2010, negotiate a memorandum of understanding to establish procedures for—

(A) applying their respective authorities in a manner so as to ensure effective and efficient regulation in the public interest;

(B) resolving conflicts concerning overlapping jurisdiction between the 2 agencies; and

(C) avoiding, to the extent possible, conflicting or duplicative regulation.

(2) Such memorandum and any subsequent amendments to the memorandum shall be promptly

submitted to the appropriate committees of Congress.

(b) The Commodity Futures Trading Commission and the Federal Energy Regulatory Commission shall, not later than 180 days after July 21, 2010, negotiate a memorandum of understanding to share information that may be requested where either Commission is conducting an investigation into potential manipulation, fraud, or market power abuse in markets subject to such Commission's regulation or oversight. Shared information shall remain subject to the same restrictions on disclosure applicable to the Commission initially holding the information.

(Pub. L. 111–203, title VII, §720, July 21, 2010, 124 Stat. 1657.)

PART B—REGULATION OF SWAP MARKETS

§8321. Authority to define terms

(a) Authority to define terms

The Commodity Futures Trading Commission may adopt a rule to define—

(1) the term "commercial risk"; and

(2) any other term included in an amendment to the Commodity Exchange Act (7 U.S.C. 1 et seq.) made by this subtitle.

(b) Modification of definitions

To include transactions and entities that have been structured to evade this subtitle (or an amendment made by this subtitle), the Commodity Futures Trading Commission shall adopt a rule to further define the terms "swap", "swap dealer", "major swap participant", and "eligible contract participant".

(Pub. L. 111–203, title VII, §721(b), (c), July 21, 2010, 124 Stat. 1670.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle A (§§711–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted this subchapter, section 78c–2 of this title, and sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of Title 7, Agriculture, amended sections 78f, 78o, and 78s of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of Title 7, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle A to the Code, see Tables.

The Commodity Exchange Act, referred to in subsec. (a)(2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

CODIFICATION

Section is comprised of subsecs. (b) and (c) of section 721 of Pub. L. 111–203, which were redesignated as subsecs. (a) and (b), respectively, of this section for purposes of codification.

§8322. Authority of FERC

Nothing in the Wall Street Transparency and Accountability Act of 2010 or the amendments to the Commodity Exchange Act [7 U.S.C. 1 et seq.] made by such Act shall limit or affect any statutory enforcement authority of the Federal Energy Regulatory Commission pursuant to section 824v of title 16 and section 717c–1 of this title that existed prior to July 21, 2010.

(Pub. L. 111–203, title VII, §722(g), July 21, 2010, 124 Stat. 1674.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Wall Street Transparency and Accountability Act of 2010, referred to in text, is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8301 of this title and Tables.

The Commodity Exchange Act, referred to in text, is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

§8323. Rulemaking on conflict of interest

(a) In general

In order to mitigate conflicts of interest, not later than 180 days after July 21, 2010, the Commodity Futures Trading Commission shall adopt rules which may include numerical limits on the control of, or the voting rights with respect to, any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading, by a bank holding company (as defined in section 1841 of title 12) with total consolidated assets of $50,000,000,000 or more, a nonbank financial company (as defined in section 5311 of title 12) supervised by the Board, an affiliate of such a bank holding company or nonbank financial company, a swap dealer, major swap participant, or associated person of a swap dealer or major swap participant.

(b) Purposes

The Commission shall adopt rules if it determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a swap dealer or major swap participant's conduct of business with, a derivatives clearing organization, contract market, or swap execution facility that clears or posts swaps or makes swaps available for trading and in which such swap dealer or major swap participant has a material debt or equity investment.

(c) Considerations

In adopting rules pursuant to this section, the Commodity Futures Trading Commission shall consider any conflicts of interest arising from the amount of equity owned by a single investor, the ability to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest, and the governance arrangements of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.

(Pub. L. 111–203, title VII, §726, July 21, 2010, 124 Stat. 1695.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§8324. Savings clause

Notwithstanding any other provision of this title,[1] nothing in this subtitle shall be construed as divesting any appropriate Federal banking agency of any authority it may have to establish or

enforce, with respect to a person for which such agency is the appropriate Federal banking agency, prudential or other standards pursuant to authority granted by Federal law other than this title.[1]

(Pub. L. 111–203, title VII, §741(c), July 21, 2010, 124 Stat. 1732.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in text, is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

This subtitle, referred to in text, is subtitle A (§§711–754) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, which enacted this subchapter, section 78c–2 of this title, and sections 1b, 6b–1, 6r to 6t, 7b–3, 24a, and 26 of Title 7, Agriculture, amended sections 78f, 78o, and 78s of this title, sections 1a, 2, 6 to 6b, 6c, 6d, 6m, 6q, 6s, 7 to 7b, 8 to 9a, 12, 12a, 13, 13–1, 13a–1, 13b, 15, 16, 21, 24, 25, 27 to 27b, 27e, and 27f of Title 7, section 761 of Title 11, Bankruptcy, and sections 4421 and 4422 of Title 12, Banks and Banking, enacted provisions set out as notes under sections 1a, 2, 6a, 7a–1, 7a–3, and 9 of Title 7, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle A to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

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

§8325. International harmonization

(a) In order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators (as that term is defined in section 1a(39) of title 7), as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps, security-based swaps, swap entities, and security-based swap entities and may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest or for the protection of investors, swap counterparties, and security-based swap counterparties.

(b) In order to promote effective and consistent global regulation of contracts of sale of a commodity for future delivery and options on such contracts, the Commodity Futures Trading Commission shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation of contracts of sale of a commodity for future delivery and options on such contracts, and may agree to such information-sharing arrangements as may be deemed necessary or appropriate in the public interest for the protection of users of contracts of sale of a commodity for future delivery.

(Pub. L. 111–203, title VII, §752, July 21, 2010, 124 Stat. 1749.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITION

For definition of "including" as used in this section, see section 5301 of Title 12, Banks and Banking.

SUBCHAPTER II—REGULATION OF SECURITY-BASED SWAP MARKETS

§8341. Authority to further define terms

The Securities and Exchange Commission may, by rule, further define—

(1) the term "commercial risk";

(2) any other term included in an amendment to the Securities Exchange Act of 1934 [1] (15 U.S.C. 78c(a)) made by this subtitle; and

(3) the terms "security-based swap", "security-based swap dealer", "major security-based swap participant", and "eligible contract participant", with regard to security-based swaps (as such terms are defined in the amendments made by subsection (a)) for the purpose of including transactions and entities that have been structured to evade this subtitle or the amendments made by this subtitle.

(Pub. L. 111–203, title VII, §761(b), July 21, 2010, 124 Stat. 1759.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in pars. (2) and (3), is subtitle B (§§761–774) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which enacted this subchapter and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

Subsection (a), referred to in par. (3), is subsec. (a) of section 761 of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which amended section 78c of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Provisions of subchapter effective on the later of 360 days after July 21, 2010, or, to the extent the provision requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision, see section 774 of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 77b of this title.

DEFINITION

For definition of "including" as used in this section, see section 5301 of Title 12, Banks and Banking.

[1] So in original. Probably should be "section 3(a) of the Securities Exchange Act of 1934".

§8342. Savings clause

Notwithstanding any other provision of this title,[1] nothing in this subtitle shall be construed as divesting any appropriate Federal banking agency of any authority it may have to establish or enforce, with respect to a person for which such agency is the appropriate Federal banking agency, prudential or other standards pursuant to authority by Federal law other than this title.[1]

(Pub. L. 111–203, title VII, §764(b), July 21, 2010, 124 Stat. 1796.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in text, is title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1641, known as the Wall Street Transparency and Accountability Act of 2010, which enacted this chapter and enacted and amended numerous other sections and notes in the Code. For complete classification of title VII to the Code, see Short Title note set out under section 8301 of this title and Tables.

This subtitle, referred to in text, is subtitle B (§§761–774) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which enacted this subchapter and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

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

§8343. Rulemaking on conflict of interest

(a) In general

In order to mitigate conflicts of interest, not later than 180 days after July 21, 2010, the Securities and Exchange Commission shall adopt rules which may include numerical limits on the control of, or the voting rights with respect to, any clearing agency that clears security-based swaps, or on the control of any security-based swap execution facility or national securities exchange that posts or makes available for trading security-based swaps, by a bank holding company (as defined in section 1841 of title 12) with total consolidated assets of $50,000,000,000 or more, a nonbank financial company (as defined in section 5311 of title 12) supervised by the Board of Governors of the Federal Reserve System, affiliate of such a bank holding company or nonbank financial company, a security-based swap dealer, major security-based swap participant, or person associated with a security-based swap dealer or major security-based swap participant.

(b) Purposes

The Securities and Exchange Commission shall adopt rules if the Commission determines, after the review described in subsection (a), that such rules are necessary or appropriate to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with a security-based swap dealer or major security-based swap participant's conduct of business with, a clearing agency, national securities exchange, or security-based swap execution facility that clears, posts, or makes available for trading security-based swaps and in which such security-based swap dealer or major security-based swap participant has a material debt or equity investment.

(c) Considerations

In adopting rules pursuant to this section, the Securities and Exchange Commission shall consider any conflicts of interest arising from the amount of equity owned by a single investor, the ability to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest, and the governance arrangements of any derivatives clearing organization that clears swaps, or swap execution facility or board of trade designated as a contract market that posts swaps or makes swaps available for trading.

(Pub. L. 111–203, title VII, §765, July 21, 2010, 124 Stat. 1796.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

§8344. Other authority

Unless otherwise provided by its terms, this subtitle does not divest any appropriate Federal banking agency, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal or State agency, of any authority derived from any other provision of applicable law.

(Pub. L. 111–203, title VII, §771, July 21, 2010, 124 Stat. 1801.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subtitle, referred to in text, is subtitle B (§§761–774) of title VII of Pub. L. 111–203, July 21, 2010, 124 Stat. 1754, which enacted this subchapter and sections 78c–3 to 78c–5, 78j–2, 78m–1, and 78o–10 of this title, amended sections 77b, 77b–1, 77e, 77q, 78c, 78c–1, 78f, 78i, 78j, 78m, 78o, 78p, 78q–1, 78t, 78u–1, 78u–2, 78bb, 78dd, 78mm, 80a–2, and 80b–2 of this title, enacted provisions set out as a note under section 77b of this title, and amended provisions set out as a note under section 78c of this title. For complete classification of subtitle B to the Code, see Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

For definitions of terms used in this section, see section 5301 of Title 12, Banks and Banking.

CHAPTER 110—ONLINE SHOPPER PROTECTION

Sec.

§8401. Findings; declaration of policy

The Congress finds the following:

(1) The Internet has become an important channel of commerce in the United States, accounting for billions of dollars in retail sales every year. Over half of all American adults have now either made an online purchase or an online travel reservation.

(2) Consumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business.

(3) An investigation by the Senate Committee on Commerce, Science, and Transportation found abundant evidence that the aggressive sales tactics many companies use against their online customers have undermined consumer confidence in the Internet and thereby harmed the American economy.

(4) The Committee showed that, in exchange for "bounties" and other payments, hundreds of reputable online retailers and websites shared their customers' billing information, including credit

card and debit card numbers, with third party sellers through a process known as "data pass". These third party sellers in turn used aggressive, misleading sales tactics to charge millions of American consumers for membership clubs the consumers did not want.

(5) Third party sellers offered membership clubs to consumers as they were in the process of completing their initial transactions on hundreds of websites. These third party "post-transaction" offers were designed to make consumers think the offers were part of the initial purchase, rather than a new transaction with a new seller.

(6) Third party sellers charged millions of consumers for membership clubs without ever obtaining consumers' billing information, including their credit or debit card information, directly from the consumers. Because third party sellers acquired consumers' billing information from the initial merchant through "data pass", millions of consumers were unaware they had been enrolled in membership clubs.

(7) The use of a "data pass" process defied consumers' expectations that they could only be charged for a good or a service if they submitted their billing information, including their complete credit or debit card numbers.

(8) Third party sellers used a free trial period to enroll members, after which they periodically charged consumers until consumers affirmatively canceled the memberships. This use of "free-to-pay conversion" and "negative option" sales took advantage of consumers' expectations that they would have an opportunity to accept or reject the membership club offer at the end of the trial period.

(Pub. L. 111–345, §2, Dec. 29, 2010, 124 Stat. 3618.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 111–345, §1, Dec. 29, 2010, 124 Stat. 3618, provided that: "This Act [enacting this chapter] may be cited as the 'Restore Online Shoppers' Confidence Act'."

§8402. Prohibitions against certain unfair and deceptive Internet sales practices

(a) Requirements for certain Internet-based sales

It shall be unlawful for any post-transaction third party seller to charge or attempt to charge any consumer's credit card, debit card, bank account, or other financial account for any good or service sold in a transaction effected on the Internet, unless—

(1) before obtaining the consumer's billing information, the post-transaction third party seller has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including—

(A) a description of the goods or services being offered;

(B) the fact that the post-transaction third party seller is not affiliated with the initial merchant, which may include disclosure of the name of the post-transaction third party in a manner that clearly differentiates the post-transaction third party seller from the initial merchant; and

(C) the cost of such goods or services; and

(2) the post-transaction third party seller has received the express informed consent for the charge from the consumer whose credit card, debit card, bank account, or other financial account will be charged by—

(A) obtaining from the consumer—

(i) the full account number of the account to be charged; and

(ii) the consumer's name and address and a means to contact the consumer; and

(B) requiring the consumer to perform an additional affirmative action, such as clicking on a

confirmation button or checking a box that indicates the consumer's consent to be charged the amount disclosed.

(b) Prohibition on data-pass used to facilitate certain deceptive Internet sales transactions

It shall be unlawful for an initial merchant to disclose a credit card, debit card, bank account, or other financial account number, or to disclose other billing information that is used to charge a customer of the initial merchant, to any post-transaction third party seller for use in an Internet-based sale of any goods or services from that post-transaction third party seller.

(c) Application with other law

Nothing in this chapter shall be construed to supersede, modify, or otherwise affect the requirements of the Electronic Funds [1] Transfer Act (15 U.S.C. 1693 et seq.) or any regulation promulgated thereunder.

(d) Definitions

In this section:

(1) Initial merchant

The term "initial merchant" means a person that has obtained a consumer's billing information directly from the consumer through an Internet transaction initiated by the consumer.

(2) Post-transaction third party seller

The term "post-transaction third party seller" means a person that—

(A) sells, or offers for sale, any good or service on the Internet;

(B) solicits the purchase of such goods or services on the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant; and

(C) is not—

(i) the initial merchant;

(ii) a subsidiary or corporate affiliate of the initial merchant; or

(iii) a successor of an entity described in clause (i) or (ii).

(Pub. L. 111–345, §3, Dec. 29, 2010, 124 Stat. 3619.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Electronic Fund Transfer Act, referred to in subsec. (c), is title IX of Pub. L. 90–321, as added by Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728, which is classified generally to subchapter VI (§1693 et seq.) of chapter 41 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

[1] So in original. Probably should be "Fund".

§8403. Negative option marketing on the Internet

It shall be unlawful for any person to charge or attempt to charge any consumer for any goods or services sold in a transaction effected on the Internet through a negative option feature (as defined in the Federal Trade Commission's Telemarketing Sales Rule in part 310 of title 16, Code of Federal Regulations), unless the person—

(1) provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information;

(2) obtains a consumer's express informed consent before charging the consumer's credit card, debit card, bank account, or other financial account for products or services through such transaction; and

(3) provides simple mechanisms for a consumer to stop recurring charges from being placed on

the consumer's credit card, debit card, bank account, or other financial account.

(Pub. L. 111–345, §4, Dec. 29, 2010, 124 Stat. 3620.)

§8404. Enforcement by Federal Trade Commission

(a) In general

Violation of this chapter or any regulation prescribed under this chapter shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. The Federal Trade Commission shall enforce this chapter in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this chapter.

(b) Penalties

Any person who violates this chapter or any regulation prescribed under this chapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated in and made part of this chapter.

(c) Authority preserved

Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(Pub. L. 111–345, §5, Dec. 29, 2010, 124 Stat. 3620.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

§8405. Enforcement by State attorneys general

(a) Right of action

Except as provided in subsection (e), the attorney general of a State, or other authorized State officer, alleging a violation of this chapter or any regulation issued under this chapter that affects or may affect such State or its residents may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found, resides, or transacts business, or wherever venue is proper under section 1391 of title 28, to obtain appropriate injunctive relief.

(b) Notice to Commission required

A State shall provide prior written notice to the Federal Trade Commission of any civil action under subsection (a) together with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such action.

(c) Intervention by the Commission

The Commission may intervene in such civil action and upon intervening—

(1) be heard on all matters arising in such civil action; and

(2) file petitions for appeal of a decision in such civil action.

(d) Construction

Nothing in this section shall be construed—

(1) to prevent the attorney general of a State, or other authorized State officer, from exercising the powers conferred on the attorney general, or other authorized State officer, by the laws of such State; or

(2) to prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

(e) Limitation

No separate suit shall be brought under this section if, at the time the suit is brought, the same alleged violation is the subject of a pending action by the Federal Trade Commission or the United States under this chapter.

(Pub. L. 111–345, §6, Dec. 29, 2010, 124 Stat. 3621.)

CHAPTER 111—WEATHER RESEARCH AND FORECASTING INNOVATION

Sec.

§8501. Definitions

In this chapter:

(1) Seasonal

The term "seasonal" means the time range between 3 months and 2 years.

(2) State

The term "State" means a State, a territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(3) Subseasonal

The term "subseasonal" means the time range between 2 weeks and 3 months.

(4) Under Secretary

The term "Under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere.

(5) Weather industry and weather enterprise

The terms "weather industry" and "weather enterprise" are interchangeable in this chapter, and include individuals and organizations from public, private, and academic sectors that contribute to the research, development, and production of weather forecast products, and primary consumers of these weather forecast products.

(Pub. L. 115–25, §2, Apr. 18, 2017, 131 Stat. 92.)

EDITORIAL NOTES

REFERENCES IN TEXT

This chapter, referred to in text, is Pub. L. 115–25, April 18, 2017, 131 Stat. 91, known as the Weather Research and Forecasting Innovation Act of 2017, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117–229, div. D, §1, Dec. 16, 2022, 136 Stat. 2313, provided that: "This Act [enacting subchapter IV of this chapter] may be cited as the 'Providing Research and Estimates of Changes In Precipitation Act' or the 'PRECIP Act'."

SHORT TITLE OF 2019 AMENDMENT

Pub. L. 115–423, §1, Jan. 7, 2019, 132 Stat. 5454, provided that: "This Act [enacting section 8550 of this title and section 4010 of Title 33, Navigation and Navigable Waters, amending sections 313d, 8512, 8518 to 8521, 8531, and 8532 of this title and sections 4001 to 4002 and 4009 of Title 33, enacting provisions set out as a note under section 4001 of Title 33, and amending provisions set out as a note under section 313d of this title] may be cited as the 'National Integrated Drought Information System Reauthorization Act of 2018'."

SHORT TITLE

Pub. L. 115–25, §1(a), Apr. 18, 2017, 131 Stat. 91, provided that: "This Act [enacting this chapter and sections 3206a and 3208 of Title 33, Navigation and Navigable Waters, amending sections 3201 to 3207 of Title 33, and enacting and repealing provisions set out as notes under section 3201 of Title 33] may be cited as the 'Weather Research and Forecasting Innovation Act of 2017'."

SUBCHAPTER I—UNITED STATES WEATHER RESEARCH AND FORECASTING IMPROVEMENT

§8511. Public safety priority

In conducting research, the Under Secretary shall prioritize improving weather data, modeling, computing, forecasting, and warnings for the protection of life and property and for the enhancement of the national economy.

(Pub. L. 115–25, title I, §101, Apr. 18, 2017, 131 Stat. 92.)

§8512. Weather research and forecasting innovation

(a) Program

The Assistant Administrator for the Office of Oceanic and Atmospheric Research shall conduct a program to develop improved understanding of and forecast capabilities for atmospheric events and their impacts, placing priority on developing more accurate, timely, and effective warnings and forecasts of high impact weather events that endanger life and property.

(b) Program elements

The program described in subsection (a) shall focus on the following activities:

(1) Improving the fundamental understanding of weather consistent with section 8511 of this title, including the boundary layer and other processes affecting high impact weather events.

(2) Improving the understanding of how the public receives, interprets, and responds to warnings and forecasts of high impact weather events that endanger life and property.

(3) Research and development, and transfer of knowledge, technologies, and applications to the National Weather Service and other appropriate agencies and entities, including the United States weather industry and academic partners, related to—

(A) advanced radar, radar networking technologies, and other ground-based technologies, including those emphasizing rapid, fine-scale sensing of the boundary layer and lower troposphere, and the use of innovative, dual-polarization, phased-array technologies;

(B) aerial weather observing systems;

(C) high performance computing and information technology and wireless communication networks;

(D) advanced numerical weather prediction systems and forecasting tools and techniques that improve the forecasting of timing, track, intensity, and severity of high impact weather, including through—

(i) the development of more effective mesoscale models;

(ii) more effective use of existing, and the development of new, regional and national cloud-resolving models;

(iii) enhanced global weather models; and

(iv) integrated assessment models;

(E) quantitative assessment tools for measuring the impact and value of data and observing systems, including Observing System Simulation Experiments (as described in section 8517 of this title), Observing System Experiments, and Analyses of Alternatives;

(F) atmospheric chemistry and interactions essential to accurately characterizing atmospheric composition and predicting meteorological processes, including cloud microphysical, precipitation, and atmospheric electrification processes, to more effectively understand their role in severe weather; and

(G) additional sources of weather data and information, including commercial observing systems.

(4) A technology transfer initiative, carried out jointly and in coordination with the Director of the National Weather Service, and in cooperation with the United States weather industry and academic partners, to ensure continuous development and transition of the latest scientific and technological advances into operations of the National Weather Service and to establish a process to sunset outdated and expensive operational methods and tools to enable cost-effective transfer of new methods and tools into operations.

(5) Advancing weather modeling skill, reclaiming and maintaining international leadership in the area of numerical weather prediction, and improving the transition of research into operations by—

(A) leveraging the weather enterprise to provide expertise on removing barriers to improving numerical weather prediction;

(B) enabling scientists and engineers to effectively collaborate in areas important for improving operational global numerical weather prediction skill, including model development, data assimilation techniques, systems architecture integration, and computational efficiencies;

(C) strengthening the National Oceanic and Atmospheric Administration's ability to undertake research projects in pursuit of substantial advancements in weather forecast skill;

(D) utilizing and leverage existing resources across the National Oceanic and Atmospheric Administration enterprise; and

(E) creating a community global weather research modeling system that—

(i) is accessible by the public;

(ii) meets basic end-user requirements for running on public computers and networks located outside of secure National Oceanic and Atmospheric Administration information and technology systems; and

(iii) utilizes, whenever appropriate and cost-effective, innovative strategies and methods, including cloud-based computing capabilities, for hosting and management of part or all of the system described in this subsection.

(c) Extramural research

(1) In general

In carrying out the program under this section, the Assistant Administrator for Oceanic and Atmospheric Research shall collaborate with and support the non-Federal weather research community, which includes institutions of higher education, private entities, and nongovernmental organizations, by making funds available through competitive grants, contracts, and cooperative agreements.

(2) Sense of Congress

It is the sense of Congress that not less than 30 percent of the funds for weather research and development at the Office of Oceanic and Atmospheric Research should be made available for the purpose described in paragraph (1).

(d) Annual report

Each year, concurrent with the annual budget request submitted by the President to Congress under section 1105 of title 31 for the National Oceanic and Atmospheric Administration, the Under Secretary shall submit to Congress a description of current and planned activities under this section.

(Pub. L. 115–25, title I, §102, Apr. 18, 2017, 131 Stat. 92; Pub. L. 115–423, §4(a), Jan. 7, 2019, 132 Stat. 5456; Pub. L. 117–263, div. J, title CVI, §10601(c)(8), Dec. 23, 2022, 136 Stat. 3997.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (b)(4), (5). Pub. L. 117–263 redesignated par. (4) relating to advancing weather modeling skill as (5).

2019—Subsec. (b)(4). Pub. L. 115–423 added par. (4) relating to advancing weather modeling skill.

§8512a. Learning excellence and good examples from new developers

(a) Definitions

In this section:

(1) Administration

The term "Administration" means the National Oceanic and Atmospheric Administration.

(2) Administrator

The term "Administrator" means the Under Secretary of Commerce for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration.

(3) Earth Prediction Innovation Center

The term "Earth Prediction Innovation Center" means the community global weather research modeling system described in paragraph (5)(E) of section 8512(b) of this title.

(4) Model

The term "model" means any vetted numerical model and associated data assimilation of the Earth's system or its components—

(A) developed, in whole or in part, by scientists and engineers employed by the Administration; or

(B) otherwise developed, in whole or in part, using Federal funds.

(5) Open license

The term "open license" has the same meaning given such term in section 3502(21) of title 44.

(6) Operational model

The term "operational model" means any model that has an output used by the Administration for operational functions.

(7) Suitable model

The term "suitable model" means a model that meets the requirements described in paragraph (5)(E)(ii) of section 8512(b) of this title, as determined by the Administrator.

(b) Purposes

The purposes of this section are—

(1) to support innovation in modeling by allowing interested stakeholders to have easy and complete access to operational model codes and to other models, as the Administrator determines appropriate; and

(2) to use vetted innovations arising from access described in paragraph (1) to improve modeling by the Administration.

(c) Plan and implementation of plan to make certain models and data available to the public

(1) In general

The Administrator shall develop and implement a plan to make available to the public, at no cost and with no restrictions on copying, publishing, distributing, citing, adapting, or otherwise using under an open license, the following:

(A) Operational models developed by the Administration.

(B) Models that are not operational models, including experimental and developmental models, as the Administrator determines appropriate.

(C) Applicable information and documentation for models described in subparagraphs (A) and (B), including a description of intended model outputs.

(D) Subject to subsection (f), all data owned by the Federal Government and data that the Administrator has the legal right to redistribute that are associated with models made available to the public pursuant to the plan and used in operational forecasting by the Administration,

including—

(i) relevant metadata; and

(ii) data used for operational models used by the Administration as of December 23, 2022.

(2) Accommodations

In developing and implementing the plan under paragraph (1), the Administrator may make such accommodations as the Administrator considers appropriate to ensure that the public release of any model, information, documentation, or data pursuant to the plan do [1] not jeopardize—

(A) national security;

(B) intellectual property or redistribution rights, including under titles 17 and 35;

(C) any trade secret or commercial or financial information subject to section 552(b)(4) of title 5;

(D) any models or data that are otherwise restricted by contract or other written agreement; or

(E) the mission of the Administration to protect lives and property.

(3) Priority

In developing and implementing the plan under paragraph (1), the Administrator shall prioritize making available to the public the models described in paragraph (1)(A).

(4) Protections for privacy and statistical information

In developing and implementing the plan under subsection (a), the Administrator shall ensure that all requirements incorporated into any models described in paragraph (1)(A) ensure compliance with statistical laws and other relevant data protection requirements, including the protection of any personally identifiable information.

(5) Exclusion of certain models

In developing and implementing the plan under paragraph (1), the Administrator may exclude models that the Administrator determines will be retired or superseded in fewer than 5 years after December 23, 2022.

(6) Platforms

In carrying out paragraphs (1) and (2), the Administrator may use government servers, contracts or agreements with a private vendor, or any other platform consistent with the purpose of this title. [2]

(7) Support program

The Administrator shall plan for and establish a program to support infrastructure, including telecommunications and technology infrastructure of the Administration and the platforms described in paragraph (6), relevant to making operational models and data available to the public pursuant to the plan under subsection (a).

(8) Omitted

(d) Requirement to review models and leverage innovations

The Administrator shall—

(1) consistent with the mission of the Earth Prediction Innovation Center, periodically review innovations and improvements made by persons not employed by the Administration as Federal employees to the operational models made available to the public pursuant to the plan under subsection (c)(1) in order to improve the accuracy and timeliness of forecasts of the Administration; and

(2) if the Administrator identifies an innovation for a suitable model, develop and implement a plan to use the innovation to improve the model.

(e) Report on implementation

(1) In general

Not later than 2 years after December 23, 2022, the Administrator shall submit to the

appropriate congressional committees a report on the implementation of this section that includes a description of—

(A) the implementation of the plan required by subsection (c);

(B) the process of the Administration under subsection (d)—

(i) for engaging with interested stakeholders to learn what innovations those stakeholders have found;

(ii) for reviewing those innovations; and

(iii) for operationalizing innovations to improve suitable models; and

(C) the use of any Federal financial assistance, including under section 3719 of this title [2] or the Crowdsourcing and Citizen Science Act (15 U.S.C. 3724), in order to facilitate and incentivize the sharing of externally developed improvements for testing, evaluation, validation, and application to further improve the mission of the Administration, and any other Administration priorities.

(2) Appropriate congressional committees defined

In this subsection, the term "appropriate congressional committees" means—

(A) the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate; and

(B) the Committee on Science, Space, and Technology and the Committee on Appropriations of the House of Representatives.

(f) Protection of national security interests

(1) In general

Notwithstanding any other provision of this section, for models developed in whole or in part with the Department of Defense, the Administrator, in consultation with the Secretary of Defense, as appropriate, shall withhold any model or data if the Administrator or the Secretary of Defense determines doing so to be necessary to protect the national security interests of the United States.

(2) Rule of construction

Nothing in this section shall be construed to supersede any other provision of law governing the protection of the national security interests of the United States.

(g) Authorization of appropriations

There is authorized to be appropriated to carry out this section $2,000,000 for each of fiscal years 2023 through 2027.

(Pub. L. 117–263, div. J, title CVI, §10601, Dec. 23, 2022, 136 Stat. 3995.)

EDITORIAL NOTES

REFERENCES IN TEXT

This title, referred to in subsec. (c)(6), means title CVI of div. J of Pub. L. 117–263, which enacted this section and amended section 8512 of this title.

Section 3719 of this title, referred to in subsec. (e)(1)(C), was in the original "section 24 of the Stevenson-Wydler Technology Innovation Act of 1990" and was translated as reading "section 24 of the Stevenson-Wydler Technology Innovation Act of 1980", to reflect the probable intent of Congress.

The Crowdsourcing and Citizen Science Act, referred to in subsec. (e)(1)(C), is section 402 of title IV of Pub. L. 114–329, Jan. 6, 2017, 130 Stat. 3019, which is classified to section 3724 of this title.

CODIFICATION

Section was enacted as part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, and not as part of the Weather Research and Forecasting Innovation Act of 2017 which comprises this chapter.

Section is comprised of section 10601 of div. J of Pub. L. 117–263. Subsec. (c)(8) of section 10601 of div. J of Pub. L. 117–263 amended section 8512 of this title.

[1] *So in original. Probably should be "does".*

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

§8513. Tornado warning improvement and extension program

(a) In general

The Under Secretary, in collaboration with the United States weather industry and academic partners, shall establish a tornado warning improvement and extension program.

(b) Goal

The goal of such program shall be to reduce the loss of life and economic losses from tornadoes through the development and extension of accurate, effective, and timely tornado forecasts, predictions, and warnings, including the prediction of tornadoes beyond 1 hour in advance.

(c) Innovative observations

The Under Secretary shall ensure that the program periodically examines the value of incorporating innovative observations, such as acoustic or infrasonic measurements, observations from phased array radars, and observations from mesonets, with respect to the improvement of tornado forecasts, predictions, and warnings.

(d) Program plan

Not later than 180 days after April 18, 2017, the Assistant Administrator for Oceanic and Atmospheric Research, in coordination with the Director of the National Weather Service, shall develop a program plan that details the specific research, development, and technology transfer activities, as well as corresponding resources and timelines, necessary to achieve the program goal.

(e) Annual budget for plan submittal

Following completion of the plan, the Under Secretary, acting through the Assistant Administrator for Oceanic and Atmospheric Research and in coordination with the Director of the National Weather Service, shall, not less frequently than once each year, submit to Congress a proposed budget corresponding with the activities identified in the plan.

(Pub. L. 115–25, title I, §103, Apr. 18, 2017, 131 Stat. 94; Pub. L. 117–316, §8, Dec. 27, 2022, 136 Stat. 4412.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsecs. (c) to (e). Pub. L. 117–316 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

§8514. Hurricane forecast improvement program

(a) In general

The Under Secretary, in collaboration with the United States weather industry and such academic entities as the Administrator considers appropriate, shall maintain a project to improve hurricane forecasting.

(b) Goal

The goal of the project maintained under subsection (a) shall be to develop and extend accurate hurricane forecasts and warnings in order to reduce loss of life, injury, and damage to the economy, with a focus on—

(1) improving the prediction of rapid intensification and track of hurricanes;
(2) improving the forecast and communication of storm surges from hurricanes;
(3) incorporating risk communication research to create more effective watch and warning products; and
(4) evaluating and incorporating, as appropriate, innovative observations, including acoustic or infrasonic measurements.

(c) Project plan

Not later than 1 year after April 18, 2017, the Under Secretary, acting through the Assistant Administrator for Oceanic and Atmospheric Research and in consultation with the Director of the National Weather Service, shall develop a plan for the project maintained under subsection (a) that details the specific research, development, and technology transfer activities, as well as corresponding resources and timelines, necessary to achieve the goal set forth in subsection (b).

(Pub. L. 115–25, title I, §104, Apr. 18, 2017, 131 Stat. 94; Pub. L. 117–316, §9, Dec. 27, 2022, 136 Stat. 4412.)

EDITORIAL NOTES

AMENDMENTS

2022—Subsec. (b)(4). Pub. L. 117–316 added par. (4).

§8515. Weather research and development planning

Not later than 1 year after April 18, 2017, and not less frequently than once each year thereafter, the Under Secretary, acting through the Assistant Administrator for Oceanic and Atmospheric Research and in coordination with the Director of the National Weather Service and the Assistant Administrator for Satellite and Information Services, shall issue a research and development and research to operations plan to restore and maintain United States leadership in numerical weather prediction and forecasting that—

(1) describes the forecasting skill and technology goals, objectives, and progress of the National Oceanic and Atmospheric Administration in carrying out the program conducted under section 8512 of this title;
(2) identifies and prioritizes specific research and development activities, and performance metrics, weighted to meet the operational weather and flood-event mission of the National Weather Service to achieve a weather-ready Nation;
(3) describes how the program will collaborate with stakeholders, including the United States weather industry and academic partners; and
(4) identifies, through consultation with the National Science Foundation, the United States weather industry, and academic partners, research necessary to enhance the integration of social science knowledge into weather forecast and warning processes, including to improve the communication of threat information necessary to enable improved severe weather planning and decisionmaking on the part of individuals and communities.

(Pub. L. 115–25, title I, §105, Apr. 18, 2017, 131 Stat. 95; Pub. L. 117–316, §10, Dec. 27, 2022, 136 Stat. 4413.)

EDITORIAL NOTES

AMENDMENTS

2022—Par. (2). Pub. L. 117–316 inserted "and flood-event" after "operational weather".

§8516. Observing system planning

The Under Secretary shall—

(1) develop and maintain a prioritized list of observation data requirements necessary to ensure weather forecasting capabilities to protect life and property to the maximum extent practicable;

(2) consistent with section 8517 of this title, utilize Observing System Simulation Experiments, Observing System Experiments, Analyses of Alternatives, and other appropriate assessment tools to ensure continuous systemic evaluations of the observing systems, data, and information needed to meet the requirements of paragraph (1), including options to maximize observational capabilities and their cost-effectiveness;

(3) identify current and potential future data gaps in observing capabilities related to the requirements listed under paragraph (1); and

(4) determine a range of options to address gaps identified under paragraph (3).

(Pub. L. 115–25, title I, §106, Apr. 18, 2017, 131 Stat. 95.)

§8517. Observing System Simulation Experiments

(a) In general

In support of the requirements of section 8516 of this title, the Assistant Administrator for Oceanic and Atmospheric Research shall undertake Observing System Simulation Experiments, or such other quantitative assessments as the Assistant Administrator considers appropriate, to quantitatively assess the relative value and benefits of observing capabilities and systems. Technical and scientific Observing System Simulation Experiment evaluations—

(1) may include assessments of the impact of observing capabilities on—

(A) global weather prediction;

(B) hurricane track and intensity forecasting;

(C) tornado warning lead times and accuracy;

(D) prediction of mid-latitude severe local storm outbreaks; and

(E) prediction of storms that have the potential to cause extreme precipitation and flooding lasting from 6 hours to 1 week; and

(2) shall be conducted in cooperation with other appropriate entities within the National Oceanic and Atmospheric Administration, other Federal agencies, the United States weather industry, and academic partners to ensure the technical and scientific merit of results from Observing System Simulation Experiments or other appropriate quantitative assessment methodologies.

(b) Requirements

Observing System Simulation Experiments shall quantitatively—

(1) determine the potential impact of proposed space-based, suborbital, and in situ observing systems on analyses and forecasts, including potential impacts on extreme weather events across all parts of the Nation;

(2) evaluate and compare observing system design options; and

(3) assess the relative capabilities and costs of various observing systems and combinations of observing systems in providing data necessary to protect life and property.

(c) Implementation

Observing System Simulation Experiments—

(1) shall be conducted prior to the acquisition of major Government-owned or Government-leased operational observing systems, including polar-orbiting and geostationary satellite systems, with a lifecycle cost of more than $500,000,000; and

(2) shall be conducted prior to the purchase of any major new commercially provided data with a lifecycle cost of more than $500,000,000.

(d) Priority Observing System Simulation Experiments

(1) Global Navigation Satellite System Radio Occultation

Not later than 30 days after April 18, 2017, the Assistant Administrator for Oceanic and Atmospheric Research shall complete an Observing System Simulation Experiment to assess the value of data from Global Navigation Satellite System Radio Occultation.

(2) Geostationary hyperspectral sounder global constellation

Not later than 120 days after April 18, 2017, the Assistant Administrator for Oceanic and Atmospheric Research shall complete an Observing System Simulation Experiment to assess the value of data from a geostationary hyperspectral sounder global constellation.

(e) Results

Upon completion of all Observing System Simulation Experiments, the Assistant Administrator shall make available to the public the results an assessment [1] of related private and public sector weather data sourcing options, including their availability, affordability, and cost-effectiveness. Such assessments shall be developed in accordance with section 50503 of title 51.

(Pub. L. 115–25, title I, §107, Apr. 18, 2017, 131 Stat. 96.)

[1] *So in original.*

§8518. Computing resource efficiency improvement and annual report

(a) Computing resources

(1) In general

In acquiring computing capabilities, including high performance computing technologies and supercomputing technologies, that enable the National Oceanic and Atmospheric Administration to meet its mission requirements, the Under Secretary shall, when appropriate and cost-effective, assess and prioritize options for entering into multi-year lease agreements for computing capabilities over options for purchasing computing hardware outright.

(2) Acquisition

In carrying out the requirements of paragraph (1), the Under Secretary shall structure multi-year lease agreements in such a manner that the expiration of the lease is set for a date on or around—

(A) the expected degradation point of the computing resources; or

(B) the point at which significantly increased computing capabilities are expected to be available for lease.

(3) Pilot programs

(A) In general

In order to more efficiently and effectively meet the mission requirements of the National Oceanic and Atmospheric Administration, the Under Secretary may create 1 or more pilot programs for assessing new or innovative information and technology capabilities and services.

(B) Program requirements

Any program created under paragraph (3) shall assess only those capabilities and services that—

(i) meet or exceed the standards and requirements of the National Oceanic and Atmospheric Administration, including for processing speed, cybersecurity, and overall reliability; or

(ii) meet or exceed, or are expected to meet or exceed, the performance of similar, in-house information and technology capabilities and services that are owned and operated by the National Oceanic and Atmospheric Administration prior to the establishment of the pilot program.

(C) Authorization of appropriations

There is authorized to be appropriated, out of funds appropriated to the National Environmental Satellite, Data, and Information Service, to carry out this paragraph $5,000,000 for fiscal year 2019, $10,000,000 for fiscal year 2020, and $5,000,000 for each of fiscal years 2021 through 2023, to remain available until expended.

(b) Reports

Not later than 1 year after January 7, 2019, and triennially thereafter until the date that is 6 years after the date on which the first report is submitted, the Under Secretary, acting through the Chief Information Officer of the National Oceanic and Atmospheric Administration and in coordination with the Assistant Administrator for Oceanic and Atmospheric Research and the Director of the National Weather Service, shall produce and make publicly available a report that explains how the Under Secretary intends—

(1) to continually support upgrades to pursue the fastest, most powerful, and cost-effective high performance computing technologies in support of its weather prediction mission;

(2) to ensure a balance between the research to operations requirements to develop the next generation of regional and global models as well as highly reliable operational models;

(3) to take advantage of advanced development concepts to, as appropriate, make next generation weather prediction models available in beta-test mode to operational forecasters, the United States weather industry, and partners in academic and Government research;

(4) to use existing computing resources to improve advanced research and operational weather prediction;

(5) to utilize non-Federal contracts to obtain the necessary expertise for advanced weather computing, if appropriate;

(6) to utilize cloud computing; and

(7) to create a long-term strategy to transition the programming language of weather model code to current and broadly-used coding language.

(Pub. L. 115–25, title I, §108, Apr. 18, 2017, 131 Stat. 97; Pub. L. 115–423, §5(a), Jan. 7, 2019, 132 Stat. 5457.)

EDITORIAL NOTES

AMENDMENTS

2019—Pub. L. 115–423 amended section generally. Prior to amendment, section related to annual report on computing resources prioritization.

§8519. Authorization of appropriations

(a) In general

There are authorized to be appropriated to the Office of Oceanic and Atmospheric Research to carry out this subchapter—

(1) $136,516,000 for fiscal year 2019, of which—

(A) $85,758,000 is authorized for weather laboratories and cooperative institutes;

(B) $30,758,000 is authorized for weather and air chemistry research programs; and

(C) $20,000,000 is authorized for the joint technology transfer initiative described in section 8512(b)(4) of this title;

(2) $148,154,000 for fiscal year 2020, of which—

(A) $87,258,000 is authorized for weather laboratories and cooperative institutes;

(B) $40,896,000 is authorized for weather and air chemistry research programs; and

(C) $20,000,000 is authorized for the joint technology transfer initiative described in section 8512(b)(4) of this title;

(3) $150,154,000 for fiscal year 2021, of which—
(A) $88,758,000 is authorized for weather laboratories and cooperative institutes;
(B) $41,396,000 is authorized for weather and air chemistry research programs; and
(C) $20,000,000 is authorized for the joint technology transfer initiative described in section 8512(b)(4) of this title;

(4) $152,154,000 for fiscal year 2022, of which—
(A) $90,258,000 is authorized for weather laboratories and cooperative institutes;
(B) $41,896,000 is authorized for weather and air chemistry research programs; and
(C) $20,000,000 is authorized for the joint technology transfer initiative described in section 8512(b)(4) of this title; and

(5) $154,154,000 for fiscal year 2023, of which—
(A) $91,758,000 is authorized for weather laboratories and cooperative institutes;
(B) $42,396,000 is authorized for weather and air chemistry research programs; and
(C) $20,000,000 is authorized for the joint technology transfer initiative described in section 8512(b)(4) of this title.

(b) Limitation

No additional funds are authorized to carry out this subchapter and the amendments made by this title.[1]

(Pub. L. 115–25, title I, §110, Apr. 18, 2017, 131 Stat. 98; Pub. L. 115–423, §3(b), Jan. 7, 2019, 132 Stat. 5455.)

EDITORIAL NOTES

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original "this title", meaning title I of Pub. L. 115–25, which enacted this subchapter and amended provisions formerly set out as a note under section 313 of this title, which is now classified to section 8520 of this title. For complete classification of title I to the Code, see Tables.

The amendments made by this title, referred to in subsec. (b), mean the amendments made by title I of Pub. L. 115–25, which amended provisions formerly set out as a note under section 313 of this title and which is now classified to section 8520 of this title.

AMENDMENTS

2019—Pub. L. 115–423 amended section generally. Prior to amendment, section related to authorization of appropriations for fiscal years 2017 and 2018.

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

§8520. United States Weather Research Program

(a) Establishment

The Secretary of Commerce, in cooperation with the Federal Coordinating Council for Science, Engineering, and Technology through the Committee on Earth and Environmental Sciences, shall establish a United States Weather Research Program to—

(1) increase benefits to the Nation from the substantial investment in modernizing the public weather warning and forecast system in the United States;
(2) improve local and regional weather forecasts and warnings;
(3) address critical weather-related scientific issues;
(4) coordinate governmental, university, and private-sector efforts;

(5) submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives, not less frequently than once each year, a report, including—

(A) a list of ongoing research projects;

(B) project goals and a point of contact for each project;

(C) the five projects related to weather observations, short-term weather, or subseasonal forecasts within Office of Oceanic and Atmospheric Research that are closest to operationalization;

(D) for each project referred to in subparagraph (C)—

(i) the potential benefit;

(ii) any barrier to operationalization; and

(iii) the plan for operationalization, including which line office will financially support the project and how much the line office intends to spend;

(6) establish teams with staff from the Office of Oceanic and Atmospheric Research and the National Weather Service to oversee the operationalization of research products developed by the Office of Oceanic and Atmospheric Research;

(7) develop mechanisms for research priorities of the Office of Oceanic and Atmospheric Research to be informed by the relevant line offices within the National Oceanic and Atmospheric Administration, the relevant user community, and the weather enterprise;

(8) develop an internal mechanism to track the progress of each research project within the Office of Oceanic and Atmospheric Research and mechanisms to terminate a project that is not adequately progressing;

(9) develop and implement a system to track whether extramural research grant goals were accomplished;

(10) provide facilities for products developed by the Office of Oceanic and Atmospheric Research to be tested in operational simulations, such as test beds;

(11) encourage academic collaboration with the Office of Oceanic and Atmospheric Research and the National Weather Service by facilitating visiting scholars; and

(12) carry out the activities of the Earth Prediction Innovation Center as described in section 8512(b)(2) of this title.

(b) Implementation plan

The Secretary of Commerce, in cooperation with the Committee on Earth and Environmental Sciences, shall prepare and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a plan for implementation of the United States Weather Research Program which shall—

(1) establish, for the 10-year period beginning in the year the plan is submitted, the goals and priorities for Federal weather research which most effectively advance the scientific understanding of weather processes and provide information to improve weather warning and forecast systems in the United States;

(2) describe specific activities, including research activities, data collection and data analysis requirements, predictive modeling, participation in international research efforts, demonstration of potential operational forecast applications, and education and training required to achieve such goals and priorities; and

(3) set forth the role of each Federal agency and department to be involved in the United States Weather Research Program, identifying and addressing, as appropriate, relevant programs and activities of the Federal agencies and departments that would contribute to such Program.

(c) Subseasonal defined

In this section, the term "subseasonal" means the time range between 2 weeks and 3 months.

(Pub. L. 102–567, title I, §108, Oct. 29, 1992, 106 Stat. 4276; Pub. L. 115–25, title I, §109, Apr. 18, 2017, 131 Stat. 97; Pub. L. 115–423, §4(b), Jan. 7, 2019, 132 Stat. 5457.)

EDITORIAL NOTES

CODIFICATION

Pub. L. 115–25, which directed amendment of section 108 of the "Oceanic and Atmospheric Administration Authorization Act of 1992", was executed to this section, which is section 108 of the National Oceanic and Atmospheric Administration Authorization Act of 1992, to reflect the probable intent of Congress.

Section was formerly set out as a note under section 313 of this title.

Section was enacted as part of the National Oceanic and Atmospheric Administration Authorization Act of 1992, and not as part of the Weather Research and Forecasting Innovation Act of 2017 which comprises this chapter.

AMENDMENTS

2019—Subsec. (a)(12). Pub. L. 115–423 added par. (12).

2017—Subsec. (a)(5) to (11). Pub. L. 115–25, §109(1), added pars. (5) to (11). See Codification note above.

Subsec. (b). Pub. L. 115–25, §109(2), substituted "The" for "Not later than 90 days after October 29, 1992, the" in introductory provisions. See Codification note above.

Subsec. (c). Pub. L. 115–25, §109(3), added subsec. (c). See Codification note above.

§8521. Weather and climate information in agriculture

(a) Findings

Congress finds that—

(1) agricultural and silvicultural operations are vulnerable to damage from atmospheric conditions that accurate and timely reporting of weather information can help prevent;

(2) the maintenance of current weather and climate analysis and information dissemination systems, and Federal, State, and private efforts to improve these systems, is essential if agriculture and silviculture are to mitigate damage from atmospheric conditions;

(3) agricultural and silvicultural weather services at the Federal level should be maintained with joint planning between the National Oceanic and Atmospheric Administration and the Department of Agriculture; and

(4) efforts should be made, involving user groups, weather and climate information providers, and Federal and State governments, to expand the use of weather and climate information in agriculture and silviculture.

(b) Policy

It, therefore, is declared to be the policy of Congress that it is in the public interest to maintain an active Federal involvement in providing agricultural and silvicultural weather and climate information and that efforts should be made, among users of this information and among private providers of this information, to improve use of this information.

(c) Functions

The Under Secretary, acting through the Director of the National Weather Service and the heads of such other programs of the National Oceanic and Atmospheric Administration as the Under Secretary considers appropriate, shall—

(1) collect and utilize information in order to make usable, reliable, and timely foundational forecasts of subseasonal and seasonal temperature and precipitation;

(2) leverage existing research and models from the weather enterprise to improve the forecasts under paragraph (1);

(3) determine and provide information on how the forecasted conditions under paragraph (1) may impact—

(A) the number and severity of droughts, fires, tornadoes, hurricanes, floods, heat waves, coastal inundation, winter storms, high impact weather, or other relevant natural disasters;

(B) snowpack; and

(C) sea ice conditions; and

(4) develop an Internet clearinghouse to provide the forecasts under paragraph (1) and the information under paragraphs (1) and (3) on both national and regional levels.

(d) Communication

The Director of the National Weather Service shall provide the forecasts under paragraph (1) of subsection (c) and the information on their impacts under paragraph (3) of such subsection to the public, including public and private entities engaged in planning and preparedness, such as National Weather Service Core partners at the Federal, regional, State, tribal, and local levels of government.

(e) Cooperation

The Under Secretary shall build upon existing forecasting and assessment programs and partnerships, including—

(1) by designating research and monitoring activities related to subseasonal and seasonal forecasts as a priority in one or more solicitations of the Cooperative Institutes of the Office of Oceanic and Atmospheric Research;

(2) by contributing to the interagency Earth System Prediction Capability; and

(3) by consulting with the Secretary of Defense and the Secretary of Homeland Security to determine the highest priority subseasonal and seasonal forecast needs to enhance national security.

(f) Forecast communication coordinators

(1) In general

The Under Secretary shall foster effective communication, understanding, and use of the forecasts by the intended users of the information described in subsection (d). This shall include assistance to States for forecast communication coordinators to enable local interpretation and planning based on the information.

(2) Requirements

For each State that requests assistance under this subsection, the Under Secretary may—

(A) provide funds to support an individual in that State—

(i) to serve as a liaison among the National Oceanic and Atmospheric Administration, other Federal departments and agencies, the weather enterprise, the State, and relevant interests within that State; and

(ii) to receive the forecasts and information under subsection (c) and disseminate the forecasts and information throughout the State, including to county and tribal governments; and

(B) require matching funds of at least 50 percent, from the State, a university, a nongovernmental organization, a trade association, or the private sector.

(3) Limitation

Assistance to an individual State under this subsection shall not exceed $100,000 in a fiscal year.

(g) Cooperation from other Federal agencies

Each Federal department and agency shall cooperate as appropriate with the Under Secretary in carrying out this section.

(h) Reports

(1) In general

Not later than 18 months after April 18, 2017, the Under Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report, including—

(A) an analysis of the [1] how information from the National Oceanic and Atmospheric

Administration on subseasonal and seasonal forecasts, as provided under subsection (c), is utilized in public planning and preparedness;

(B) specific plans and goals for the continued development of the subseasonal and seasonal forecasts and related products described in subsection (c); and

(C) an identification of research, monitoring, observing, and forecasting requirements to meet the goals described in subparagraph (B).

(2) Consultation

In developing the report under paragraph (1), the Under Secretary shall consult with relevant Federal, regional, State, tribal, and local government agencies, research institutions, and the private sector.

(i) Definitions

In this section:

(1) Foundational forecast

The term "foundational forecast" means basic weather observation and forecast data, largely in raw form, before further processing is applied.

(2) National Weather Service core partners

The term "National Weather Service core partners" means government and nongovernment entities which are directly involved in the preparation or dissemination of, or discussions involving, hazardous weather or other emergency information put out by the National Weather Service.

(3) Seasonal

The term "seasonal" means the time range between 3 months and 2 years.

(4) State

The term "State" means a State, a territory, or possession of the United States, including a Commonwealth, or the District of Columbia.

(5) Subseasonal

The term "subseasonal" means the time range between 2 weeks and 3 months.

(6) Under Secretary

The term "Under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere.

(7) Weather industry and weather enterprise

The terms "weather industry" and "weather enterprise" are interchangeable in this section and include individuals and organizations from public, private, and academic sectors that contribute to the research, development, and production of weather forecast products, and primary consumers of these weather forecast products.

(j) Authorization of appropriations

There are authorized to be appropriated to carry out the activities under this section—

(1) $26,500,000 for fiscal year 2019;
(2) $27,000,000 for fiscal year 2020;
(3) $27,500,000 for fiscal year 2021;
(4) $28,000,000 for fiscal year 2022; and
(5) $28,500,000 for fiscal year 2023.

(k) Derivation of funds

Amounts made available to carry out this section shall be derived from amounts appropriated or otherwise made available to the National Weather Service.

(Pub. L. 99–198, title XVII, §1762, Dec. 23, 1985, 99 Stat. 1651; Pub. L. 115–25, title II, §201, Apr.

18, 2017, 131 Stat. 98; Pub. L. 115–423, §3(a), Jan. 7, 2019, 132 Stat. 5455; Pub. L. 117–316, §11, Dec. 27, 2022, 136 Stat. 4413.)

EDITORIAL NOTES

CODIFICATION

Section was formerly set out as a note under section 313 of this title.

Section was enacted as part of the Food Security Act of 1985, and not as part of the Weather Research and Forecasting Innovation Act of 2017 which comprises this chapter.

AMENDMENTS

2022—Subsec. (f)(1). Pub. L. 117–316 substituted "shall include" for "may include".

2019—Subsec. (j). Pub. L. 115–423, §3(a)(1), amended subsec. (j) generally. Prior to amendment, text read as follows: "For each of fiscal years 2017 and 2018, there are authorized out of funds appropriated to the National Weather Service, $26,500,000 to carry out the activities of this section."

Subsec. (k). Pub. L. 115–423, §3(a)(2), added subsec. (k).

2017—Subsecs. (a), (b). Pub. L. 115–25, §201(1), (2), inserted headings.

Subsecs. (c) to (j). Pub. L. 115–25, §201(3), added subsecs. (c) to (j).

[1] *So in original. The word "the" probably should not appear.*

SUBCHAPTER II—WEATHER SATELLITE AND DATA INNOVATION

§8531. National Oceanic and Atmospheric Administration satellite and data management

(a) Short-term management of environmental observations

(1) Microsatellite constellations

(A) In general

The Under Secretary shall complete and operationalize the Constellation Observing System for Meteorology, Ionosphere, and Climate–1 and Climate–2 (COSMIC) in effect on the day before April 18, 2017—

(i) by deploying constellations of microsatellites in both the equatorial and polar orbits;

(ii) by integrating the resulting data and research into all national operational and research weather forecast models; and

(iii) by ensuring that the resulting data of National Oceanic and Atmospheric Administration's COSMIC–1 and COSMIC–2 programs are free and open to all communities.

(B) Annual reports

Not less frequently than once each year until the Under Secretary has completed and operationalized the program described in subparagraph (A) pursuant to such subparagraph, the Under Secretary shall submit to Congress a report on the status of the efforts of the Under Secretary to carry out such subparagraph.

(2) Integration of ocean and coastal data from the Integrated Ocean Observing System

In National Weather Service Regions where the Director of the National Weather Service determines that ocean and coastal data would improve forecasts, the Director, in consultation with the Assistant Administrator for Oceanic and Atmospheric Research and the Assistant Administrator of the National Ocean Service, shall—

(A) integrate additional coastal and ocean observations, and other data and research, from the

Integrated Ocean Observing System (IOOS) into regional weather forecasts to improve weather forecasts and forecasting decision support systems;

(B) support the development of real-time data sharing products and forecast products in collaboration with the regional associations of such system, including contributions from the private sector, academia, and research institutions to ensure timely and accurate use of ocean and coastal data in regional forecasts; and

(C) support increasing use of autonomous, mobile surface, sub-surface, and submarine vehicle ocean and fresh water sensor systems and the infrastructure necessary to share and analyze these data in real-time and feed them into predictive early warning systems.

(3) Existing monitoring and observation-capability

The Under Secretary shall identify degradation of existing monitoring and observation capabilities that could lead to a reduction in forecast quality.

(4) Specifications for new satellite systems or data determined by operational needs

In developing specifications for any satellite systems or data to follow the Joint Polar Satellite System, Geostationary Operational Environmental Satellites, and any other satellites, in effect on the day before April 18, 2017, the Under Secretary shall ensure the specifications are determined to the extent practicable by the recommendations of the reports under subsection (b) of this section.

(b) Independent Study on Future of National Oceanic and Atmospheric Administration satellite systems and data

(1) Agreement

(A) In general

The Under Secretary shall seek to enter into an agreement with the National Academy of Sciences to perform the services covered by this subsection.

(B) Timing

The Under Secretary shall seek to enter into the agreement described in subparagraph (A) before September 30, 2018.

(2) Study

(A) In general

Under an agreement between the Under Secretary and the National Academy of Sciences under this subsection, the National Academy of Sciences shall conduct a study on matters concerning future satellite data needs.

(B) Elements

In conducting the study under subparagraph (A), the National Academy of Sciences shall—

(i) develop recommendations on how to make the data portfolio of the Administration more robust and cost-effective;

(ii) assess the costs and benefits of moving toward a constellation of many small satellites, standardizing satellite bus design, relying more on the purchasing of data, or acquiring data from other sources or methods;

(iii) identify the environmental observations that are essential to the performance of weather models, based on an assessment of Federal, academic, and private sector weather research, and the cost of obtaining the environmental data;

(iv) identify environmental observations that improve the quality of operational and research weather models in effect on the day before April 18, 2017;

(v) identify and prioritize new environmental observations that could contribute to existing and future weather models; and

(vi) develop recommendations on a portfolio of environmental observations that balances essential, quality-improving, and new data, private and nonprivate sources, and space-based

and Earth-based sources.

(C) Deadline and report

In carrying out the study under subparagraph (A), the National Academy of Sciences shall complete and transmit to the Under Secretary a report containing the findings of the National Academy of Sciences with respect to the study not later than 2 years after the date on which the Administrator enters into an agreement with the National Academy of Sciences under paragraph (1)(A).

(3) Alternate organization

(A) In general

If the Under Secretary is unable within the period prescribed in subparagraph (B) of paragraph (1) to enter into an agreement described in subparagraph (A) of such paragraph with the National Academy of Sciences on terms acceptable to the Under Secretary, the Under Secretary shall seek to enter into such an agreement with another appropriate organization that—

(i) is not part of the Federal Government;
(ii) operates as a not-for-profit entity; and
(iii) has expertise and objectivity comparable to that of the National Academy of Sciences.

(B) Treatment

If the Under Secretary enters into an agreement with another organization as described in subparagraph (A), any reference in this subsection to the National Academy of Sciences shall be treated as a reference to the other organization.

(4) Authorization of appropriations

There are authorized to be appropriated, out of funds appropriated to National [1] Environmental Satellite, Data, and Information Service, to carry out this subsection $1,000,000 for the period encompassing fiscal years 2018 through 2019.

(c) Next generation satellite architecture

(1) In general

The Under Secretary shall analyze, test, and plan the procurement of future data sources and satellite architectures, including respective ground system elements, identified in the National Oceanic and Atmospheric Administration's Satellite Observing System Architecture Study that—

(A) lower the cost of observations used to meet the National Oceanic and Atmospheric Administration's mission requirements;
(B) disaggregate current satellite systems, where appropriate;
(C) include new, value-adding technological advancements; and
(D) improve—
(i) weather and climate forecasting and predictions; and
(ii) the understanding, management, and exploration of the ocean.

(2) Quantitative assessments and partnership authority

In meeting the requirements described in paragraph (1), the Under Secretary—

(A) may partner with the commercial and academic sectors, non-governmental and not-for-profit organizations, and other Federal agencies; and
(B) shall, consistent with section 8517 of this title, undertake quantitative assessments for objective analyses, as the Under Secretary considers appropriate, to evaluate relative value and benefits of future data sources and satellite architectures described in paragraph (1).

(d) Additional forms of transaction authorized

(1) In general

Subject to paragraph (2), in order to enhance the effectiveness of data, satellite, and other observing systems used by the National Oceanic and Atmospheric Administration to meet its

missions, the Under Secretary may enter into and perform such transaction agreements on such terms as the Under Secretary considers appropriate to carry out—

(A) basic, applied, and advanced research projects and ocean exploration missions to meet the objectives described in subparagraphs (A) through (D) of subsection (c)(1); or

(B) any other type of project to meet other mission objectives, as determined by the Under Secretary.

(2) Method and scope

(A) In general

A transaction agreement under paragraph (1) shall be limited to research and development activities.

(B) Permissible uses

A transaction agreement under paragraph (1) may be used—

(i) for the construction, use, operation, or procurement of new, improved, innovative, or value-adding systems, including satellites, instrumentation, ground stations, data, and data processing;

(ii) to make determinations on how to best use existing or planned data, systems, and assets of the National Oceanic and Atmospheric Administration; and

(iii) only when the objectives of the National Oceanic and Atmospheric Administration cannot be met using a cooperative research and development agreement, grants procurement contract, or cooperative agreement.

(3) Termination of effectiveness

The authority provided in this subsection terminates effective September 30, 2030.

(e) Transparency

Not later than 60 days after the date that a transaction agreement is made under subsection (d), the Under Secretary shall make publicly available, in a searchable format, on the website of the National Oceanic and Atmospheric Administration all uses of the authority under subsection (d), including an estimate of committed National Oceanic and Atmospheric Administration resources and the expected benefits to National Oceanic and Atmospheric Administration objectives for the transaction agreement, with appropriate redactions for proprietary, sensitive, or classified information.

(f) Reports

(1) In general

Not later than 90 days after September 30 of each fiscal year through September 30, 2023, the Under Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on the use of additional transaction authority by the National Oceanic and Atmospheric Administration during the previous fiscal year.

(2) Contents

Each report shall include—

(A) for each transaction agreement in effect during the fiscal year covered by the report—

(i) an indication of whether the transaction agreement is a reimbursable, non-reimbursable, or funded agreement;

(ii) a description of—

(I) the subject and terms;

(II) the parties;

(III) the responsible National Oceanic and Atmospheric Administration line office;

(IV) the value;

(V) the extent of the cost sharing among Federal Government and non-Federal sources;

(VI) the duration or schedule; and

(VII) all milestones;

(iii) an indication of whether the transaction agreement was renewed during the previous fiscal year;

(iv) the technology areas in which research projects were conducted under that agreement;

(v) the extent to which the use of that agreement—

(I) has contributed to a broadening of the technology and industrial base available for meeting National Oceanic and Atmospheric Administration needs; and

(II) has fostered within the technology and industrial base new relationships and practices that support the United States; and

(vi) the total value received by the Federal Government under that agreement for that fiscal year; and

(B) a list of all anticipated reimbursable, non-reimbursable, and funded transaction agreements for the upcoming fiscal year.

(g) Rule of construction

Nothing in this section may be construed as limiting the authority of the National Oceanic and Atmospheric Administration to use cooperative research and development agreements, grants, procurement contracts, or cooperative agreements.

(Pub. L. 115–25, title III, §301, Apr. 18, 2017, 131 Stat. 101; Pub. L. 115–423, §§6, 7(a), Jan. 7, 2019, 132 Stat. 5459, 5461; Pub. L. 116–259, title V, §503, Dec. 23, 2020, 134 Stat. 1179.)

EDITORIAL NOTES

AMENDMENTS

2020—Subsec. (c)(1)(D). Pub. L. 116–259, §503(1), added subpar. (D) and struck out former subpar. (D) which read as follows: "improve weather forecasting and predictions."

Subsec. (d)(1). Pub. L. 116–259, §503(2)(A), substituted "data, satellite, and other observing systems" for "data and satellite systems" and "to carry out—" and subpars. (A) and (B) for "to carry out basic, applied, and advanced research projects to meet the objectives described in subparagraphs (A) through (D) subsection (c)(1)."

Subsec. (d)(2)(B)(i). Pub. L. 116–259, §503(2)(B), substituted "systems, including satellites, instrumentation, ground stations, data, and data processing;" for "satellites, instrumentation, ground stations, and data;".

Subsec. (d)(3). Pub. L. 116–259, §503(2)(C), substituted "2030" for "2023".

2019—Subsec. (a)(2)(C). Pub. L. 115–423, §7(a), added subpar. (C).

Subsecs. (c) to (g). Pub. L. 115–423, §6, added subsecs. (c) to (g).

[1] *So in original. Probably should be preceded by "the".*

§8532. Commercial weather data

(a) Data and hosted satellite payloads

Notwithstanding any other provision of law, the Secretary of Commerce may enter into agreements for—

(1) the purchase of weather data through contracts with commercial providers; and

(2) the placement of weather satellite instruments on cohosted government or private payloads.

(b) Strategy

(1) In general

Not later than 180 days after April 18, 2017, the Secretary of Commerce, in consultation with the Under Secretary, shall submit to the Committee on Commerce, Science, and Transportation of

the Senate and the Committee on Science, Space, and Technology of the House of Representatives a strategy to enable the procurement of quality commercial weather data. The strategy shall assess the range of commercial opportunities, including public-private partnerships, for obtaining surface-based, aviation-based, and space-based weather observations. The strategy shall include the expected cost-effectiveness of these opportunities as well as provide a plan for procuring data, including an expected implementation timeline, from these nongovernmental sources, as appropriate.

(2) Requirements

The strategy shall include—

(A) an analysis of financial or other benefits to, and risks associated with, acquiring commercial weather data or services, including through multiyear acquisition approaches;

(B) an identification of methods to address planning, programming, budgeting, and execution challenges to such approaches, including—

(i) how standards will be set to ensure that data is reliable and effective;

(ii) how data may be acquired through commercial experimental or innovative techniques and then evaluated for integration into operational use;

(iii) how to guarantee public access to all forecast-critical data to ensure that the United States weather industry and the public continue to have access to information critical to their work; and

(iv) in accordance with section 50503 of title 51, methods to address potential termination liability or cancellation costs associated with weather data or service contracts; and

(C) an identification of any changes needed in the requirements development and approval processes of the Department of Commerce to facilitate effective and efficient implementation of such strategy.

(3) Authority for agreements

The Assistant Administrator for National [1] Environmental Satellite, Data, and Information Service may enter into multiyear agreements necessary to carry out the strategy developed under this subsection.

(c) Pilot program

(1) Criteria

Not later than 30 days after April 18, 2017, the Under Secretary shall publish data and metadata standards and specifications for space-based commercial weather data, including radio occultation data, and, as soon as possible, geostationary hyperspectral sounder data.

(2) Pilot contracts

(A) Contracts

Not later than 90 days after April 18, 2017, the Under Secretary shall, through an open competition, enter into at least one pilot contract with one or more private sector entities capable of providing data that meet the standards and specifications set by the Under Secretary for providing commercial weather data in a manner that allows the Under Secretary to calibrate and evaluate the data for its use in National Oceanic and Atmospheric Administration meteorological models.

(B) Assessment of data viability

Not later than the date that is 3 years after the date on which the Under Secretary enters into a contract under subparagraph (A), the Under Secretary shall assess and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives the results of a determination of the extent to which data provided under the contract entered into under subparagraph (A) meet the criteria published under paragraph (1) and the extent to which the pilot program has demonstrated—

(i) the viability of assimilating the commercially provided data into National Oceanic and Atmospheric Administration meteorological models;

(ii) whether, and by how much, the data add value to weather forecasts; and

(iii) the accuracy, quality, timeliness, validity, reliability, usability, information technology security, and cost-effectiveness of obtaining commercial weather data from private sector providers.

(3) Authorization of appropriations

For each of fiscal years 2019 through 2023, there are authorized to be appropriated for procurement, acquisition, and construction at the National Environmental Satellite, Data, and Information Service, $6,000,000 to carry out this subsection.

(d) Obtaining future data

If an assessment under subsection (c)(2)(B) demonstrates the ability of commercial weather data to meet data and metadata standards and specifications published under subsection (c)(1), the Under Secretary shall—

(1) where appropriate, cost-effective, and feasible, obtain commercial weather data from private sector providers;

(2) as early as possible in the acquisition process for any future National Oceanic and Atmospheric Administration meteorological space system, consider whether there is a suitable, cost-effective, commercial capability available or that will be available to meet any or all of the observational requirements by the planned operational date of the system;

(3) if a suitable, cost-effective, commercial capability is or will be available as described in paragraph (2), determine whether it is in the national interest to develop a governmental meteorological space system; and

(4) submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report detailing any determination made under paragraphs (2) and (3).

(e) Data sharing practices

The Under Secretary shall continue to meet the international meteorological agreements into which the Under Secretary has entered, including practices set forth through World Meteorological Organization Resolution 40.

(Pub. L. 115–25, title III, §302, Apr. 18, 2017, 131 Stat. 103; Pub. L. 115–423, §7(b), Jan. 7, 2019, 132 Stat. 5461.)

EDITORIAL NOTES

AMENDMENTS

2019—Subsec. (c)(3). Pub. L. 115–423 substituted "2019 through 2023" for "2017 through 2020" and inserted "the" before "National".

[1] *So in original. Probably should be preceded by "the".*

§8533. Unnecessary duplication

In meeting the requirements under this subchapter, the Under Secretary shall avoid unnecessary duplication between public and private sources of data and the corresponding expenditure of funds and employment of personnel.

(Pub. L. 115–25, title III, §303, Apr. 18, 2017, 131 Stat. 105.)

SUBCHAPTER III—FEDERAL WEATHER COORDINATION

§8541. Environmental Information Services Working Group

(a) Establishment

The National Oceanic and Atmospheric Administration Science Advisory Board shall continue to maintain a standing working group named the Environmental Information Services Working Group (in this section referred to as the "Working Group")—

(1) to provide advice for prioritizing weather research initiatives at the National Oceanic and Atmospheric Administration to produce real improvement in weather forecasting;

(2) to provide advice on existing or emerging technologies or techniques that can be found in private industry or the research community that could be incorporated into forecasting at the National Weather Service to improve forecasting skill;

(3) to identify opportunities to improve—

(A) communications between weather forecasters, Federal, State, local, tribal, and other emergency management personnel, and the public; and

(B) communications and partnerships among the National Oceanic and Atmospheric Administration and the private and academic sectors; and

(4) to address such other matters as the Science Advisory Board requests of the Working Group.

(b) Composition

(1) In general

The Working Group shall be composed of leading experts and innovators from all relevant fields of science and engineering including atmospheric chemistry, atmospheric physics, meteorology, hydrology, social science, risk communications, electrical engineering, and computer sciences. In carrying out this section, the Working Group may organize into subpanels.

(2) Number

The Working Group shall be composed of no fewer than 15 members. Nominees for the Working Group may be forwarded by the Working Group for approval by the Science Advisory Board. Members of the Working Group may choose a chair (or co-chairs) from among their number with approval by the Science Advisory Board.

(c) Annual report

Not less frequently than once each year, the Working Group shall transmit to the Science Advisory Board for submission to the Under Secretary a report on progress made by National Oceanic and Atmospheric Administration in adopting the Working Group's recommendations. The Science Advisory Board shall transmit this report to the Under Secretary. Within 30 days of receipt of such report, the Under Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a copy of such report.

(Pub. L. 115–25, title IV, §401, Apr. 18, 2017, 131 Stat. 105.)

§8542. Interagency weather research and forecast innovation coordination

(a) Establishment

The Director of the Office of Science and Technology Policy shall establish an Interagency Committee for Advancing Weather Services to improve coordination of relevant weather research and forecast innovation activities across the Federal Government. The Interagency Committee shall—

(1) include participation by the National Aeronautics and Space Administration, the Federal

Aviation Administration, National Oceanic and Atmospheric Administration and its constituent elements, the National Science Foundation, and such other agencies involved in weather forecasting research as the President determines are appropriate;

(2) identify and prioritize top forecast needs and coordinate those needs against budget requests and program initiatives across participating offices and agencies; and

(3) share information regarding operational needs and forecasting improvements across relevant agencies.

(b) Co-chair

The Federal Coordinator for Meteorology shall serve as a co-chair of this panel.

(c) Further coordination

The Director of the Office of Science and Technology Policy shall take such other steps as are necessary to coordinate the activities of the Federal Government with those of the United States weather industry, State governments, emergency managers, and academic researchers.

(Pub. L. 115–25, title IV, §402, Apr. 18, 2017, 131 Stat. 106.)

§8543. Office of Oceanic and Atmospheric Research and National Weather Service exchange program

(a) In general

The Assistant Administrator for Oceanic and Atmospheric Research and the Director of National [1] Weather Service may establish a program to detail Office of Oceanic and Atmospheric Research personnel to the National Weather Service and National Weather Service personnel to the Office of Oceanic and Atmospheric Research.

(b) Goal

The goal of this program is to enhance forecasting innovation through regular, direct interaction between the Office of Oceanic and Atmospheric Research's world-class scientists and the National Weather Service's operational staff.

(c) Elements

The program shall allow up to 10 Office of Oceanic and Atmospheric Research staff and National Weather Service staff to spend up to 1 year on detail. Candidates shall be jointly selected by the Assistant Administrator for Oceanic and Atmospheric Research and the Director of the National Weather Service.

(d) Annual report

Not less frequently than once each year, the Under Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on participation in such program and shall highlight any innovations that come from this interaction.

(Pub. L. 115–25, title IV, §403, Apr. 18, 2017, 131 Stat. 107.)

[1] So in original. Probably should be preceded by "the".

§8544. Visiting fellows at National Weather Service

(a) In general

The Director of the National Weather Service may establish a program to host postdoctoral fellows and academic researchers at any of the National Centers for Environmental Prediction.

(b) Goal

This program shall be designed to provide direct interaction between forecasters and talented academic and private sector researchers in an effort to bring innovation to forecasting tools and techniques to the National Weather Service.

(c) Selection and appointment

Such fellows shall be competitively selected and appointed for a term not to exceed 1 year.

(Pub. L. 115–25, title IV, §404, Apr. 18, 2017, 131 Stat. 107.)

§8545. Warning coordination meteorologists at weather forecast offices of National Weather Service

(a) Designation of warning coordination meteorologists

(1) In general

The Director of the National Weather Service shall designate at least one warning coordination meteorologist at each weather forecast office of the National Weather Service.

(2) No additional employees authorized

Nothing in this section shall be construed to authorize or require a change in the authorized number of full time equivalent employees in the National Weather Service or otherwise result in the employment of any additional employees.

(3) Performance by other employees

Performance of the responsibilities outlined in this section is not limited to the warning coordination meteorologist position.

(b) Primary role of warning coordination meteorologists

The primary role of the warning coordination meteorologist shall be to carry out the responsibilities required by this section.

(c) Responsibilities

(1) In general

Subject to paragraph (2), consistent with the analysis described in section 409,[1] and in order to increase impact-based decision support services, each warning coordination meteorologist designated under subsection (a) shall—

(A) be responsible for providing service to the geographic area of responsibility covered by the weather forecast office at which the warning coordination meteorologist is employed to help ensure that users of products of the National Weather Service can respond effectively to improve outcomes from weather events;

(B) liaise with users of products and services of the National Weather Service, such as the public, media outlets, users in the aviation, marine, and agricultural communities, and forestry, land, and water management interests, to evaluate the adequacy and usefulness of the products and services of the National Weather Service;

(C) collaborate with such weather forecast offices and State, local, and tribal government agencies as the Director considers appropriate in developing, proposing, and implementing plans to develop, modify, or tailor products and services of the National Weather Service to improve the usefulness of such products and services;

(D) ensure the maintenance and accuracy of severe weather call lists, appropriate office severe weather policy or procedures, and other severe weather or dissemination methodologies or strategies; and

(E) work closely with State, local, and tribal emergency management agencies, and other agencies related to disaster management, to ensure a planned, coordinated, and effective preparedness and response effort.

(2) Other staff

The Director may assign a responsibility set forth in paragraph (1) to such other staff as the Director considers appropriate to carry out such responsibility.

(d) Additional responsibilities

(1) In general

Subject to paragraph (2), a warning coordination meteorologist designated under subsection (a) may—

(A) work with a State agency to develop plans for promoting more effective use of products and services of the National Weather Service throughout the State;

(B) identify priority community preparedness objectives;

(C) develop plans to meet the objectives identified under paragraph (2); and

(D) conduct severe weather event preparedness planning and citizen education efforts with and through various State, local, and tribal government agencies and other disaster management-related organizations.

(2) Other staff

The Director may assign a responsibility set forth in paragraph (1) to such other staff as the Director considers appropriate to carry out such responsibility.

(e) Placement with State and local emergency managers

(1) In general

In carrying out this section, the Director of the National Weather Service may place a warning coordination meteorologist designated under subsection (a) with a State or local emergency manager if the Director considers doing so is necessary or convenient to carry out this section.

(2) Treatment

If the Director determines that the placement of a warning coordination meteorologist placed with a State or local emergency manager under paragraph (1) is near a weather forecast office of the National Weather Service, such placement shall be treated as designation of the warning coordination meteorologist at such weather forecast office for purposes of subsection (a).

(Pub. L. 115–25, title IV, §405, Apr. 18, 2017, 131 Stat. 107.)

EDITORIAL NOTES

REFERENCES IN TEXT

Section 409, referred to in subsec. (c)(1), is section 409 of Pub. L. 115–25, title IV, Apr. 18, 2017, 131 Stat. 112, which is not classified to the Code.

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

§8546. National Oceanic and Atmospheric Administration Weather Ready All Hazards Award Program

(a) Program

The Director of the National Weather Service is authorized to establish the National Oceanic and Atmospheric Administration Weather Ready All Hazards Award Program. This award program shall provide annual awards to honor individuals or organizations that use or provide National Oceanic and Atmospheric Administration Weather Radio All Hazards receivers or transmitters to save lives and protect property. Individuals or organizations that utilize other early warning tools or applications also qualify for this award.

(b) Goal

This award program draws attention to the life-saving work of the National Oceanic and Atmospheric Administration Weather Ready All Hazards Program, as well as emerging tools and applications, that provide real-time warning to individuals and communities of severe weather or other hazardous conditions.

(c) Program elements

(1) Nominations

Nominations for this award shall be made annually by the Weather Field Offices to the Director of the National Weather Service. Broadcast meteorologists, weather radio manufacturers and weather warning tool and application developers, emergency managers, and public safety officials may nominate individuals or organizations to their local Weather Field Offices, but the final list of award nominees must come from the Weather Field Offices.

(2) Selection of awardees

Annually, the Director of the National Weather Service shall choose winners of this award whose timely actions, based on National Oceanic and Atmospheric Administration Weather Radio All Hazards receivers or transmitters or other early warning tools and applications, saved lives or property, or demonstrated public service in support of weather or all hazard warnings.

(3) Award ceremony

The Director of the National Weather Service shall establish a means of making these awards to provide maximum public awareness of the importance of National Oceanic and Atmospheric Administration Weather Radio, and such other warning tools and applications as are represented in the awards.

(Pub. L. 115–25, title IV, §407, Apr. 18, 2017, 131 Stat. 111.)

§8547. Report on contract positions at National Weather Service

(a) Report required

Not later than 180 days after April 18, 2017, the Under Secretary shall submit to Congress a report on the use of contractors at the National Weather Service for the most recently completed fiscal year.

(b) Contents

The report required by subsection (a) shall include, with respect to the most recently completed fiscal year, the following:

(1) The total number of full-time equivalent employees at the National Weather Service, disaggregated by each equivalent level of the General Schedule.

(2) The total number of full-time equivalent contractors at the National Weather Service, disaggregated by each equivalent level of the General Schedule that most closely approximates their duties.

(3) The total number of vacant positions at the National Weather Service on the day before April 18, 2017, disaggregated by each equivalent level of the General Schedule.

(4) The five most common positions filled by full-time equivalent contractors at the National Weather Service and the equivalent level of the General Schedule that most closely approximates the duties of such positions.

(5) Of the positions identified under paragraph (4), the percentage of full-time equivalent contractors in those positions that have held a prior position at the National Weather Service or another entity in National [1] Oceanic and Atmospheric Administration.

(6) The average full-time equivalent salary for Federal employees at the National Weather Service for each equivalent level of the General Schedule.

(7) The average salary for full-time equivalent contractors performing at each equivalent level of the General Schedule at the National Weather Service.

(8) A description of any actions taken by the Under Secretary to respond to the issues raised by

the Inspector General of the Department of Commerce regarding the hiring of former National Oceanic and Atmospheric Administration employees as contractors at the National Weather Service such as the issues raised in the Investigative Report dated June 2, 2015 (OIG–12–0447).

(c) Annual publication

For each fiscal year after the fiscal year covered by the report required by subsection (a), the Under Secretary shall, not later than 180 days after the completion of the fiscal year, publish on a publicly accessible Internet website the information described in paragraphs (1) through (8) of subsection (b) for such fiscal year.

(Pub. L. 115–25, title IV, §410, Apr. 18, 2017, 131 Stat. 112.)

EDITORIAL NOTES

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b), is set out under section 5332 of Title 5, Government Organization and Employees.

[1] *So in original. Probably should be preceded by "the".*

§8548. Weather enterprise outreach

(a) In general

The Under Secretary may establish mechanisms for outreach to the weather enterprise—

(1) to assess the weather forecasts and forecast products provided by the National Oceanic and Atmospheric Administration; and

(2) to determine the highest priority weather forecast needs of the community described in subsection (b).

(b) Outreach community

In conducting outreach under subsection (a), the Under Secretary shall contact leading experts and innovators from relevant stakeholders, including the representatives from the following:

(1) State or local emergency management agencies.

(2) State agriculture agencies.

(3) Indian tribes (as defined in section 5304 of title 25) and Native Hawaiians (as defined in section 7517 of title 20).

(4) The private aerospace industry.

(5) The private earth observing industry.

(6) The operational forecasting community.

(7) The academic community.

(8) Professional societies that focus on meteorology.

(9) Such other stakeholder groups as the Under Secretary considers appropriate.

(Pub. L. 115–25, title IV, §412, Apr. 18, 2017, 131 Stat. 113.)

§8549. Hurricane hunter aircraft

(a) Backup capability

The Under Secretary shall acquire backup for the capabilities of the WP–3D Orion and G–IV hurricane aircraft of the National Oceanic and Atmospheric Administration that is sufficient to prevent a single point of failure.

(b) Authority to enter agreements

In order to carry out subsection (a), the Under Secretary shall negotiate and enter into 1 or more

agreements or contracts, to the extent practicable and necessary, with governmental and non-governmental entities.

(c) Future technology

The Under Secretary shall continue the development of Airborne Phased Array Radar under the United States Weather Research Program.

(d) Authorization of appropriations

For each of fiscal years 2017 through 2020, support for implementing subsections (a) and (b) is authorized out of funds appropriated to the Office of Marine and Aviation Operations.

(Pub. L. 115–25, title IV, §413, Apr. 18, 2017, 131 Stat. 114.)

§8550. Improvements to Cooperative Observer Program of National Weather Service

(a) In general

The Under Secretary of Commerce for Oceans and Atmosphere, acting through the National Weather Service, shall improve the Cooperative Observer Program by—

(1) providing support to—

(A) State-coordinated programs relating to the Program; and

(B) States and regions where observations provided through the Program are scarce;

(2) working with State weather service headquarters to increase participation in the Program and to add stations in States and regions described in paragraph (1)(B);

(3) where feasible, ensuring that data streams from stations that have been contributing data to the Program for more than 50 years are maintained and continually staffed by volunteers;

(4) prioritizing the recruitment of new volunteers for the Program;

(5) ensuring that opportunities exist for automated reporting to lessen the burden on volunteers to collect and report data by hand; and

(6) ensuring that integrated reporting is available for qualitative observations that cannot be automated, such as drought conditions, snow observations, and hazardous weather events, to ensure that volunteers in the Program can report and upload observations quickly and easily.

(b) Coordination with States and regions

Not less frequently than every 180 days, the National Weather Service shall coordinate with State and regional offices with respect to the status of Cooperative Observer Program stations.

(c) Coordination with Federal agencies

The National Weather Service shall coordinate with other Federal agencies, including the Forest Service, the Department of Agriculture, and the United States Geological Survey, to leverage opportunities to grow the Cooperative Observer Program network and to more effectively use existing infrastructure, weather stations, and staff of the Program.

(Pub. L. 115–423, §8, Jan. 7, 2019, 132 Stat. 5461.)

EDITORIAL NOTES

CODIFICATION

This section was enacted as part of the National Integrated Drought Information System Reauthorization Act of 2018, and not as part of the Weather Research and Forecasting Innovation Act of 2017 which comprises this chapter.

SUBCHAPTER IV—IMPROVING FEDERAL PRECIPITATION INFORMATION

§8561. Study on precipitation estimation

(a) In general

Not later than 90 days after December 16, 2022, the Administrator, in consultation with other Federal agencies as appropriate, shall seek to enter an agreement with the National Academies—

(1) to conduct a study on the state of practice and research needs for precipitation estimation, including probable maximum precipitation estimation; and

(2) to submit, not later than 24 months after the date on which such agreement is finalized, to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, and make publicly available on a website, a report on the results of the study under paragraph (1).

(b) Study

The report under subsection (a) shall include the following:

(1) An examination of the current state of practice for precipitation estimation at scales appropriate for decisionmaker needs, and rationale for further evolution of this field.

(2) An evaluation of best practices for precipitation estimation that are based on the best-available science, include considerations of non-stationarity, and can be utilized by the user community.

(3) A framework for—

(A) the development of a National Guidance Document for estimating extreme precipitation in future conditions; and

(B) evaluation of the strengths and challenges of the full spectrum of approaches, including for probable maximum precipitation studies.

(4) A description of existing research needs in the field of precipitation estimation in order to modernize current methodologies and consider non-stationarity.

(5) A description of in-situ, airborne, and space-based observation requirements, that could enhance precipitation estimation and development of models, including an examination of the use of geographic information systems and geospatial technology for integration, analysis, and visualization of precipitation data.

(6) A recommended plan for a Federal research and development program, including specifications for costs, timeframes, and responsible agencies for addressing identified research needs.

(7) An analysis of the respective roles in precipitation estimation of various Federal agencies, academia, State, tribal, territorial, and local governments, and other public and private stakeholders.

(8) Recommendations for data management to promote long-term needs such as enabling retrospective analyses and data discoverability, interoperability, and reuse.

(9) Recommendations for how data and services from the entire enterprise can be best leveraged by the Federal Government.

(10) A description of non-Federal precipitation data, its accessibility by the Federal Government, and ways for National Oceanic and Atmospheric Administration to improve or expand such datasets.

(c) Authorization of appropriations

There is authorized $1,500,000 to the National Oceanic and Atmospheric Administration to carry out this study.

(Pub. L. 115–25, title VI, §601, as added Pub. L. 117–229, div. D, §2(a), Dec. 16, 2022, 136 Stat.

2313.)

§8562. Improving probable maximum precipitation estimates

(a) In general

Not later than 90 days after the date on which the National Academies makes public the report under section 8561 of this title, the Administrator, in consideration of the report recommendations, shall consult with relevant partners, including users of the data, on the development of a plan to—

(1) not later than 6 years after the completion of such report and not less than every 10 years thereafter, update probable maximum precipitation estimates for the United States, such that each update considers non-stationarity;

(2) coordinate with partners to conduct research in the field of extreme precipitation estimation, in accordance with the research needs identified in such report;

(3) make publicly available, in a searchable, interoperable format, all probable maximum precipitation studies developed by the National Oceanic and Atmospheric Administration that the Administrator has the legal right to redistribute and deemed to be at an appropriate state of development on an internet website of the National Oceanic and Atmospheric Administration; and

(4) ensure all probable maximum precipitation estimate data, products, and supporting documentation and metadata developed by the National Oceanic and Atmospheric Administration are preserved, curated, and served by the National Oceanic and Atmospheric Administration, as appropriate.

(b) National guidance document for the development of probable maximum precipitation estimates

The Administrator, in collaboration with Federal agencies, State, territorial, Tribal and local governments, academia, and other partners the Administrator deems appropriate, shall develop a National Guidance Document that—

(1) provides best practices that can be followed by Federal and State regulatory agencies, private meteorological consultants, and other users that perform probable maximum precipitation studies;

(2) considers the recommendations provided in the National Academies study under section 8561 of this title;

(3) facilitates review of probable maximum precipitation studies by regulatory agencies; and

(4) provides confidence in regional and site-specific probable maximum precipitation estimates.

(c) Publication

Not later than 2 years after the date on which the National Academies makes public the report under section 8561 of this title, the Administrator shall make publicly available the National Guidance Document under subsection (b) on an internet website of the National Oceanic and Atmospheric Administration.

(d) Updates

The Administrator shall update the National Guidance Document not less than once every 10 years after the publication of the National Guidance Document under subsection (c) and publish such updates in accordance with such subsection.

(Pub. L. 115–25, title VI, §602, as added Pub. L. 117–229, div. D, §2(a), Dec. 16, 2022, 136 Stat. 2314.)

§8563. Definitions

In this subchapter:

(1) Administrator

The term "Administrator" means the Under Secretary of Commerce for Oceans and Atmosphere and Administrator of the National Oceanic and Atmospheric Administration.

(2) National Academies

The term "National Academies" means the National Academies of Sciences, Engineering, and Medicine.

(3) United States

The term "United States" means, collectively, each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, and any other territory or possession of the United States.

(Pub. L. 115–25, title VI, §603, as added Pub. L. 117–229, div. D, §2(a), Dec. 16, 2022, 136 Stat. 2315.)

CHAPTER 112—SPORTS MEDICINE LICENSURE

Sec.
8601. Protections for covered sports medicine professionals.

§8601. Protections for covered sports medicine professionals

(a) In general

In the case of a covered sports medicine professional who has in effect medical professional liability insurance coverage and provides in a secondary State covered medical services that are within the scope of practice of such professional in the primary State to an athlete or an athletic team (or a staff member of such an athlete or athletic team) pursuant to an agreement described in subsection (c)(4) with respect to such athlete or athletic team—

(1) such medical professional liability insurance coverage shall cover (subject to any related premium adjustments) such professional with respect to such covered medical services provided by the professional in the secondary State to such an individual or team as if such services were provided by such professional in the primary State to such an individual or team; and

(2) to the extent such professional is licensed under the requirements of the primary State to provide such services to such an individual or team, the professional shall be treated as satisfying any licensure requirements of the secondary State to provide such services to such an individual or team to the extent the licensure requirements of the secondary State are substantially similar to the licensure requirements of the primary State.

(b) Rule of construction

Nothing in this section shall be construed—

(1) to allow a covered sports medicine professional to provide medical services in the secondary State that exceed the scope of that professional's license in the primary State;

(2) to allow a covered sports medicine professional to provide medical services in the secondary State that exceed the scope of a substantially similar sports medicine professional license in the secondary State;

(3) to supersede any reciprocity agreement in effect between the two States regarding such services or such professionals;

(4) to supersede any interstate compact agreement entered into by the two States regarding such services or such professionals; or

(5) to supersede a licensure exemption the secondary State provides for sports medicine professionals licensed in the primary State.

(c) Definitions

In this chapter, the following definitions apply:

(1) Athlete

The term "athlete" means—

(A) an individual participating in a sporting event or activity for which the individual may be paid;

(B) an individual participating in a sporting event or activity sponsored or sanctioned by a national governing body; or

(C) an individual for whom a high school or institution of higher education provides a covered sports medicine professional.

(2) Athletic team

The term "athletic team" means a sports team—

(A) composed of individuals who are paid to participate on the team;

(B) composed of individuals who are participating in a sporting event or activity sponsored or sanctioned by a national governing body; or

(C) for which a high school or an institution of higher education provides a covered sports medicine professional.

(3) Covered medical services

The term "covered medical services" means general medical care, emergency medical care, athletic training, or physical therapy services. Such term does not include care provided by a covered sports medicine professional—

(A) at a health care facility; or

(B) while a health care provider licensed to practice in the secondary State is transporting the injured individual to a health care facility.

(4) Covered sports medicine professional

The term "covered sports medicine professional" means a physician, athletic trainer, or other health care professional who—

(A) is licensed to practice in the primary State;

(B) provides covered medical services, pursuant to a written agreement with an athlete, an athletic team, a national governing body, a high school, or an institution of higher education; and

(C) prior to providing the covered medical services described in subparagraph (B), has disclosed the nature and extent of such services to the entity that provides the professional with liability insurance in the primary State.

(5) Health care facility

The term "health care facility" means a facility in which medical care, diagnosis, or treatment is provided on an inpatient or outpatient basis. Such term does not include facilities at an arena, stadium, or practice facility, or temporary facilities existing for events where athletes or athletic teams may compete.

(6) Institution of higher education

The term "institution of higher education" has the meaning given such term in section 1001 of title 20.

(7) License

The term "license" or "licensure", as applied with respect to a covered sports medicine professional, means a professional that has met the requirements and is approved to provide covered medical services in accordance with State laws and regulations in the primary State. Such term may include the registration or certification, or any other form of special recognition, of an individual as such a professional, as applicable.

(8) National governing body

The term "national governing body" has the meaning given such term in section 220501 of title

36.

(9) Primary State

The term "primary State" means, with respect to a covered sports medicine professional, the State in which—

(A) the covered sports medicine professional is licensed to practice; and

(B) the majority of the covered sports medicine professional's practice is underwritten for medical professional liability insurance coverage.

(10) Secondary State

The term "secondary State" means, with respect to a covered sports medicine professional, any State that is not the primary State.

(11) State

The term "State" means each of the several States, the District of Columbia, and each commonwealth, territory, or possession of the United States.

(12) Substantially similar

The term "substantially similar", with respect to the licensure by primary and secondary States of a sports medicine professional, means that both the primary and secondary States have in place a form of licensure for such professionals that permits such professionals to provide covered medical services.

(Pub. L. 115–254, div. A, §12, Oct. 5, 2018, 132 Stat. 3197.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 115–254, div. A, §11, Oct. 5, 2018, 132 Stat. 3197, provided that: "This division [enacting this chapter] may be cited as the 'Sports Medicine Licensure Clarity Act of 2018'."

CHAPTER 113—CONCRETE MASONRY PRODUCTS RESEARCH, EDUCATION, AND PROMOTION

Sec.

§8701. Declaration of policy

(a) Purpose

The purpose of this chapter is to authorize the establishment of an orderly program for developing, financing, and carrying out an effective, continuous, and coordinated program of research, education, and promotion, including funds for marketing and market research activities, that is designed to—

(1) strengthen the position of the concrete masonry products industry in the domestic marketplace;

(2) maintain, develop, and expand markets and uses for concrete masonry products in the domestic marketplace; and

(3) promote the use of concrete masonry products in construction and building.

(b) Limitation

Nothing in this chapter may be construed to provide for the control of production or otherwise limit the right of any person to manufacture concrete masonry products.

(Pub. L. 115–254, div. E, §1302, Oct. 5, 2018, 132 Stat. 3469.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Pub. L. 115–254, div. E, §1301, Oct. 5, 2018, 132 Stat. 3469, provided that: "This division [enacting this chapter] may be cited as the 'Concrete Masonry Products Research, Education, and Promotion Act of 2018'."

§8702. Definitions

For the purposes of this chapter:

(1) Block machine

The term "block machine" means a piece of equipment that utilizes vibration and compaction to form concrete masonry products.

(2) Board

The term "Board" means the Concrete Masonry Products Board established under section 8704 of this title.

(3) Cavity

The term "cavity" means the open space in the mold of a block machine capable of forming a single concrete masonry unit having nominal plan dimensions of 8 inches by 16 inches.

(4) Concrete masonry products

The term "concrete masonry products" refers to a broader class of products, including concrete masonry units as well as hardscape products such as concrete pavers and segmental retaining wall units, manufactured on a block machine using dry-cast concrete.

(5) Concrete masonry unit

The term "concrete masonry unit"—

(A) means a concrete masonry product that is a manmade masonry unit having an actual width of 3 inches or greater and manufactured from dry-cast concrete using a block machine; and

(B) includes concrete block and related concrete units used in masonry applications.

(6) Conflict of interest

The term "conflict of interest" means, with respect to a member or employee of the Board, a situation in which such member or employee has a direct or indirect financial or other interest in a person that performs a service for, or enters into a contract with, for anything of economic value.

(7) Department

The term "Department" means the Department of Commerce.

(8) Dry-cast concrete

The term "dry-cast concrete" means a composite material that is composed essentially of aggregates embedded in a binding medium composed of a mixture of cementitious materials (including hydraulic cement, pozzolans, or other cementitious materials) and water of such a consistency to maintain its shape after forming in a block machine.

(9) Education

The term "education" means programs that will educate or communicate the benefits of concrete masonry products in safe and environmentally sustainable development, advancements in concrete masonry product technology and development, and other information and programs designed to generate increased demand for commercial, residential, multifamily, and institutional projects using concrete masonry products and to generally enhance the image of concrete masonry products.

(10) Machine cavities

The term "machine cavities" means the cavities with which a block machine could be equipped.

(11) Machine cavities in operation

The term "machine cavities in operation" means those machine cavities associated with a block machine that have produced concrete masonry units within the last 6 months of the date set for determining eligibility and is fully operable and capable of producing concrete masonry units.

(12) Manufacturer

The term "manufacturer" means any person engaged in the manufacturing of commercial concrete masonry products in the United States.

(13) Masonry unit

The term "masonry unit" means a noncombustible building product intended to be laid by hand or joined using mortar, grout, surface bonding, post-tensioning or some combination of these methods.

(14) Order

The term "order" means an order issued under section 8703 of this title.

(15) Person

The term "person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(16) Promotion

The term "promotion" means any action, including paid advertising, to advance the image and desirability of concrete masonry products with the express intent of improving the competitive position and stimulating sales of concrete masonry products in the marketplace.

(17) Research

The term "research" means studies testing the effectiveness of market development and promotion efforts, studies relating to the improvement of concrete masonry products and new product development, and studies documenting the performance of concrete masonry.

(18) Secretary

The term "Secretary" means the Secretary of Commerce.

(19) United States

The term "United States" means the several States and the District of Columbia.

(Pub. L. 115–254, div. E, §1303, Oct. 5, 2018, 132 Stat. 3469.)

§8703. Issuance of orders

(a) In general

(1) Issuance

The Secretary, subject to the procedures provided in subsection (b), shall issue orders under this chapter applicable to manufacturers of concrete masonry products.

(2) Scope

Any order shall be national in scope.

(3) One order

Not more than 1 order shall be in effect at any one time.

(b) Procedures

(1) Development or receipt of proposed order

A proposed order with respect to the generic research, education, and promotion with regards to concrete masonry products may be—

(A) proposed by the Secretary at any time; or

(B) requested by or submitted to the Secretary by—

(i) an existing national organization of concrete masonry product manufacturers; or

(ii) any person that may be affected by the issuance of an order.

(2) Publication of proposed order

If the Secretary determines that a proposed order received in accordance with paragraph (1)(B) is consistent with and will effectuate the purpose of this chapter, the Secretary shall publish such proposed order in the Federal Register not later than 90 days after receiving the order, and give not less than 30 days notice and opportunity for public comment on the proposed order.

(3) Issuance of order

(A) In general

After notice and opportunity for public comment are provided in accordance with paragraph (2), the Secretary shall issue the order, taking into consideration the comments received and including in the order such provisions as are necessary to ensure that the order is in conformity with this chapter.

(B) Effective date

If there is an affirmative vote in a referendum as provided in section 8706 of this title, the Secretary shall issue the order and such order shall be effective not later than 140 days after publication of the proposed order.

(c) Amendments

The Secretary may, from time to time, amend an order. The provisions of this chapter applicable to an order shall be applicable to any amendment to an order.

(Pub. L. 115–254, div. E, §1304, Oct. 5, 2018, 132 Stat. 3471.)

§8704. Required terms in orders

(a) In general

Any order issued under this chapter shall contain the terms and provisions specified in this section.

(b) Concrete Masonry Products Board

(1) Establishment and membership

(A) Establishment

The order shall provide for the establishment of a Concrete Masonry Products Board to carry out a program of generic promotion, research, and education regarding concrete masonry products.

(B) Membership

(i) Number of members

The Board shall consist of not fewer than 15 and not more than 25 members.

(ii) Appointment

The members of the Board shall be appointed by the Secretary from nominations submitted as provided in the order.

(iii) Composition

The Board shall consist of manufacturers. No employee of an industry trade organization exempt from tax under paragraph (3) or (6) of section 501(c) of title 26 representing the concrete masonry industry or related industries shall serve as a member of the Board and no member of the Board may serve concurrently as an officer of the board of directors of a national concrete masonry products industry trade association. Only 2 individuals from any single company or its affiliates may serve on the Board at any one time.

(2) Distribution of appointments

(A) Representation

To ensure fair and equitable representation of the concrete masonry products industry, the composition of the Board shall reflect the geographical distribution of the manufacture of concrete masonry products in the United States, the types of concrete masonry products manufactured, and the range in size of manufacturers in the United States.

(B) Adjustment in Board representation

Three years after the assessment of concrete masonry products commences pursuant to an order, and at the end of each 3-year period thereafter, the Board, subject to the review and approval of the Secretary, shall, if warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the manufacture of concrete masonry products and the types of concrete masonry products manufactured.

(3) Nominations process

The Secretary may make appointments from nominations by manufacturers pursuant to the method set forth in the order.

(4) Failure to appoint

If the Secretary fails to make an appointment to the Board within 60 days of receiving nominations for such appointment, the first nominee for such appointment shall be deemed appointed, unless the Secretary provides reasonable justification for the delay to the Board and to Congress and provides a reasonable date by which approval or disapproval will be made.

(5) Alternates

The order shall provide for the selection of alternate members of the Board by the Secretary in accordance with procedures specified in the order.

(6) Terms

(A) In general

The members and any alternates of the Board shall each serve for a term of 3 years, except that members and any alternates initially appointed to the Board shall serve for terms of not more than 2, 3, and 4 years, as specified by the order.

(B) Limitation on consecutive terms

A member or an alternate may serve not more than 2 consecutive terms.

(C) Continuation of term

Notwithstanding subparagraph (B), each member or alternate shall continue to serve until a successor is appointed by the Secretary.

(D) Vacancies

A vacancy arising before the expiration of a term of office of an incumbent member or alternate of the Board shall be filled in a manner provided for in the order.

(7) Disqualification from Board service

The order shall provide that if a member or alternate of the Board who was appointed as a manufacturer ceases to qualify as a manufacturer, such member or alternate shall be disqualified from serving on the Board.

(8) Compensation

(A) In general

Members and any alternates of the Board shall serve without compensation.

(B) Travel expenses

If approved by the Board, members or alternates shall be reimbursed for reasonable travel expenses, which may include per diem allowance or actual subsistence incurred while away from their homes or regular places of business in the performance of services for the Board.

(c) Powers and duties of the Board

The order shall specify the powers and duties of the Board, including the power and duty—

(1) to administer the order in accordance with its terms and conditions and to collect assessments;

(2) to develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board and such rules as may be necessary to administer the order, including activities authorized to be carried out under the order;

(3) to meet, organize, and select from among members of the Board a chairperson, other officers, and committees and subcommittees, as the Board determines appropriate;

(4) to establish regional organizations or committees to administer regional initiatives;

(5) to establish working committees of persons other than Board members;

(6) to employ such persons, other than the members, as the Board considers necessary, and to determine the compensation and specify the duties of the persons;

(7) to prepare and submit for the approval of the Secretary, before the beginning of each fiscal year, rates of assessment under section 8705 of this title and an annual budget of the anticipated expenses to be incurred in the administration of the order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the Board;

(8) to borrow funds necessary for the startup expenses of the order;

(9) to carry out generic research, education, and promotion programs and projects relating to concrete masonry products, and to pay the costs of such programs and projects with assessments collected under section 8705 of this title;

(10) subject to subsection (e), to enter into contracts or agreements to develop and carry out programs or projects of research, education, and promotion relating to concrete masonry products;

(11) to keep minutes, books, and records that reflect the actions and transactions of the Board, and promptly report minutes of each Board meeting to the Secretary;

(12) to receive, investigate, and report to the Secretary complaints of violations of the order;

(13) to furnish the Secretary with such information as the Secretary may request;

(14) to recommend to the Secretary such amendments to the order as the Board considers appropriate; and

(15) to provide the Secretary with advance notice of meetings to permit the Secretary, or the representative of the Secretary, to attend the meetings.

(d) Programs and projects; budgets; expenses

(1) Programs and projects

(A) In general

The order shall require the Board to submit to the Secretary for approval any program or project of research, education, or promotion relating to concrete masonry products.

(B) Statement required

Any educational or promotional activity undertaken with funds provided by the Board shall include a statement that such activities were supported in whole or in part by the Board.

(2) Budgets

(A) Submission

The order shall require the Board to submit to the Secretary for approval a budget of the anticipated expenses and disbursements of the Board in the implementation of the order, including the projected costs of concrete masonry products research, education, and promotion programs and projects.

(B) Timing

The budget shall be submitted before the beginning of a fiscal year and as frequently as may be necessary after the beginning of the fiscal year.

(C) Approval

If the Secretary fails to approve or reject a budget within 60 days of receipt, such budget shall be deemed approved, unless the Secretary provides to the Board and to Congress, in writing, reasonable justification for the delay and provides a reasonable date by which approval or disapproval will be made.

(3) Administrative expenses

(A) Incurring expenses

The Board may incur the expenses described in paragraph (2) and other expenses for the administration, maintenance, and functioning of the Board as authorized by the Secretary.

(B) Payment of expenses

Expenses incurred under subparagraph (A) shall be paid by the Board using assessments collected under section 8705 of this title, earnings obtained from assessments, and other income of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays.

(C) Limitation on spending

For fiscal years beginning 3 or more years after the date of the establishment of the Board, the Board may not expend for administration (except for reimbursement to the Secretary required under subparagraph (D)), maintenance, and functioning of the Board in a fiscal year an amount that exceeds 10 percent of the assessment and other income received by the Board for the fiscal year.

(D) Reimbursement of Secretary

The order shall require that the Secretary be reimbursed by the Board from assessments for all expenses incurred by the Secretary in the implementation, administration, and supervision of the order, including all referenda costs incurred in connection with the order.

(e) Contracts and agreements

(1) In general

The order shall provide that, with the approval of the Secretary, the Board may—

(A) enter into contracts and agreements to carry out generic research, education, and promotion programs and projects relating to concrete masonry products, including contracts and

agreements with manufacturer associations or other entities as considered appropriate by the Secretary;

(B) enter into contracts and agreements for administrative services; and

(C) pay the cost of approved generic research, education, and promotion programs and projects using assessments collected under section 8705 of this title, earnings obtained from assessments, and other income of the Board.

(2) Requirements

Each contract or agreement shall provide that any person who enters into the contract or agreement with the Board shall—

(A) develop and submit to the Board a proposed program or project together with a budget that specifies the cost to be incurred to carry out the program or project;

(B) keep accurate records of all transactions relating to the contract or agreement;

(C) account for funds received and expended in connection with the contract or agreement;

(D) make periodic reports to the Board of activities conducted under the contract or agreement; and

(E) make such other reports as the Board or the Secretary considers relevant.

(3) Failure to approve

If the Secretary fails to approve or reject a contract or agreement entered into under paragraph (1) within 60 days of receipt, the contract or agreement shall be deemed approved, unless the Secretary provides to the Board and to Congress, in writing, reasonable justification for the delay and provides a reasonable date by which approval or disapproval will be made.

(f) Books and records of Board

(1) In general

The order shall require the Board to—

(A) maintain such books and records (which shall be available to the Secretary for inspection and audit) as the Secretary may require;

(B) collect and submit to the Secretary, at any time the Secretary may specify, any information the Secretary may request; and

(C) account for the receipt and disbursement of all funds in the possession, or under the control, of the Board.

(2) Audits

The order shall require the Board to have—

(A) the books and records of the Board audited by an independent auditor at the end of each fiscal year; and

(B) a report of the audit submitted directly to the Secretary.

(g) Prohibited activities

(1) In general

Subject to paragraph (2), the Board shall not engage in any program or project to, nor shall any funds received by the Board under this chapter be used to—

(A) influence legislation, elections, or governmental action;

(B) engage in an action that would be a conflict of interest;

(C) engage in advertising that is false or misleading;

(D) engage in any promotion, research, or education that would be disparaging to other construction materials; or

(E) engage in any promotion or project that would benefit any individual manufacturer.

(2) Exceptions

Paragraph (1) does not preclude—

(A) the development and recommendation of amendments to the order;

(B) the communication to appropriate government officials of information relating to the