

of effort and minimizing the compliance burden on business enterprises and other persons.

**(b) Policy recommendations**

In exercising his responsibilities under subsection (a) of this section, the Director shall recommend policies which, to the greatest extent practicable—

- (1) provide adequately for the energy information needs of the various departments and agencies of the Federal Government, the Congress, and the public;
- (2) minimize the burden of reporting energy information on businesses, other persons, and especially small businesses;
- (3) reduce the cost to Government of obtaining information; and
- (4) utilize files of information and existing facilities of established Federal agencies.

**(c) Report to Administrator by other Federal agencies involved in collection of energy information; cooperation of other Federal agencies; report by Administrator to President, Congress, and Energy Resources Council**

(1) At the earliest practicable date after August 14, 1976, each Federal agency which is engaged in the gathering of energy information as a part of an established program, function, or other activity shall promptly provide the Administrator with a report on energy information which—

- (A) identifies the statutory authority upon which the energy information collection activities of such agency is based;
- (B) lists and describes the energy information needs and requirements of such agency; and
- (C) lists and describes the categories, definitions, levels of detail, and frequency of collection of the energy information collected by such agency.

Such agencies shall cooperate with the Administrator and provide such other descriptive information with respect to energy information activities as the Administrator may request. The Administrator shall prepare a report on his activities under this subsection, which report shall include recommendations with respect to the coordination of energy information activities of the Federal Government. Such report shall be available to the Congress and shall be transmitted to the President and to the Energy Resources Council for use in preparation of the plan required under subsection (c) of section 5818 of title 42.

(Pub. L. 93-275, §56, as added Pub. L. 94-385, title I, §142, Aug. 14, 1976, 90 Stat. 1138.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 5818 of title 42, referred to in subsec. (c), was repealed by Pub. L. 95-91, title VII, §709(b), Aug. 4, 1977, 91 Stat. 608.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective 150 days after Aug. 14, 1976, except that subsec. (c) of this section effective Aug. 14, 1976, see section 143 of Pub. L. 94-385, set out as a note under section 790 of this title.

**TRANSFER OF FUNCTIONS**

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

**§790f. Reports by Director**

**(a) Periodic and special reports by Director to Congress and public; contents**

The Director shall make periodic reports and may make special reports to the Congress and the public, including but not limited to—

(1) such reports as the Director determines are necessary to provide a comprehensive picture of the quarterly, monthly, and, as appropriate, weekly supply and consumption of the various nonmineral energy resources, mineral fuels, and electricity in the United States; the information reported may be organized by company, by States, by regions, or by such other producing and consuming sectors, or combinations thereof, and shall be accompanied by an appropriate discussion of the evolution of the energy supply and consumption situation and such national and international trends and their effects as the Director may find to be significant; and

(2) an annual report which includes, but is not limited to, a description of the activities of the Office and the National Energy Information System during the preceding year; a summary of all special reports published during the preceding year; a summary of statistical information collected during the preceding year; short-, medium-, and long-term energy consumption and supply trends and forecasts under various assumptions; and, to the maximum extent practicable, a summary or schedule of the amounts of mineral fuel resources, nonmineral energy resources, and mineral fuels that can be brought to market at various prices and technologies and their relationship to forecasted demands.

**(b) Duty of Director to insure adequate documentation of forecasts and reports; periodic audit and validation of analytical methodologies; availability of information to public**

(1) The Director, on behalf of the Administrator, shall insure that adequate documentation for all statistical and forecast reports prepared by the Director is made available to the public at the time of publication of such reports. The Director shall periodically audit and validate analytical methodologies employed in the preparation of periodic statistical and forecast reports.

(2) The Director shall, on a regular basis, make available to the public information which contains validation and audits of periodic statistical and forecast reports.

**(c) Approval prior to publication of forecasts and reports**

Prior to publication, the Director may not be required to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

(Pub. L. 93–275, §57, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1139.)

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under section 790 of this title.

**TERMINATION OF REPORTING REQUIREMENTS**

For termination, effective May 15, 2000, of provisions in subsec. (a)(2) of this section relating to an 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.

**TRANSFER OF FUNCTIONS**

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

**§790g. Access by Director to energy information**

**(a) Access by Director to energy information in possession of other Federal agencies; limitations**

In furtherance and not in limitation of any other authority, the Director, on behalf of the Administrator, shall have access to energy information in the possession of any Federal agency except information—

- (1) the disclosure of which to another Federal agency is expressly prohibited by law; or
- (2) the disclosure of which the agency so requested determines would significantly impair the discharge of authorities and responsibilities which have been delegated to, or vested by law, in such agency.

**(b) Authority to obtain information from original or alternate sources**

In the event that energy information in the possession of another Federal agency which is required to achieve the purposes of this chapter is denied the Director or the Administrator pursuant to paragraph (1) or paragraph (2) of subsection (a) of this section, the Administrator, or the Director, on behalf of the Administrator, shall take appropriate action, pursuant to authority granted by law, to obtain said information from the original sources or a suitable alternate source. Such source shall be notified of the reason for this request for information.

(Pub. L. 93–275, §58, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1139.)

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under section 790 of this title.

**TRANSFER OF FUNCTIONS**

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

**§790h. Congressional access to energy information; disclosure by Congress**

The Director shall promptly provide upon request any energy information in the possession of the Office to any duly established committee of the Congress. Such information shall be deemed the property of such committee and may not be disclosed except in accordance with the rules of such committee and the Rules of the House of Representatives or the Senate and as permitted by law.

(Pub. L. 93–275, §59, as added Pub. L. 94–385, title I, §142, Aug. 14, 1976, 90 Stat. 1140.)

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective 150 days after Aug. 14, 1976, see section 143 of Pub. L. 94–385, set out as a note under section 790 of this title.

**TRANSFER OF FUNCTIONS**

Functions assigned to Director of Office of Energy Information and Analysis under this subchapter vested in Administrator of Energy Information Administration within Department of Energy by section 7135(c) of Title 42, The Public Health and Welfare.

**CHAPTER 16C—ENERGY SUPPLY AND ENVIRONMENTAL**

## COORDINATION

Sec.	
791.	Congressional declaration of purpose.
792.	Coal conversion and allocation.
793.	Protection of public health and environment.
794.	Energy conservation study.
795.	Report to Congress by January 31, 1975.
796.	Reporting of energy information.
797.	Enforcement.
798.	Definitions.

### **§791. Congressional declaration of purpose**

The purposes of this chapter are (1) to provide for a means to assist in meeting the essential needs of the United States for fuels, in a manner which is consistent, to the fullest extent practicable, with existing national commitments to protect and improve the environment, and (2) to provide requirements for reports respecting energy resources.

(Pub. L. 93-319, §1(b), June 22, 1974, 88 Stat. 246.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 93-319 which, in addition to enacting this chapter and provision set out as a note under this section, enacted sections 1857c-10 and 1857f-6f of Title 42, The Public Health and Welfare, and amended sections 1857b-1, 1857c-5, 1857c-8, 1857c-9, 1857d-1, 1857f-1, 1857f-6e, 1857f-7, 1857h-5, and 1857l of Title 42. For complete classification of this Act to the Code, see Tables.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### SHORT TITLE

Pub. L. 93-319, §1(a), June 22, 1974, 88 Stat. 246, provided that Pub. L. 93-319 [enacting this chapter, enacting sections 1857c-10 and 1857f-6f of Title 42, The Public Health and Welfare, and amending sections 1857b-1, 1857c-5, 1857c-8, 1857c-9, 1857d-1, 1857f-1, 1857f-6e, 1857f-7, 1857h-5, and 1857l of Title 42] may be cited as the "Energy Supply and Environmental Coordination Act of 1974".

### **§792. Coal conversion and allocation**

#### **(a) Powerplant and fuel burning installations**

The Federal Energy Administrator—

- (1) shall, by order, prohibit any powerplant, and
- (2) may, by order, prohibit any major fuel burning installation, other than a powerplant,

from burning natural gas or petroleum products as its primary energy source, if the requirements of subsection (b) are met and if (A) the Federal Energy Administrator determines such powerplant or installation on June 22, 1974, had, or thereafter acquires or is designed with, the capability and necessary plant equipment to burn coal, or (B) such powerplant or installation is required to meet a design or construction requirement under subsection (c).

#### **(b) Prerequisites to issuance or effectiveness of orders prohibiting use of natural gas or petroleum products as primary energy source**

The requirements referred to in subsection (a) are as follows:

- (1) An order under subsection (a) may not be issued with respect to a powerplant or installation

unless the Federal Energy Administrator finds (A) that the burning of coal by such plant or installation, in lieu of petroleum products or natural gas, is practicable and consistent with the purposes of this chapter, (B) that coal and coal transportation facilities will be available during the period the order is in effect, and (C) in the case of a powerplant, that the prohibition under subsection (a) will not impair the reliability of service in the area served by such plant. Such an order shall be rescinded or modified to the extent the Federal Energy Administrator determines that any requirement described in subparagraph (A), (B), or (C) of this paragraph is no longer met; and such an order may at any time be modified if the Federal Energy Administrator determines that such order, as modified, complies with the requirements of this section.

(2)(A) Before issuing an order under subsection (a) which is applicable to a powerplant or installation for a period ending on or before June 30, 1975, the Federal Energy Administrator (i) shall give notice to the public and afford interested persons an opportunity for written presentations of data, views, and arguments, (ii) shall consult with the Administrator of the Environmental Protection Agency, and (iii) shall take into account the likelihood that the powerplant or installation will be permitted to burn coal after June 30, 1975.

(B) An order described in subparagraph (A) of this paragraph shall not become effective until the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c-10(d)(1)(A) <sup>1</sup> of title 42 is the earliest date that such plant or installation will be able to comply with the air pollution requirements which will be applicable to it. Such order shall not be effective for any period certified by the Administrator of the Environmental Protection Agency pursuant to section 1857c-10(d)(3)(B) <sup>1</sup> of title 42.

(3)(A) Before issuing an order under subsection (a) which is applicable to a powerplant or installation after June 30, 1975 (or modifying an order to which paragraph (2) applies, so as to apply such order to a powerplant or installation after such date), the Federal Energy Administrator shall give notice to the public and afford interested persons an opportunity for oral and written presentations of data, views, and arguments.

(B) An order (or modification thereof) described in subparagraph (A) of this paragraph shall not become effective until (i) the Administrator of the Environmental Protection Agency notifies the Federal Energy Administrator under section 1857c-10(d)(1)(B) <sup>1</sup> of title 42 that such plant or installation will be able on and after July 1, 1975, to burn coal and to comply with all applicable air pollution requirements without a compliance date extension under section 1857c-10(c) <sup>1</sup> of title 42, or (ii) if such notification is not given, the date which the Administrator of the Environmental Protection Agency certifies pursuant to section 1857c-10(d)(1)(B) <sup>1</sup> of title 42 is the earliest date that such plant or installation will be able to comply with all applicable requirements of such 1857c-10 <sup>1</sup> of title 42. Such order (or modification) shall not be effective during any period certified by the Administrator of the Environmental Protection Agency under section 1857c-10(d)(3)(B) <sup>1</sup> of title 42.

### **(c) Construction and design of powerplants or other major fuel burning installations**

The Federal Energy Administrator may require that any powerplant or other major fuel burning installation in the early planning process (other than a combustion gas turbine or combined cycle unit) be designed and constructed so as to be capable of using coal as its primary energy source. No powerplant or other major fuel burning installation may be required under this subsection to be so designed and constructed, if the Administrator determines that (1) in the case of a powerplant to do so is likely to result in an impairment of reliability or adequacy of service, or (2) an adequate and reliable supply of coal is not expected to be available. In considering whether to impose a design and construction requirement under this subsection, the Federal Energy Administrator shall consider the existence and effects of any contractual commitment for the construction of such facilities and the capability of the owner to recover any capital investment made as a result of any requirement imposed under this subsection.

### **(d) Allocation of coal**

The Federal Energy Administrator may, by rule or order, allocate coal (1) to any powerplant or

major fuel-burning installation to which an order under subsection (a) has been issued, or (2) to any other person to the extent necessary to carry out the purposes of this chapter.

**(e) Definitions**

For purposes of this section:

(1) The term "powerplant" means a fossil-fuel fired electric generating unit which produces electric power for purposes of sale or exchange.

(2) The term "coal" includes coal derivatives.

**(f) Expiration of authority; effective dates**

(1) Authority to issue orders or rules under subsections (a) through (d) of this section shall expire at midnight, December 31, 1978. Such a rule or order may take effect at any time before January 1, 1985.

(2) Authority to amend, repeal, rescind, modify, or enforce such rules or orders shall expire at midnight, December 31, 1984; but the expiration of such authority shall not affect any administrative or judicial proceeding which relates to any act or omission which occurred prior to January 1, 1985.

(Pub. L. 93-319, §2, June 22, 1974, 88 Stat. 246; Pub. L. 94-163, title I, §101, Dec. 22, 1975, 89 Stat. 875; Pub. L. 95-70, §7, July 21, 1977, 91 Stat. 277.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in subsecs. (b)(1) and (d), was in the original "this Act", meaning Pub. L. 93-319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title and Tables.

Section 1857c-10 of title 42, referred to in subsec. (b)(2)(B), (3)(B), was in the original a reference to section 119 of the Clean Air Act, and was repealed by Pub. L. 95-95, §112(b), which provided in part that references in this section to section 1857c-10 shall be construed to refer to section 7413(d) of title 42 and to paragraph (5) thereof in particular. Subsequently, section 7413 of title 42 was amended generally by Pub. L. 101-549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) no longer relates to final compliance orders. See section 7413(a) of title 42 for provisions relating generally to compliance orders. For further details, see Compliance Orders note set out below.

**AMENDMENTS**

**1977**—Subsec. (f)(1). Pub. L. 95-70 substituted "shall expire at midnight, December 31, 1978" for "shall expire at midnight, June 30, 1977".

**1975**—Subsec. (a). Pub. L. 94-163, §101(b), authorized the Administrator to prohibit any powerplant or other fuel burning installation from burning natural gas or petroleum products as its primary energy source if such powerplant or other installation is required to meet a design or construction requirement under subsec. (c) of this section.

Subsec. (c). Pub. L. 94-163, §101(c), inserted "or other major fuel burning installation" after "powerplant" wherever appearing and inserted "in the case of a powerplant" after "if the Administrator determines that (1)".

Subsec. (f)(1). Pub. L. 94-163, §101(a)(1), substituted "June 30, 1977" for "June 30, 1975" and "January 1, 1985" for "January 1, 1979".

Subsec. (f)(2). Pub. L. 94-163, §101(a)(2), substituted "December 31, 1984" for "December 31, 1978" and "January 1, 1985" for "January 1, 1979".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**TRANSFER OF FUNCTIONS**

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

**COMPLIANCE ORDERS**

Pub. L. 95-95, title I, §112(b), Aug. 7, 1977, 91 Stat. 709, repealed section 119 of the Clean Air Act, which

was classified to section 1857c–10 of Title 42, The Public Health and Welfare, and which related to the Administrator's authority to deal with the energy shortage. Section 112(b) of Pub. L. 95–95 provided that:

"(1) Section 119 of such Act [section 1857c–10 of Title 42, The Public Health and Welfare] is hereby repealed. All references to such section 119 [section 1857c–10 of Title 42] or subsections thereof in section 2 of the Energy Supply and Environmental Coordination Act of 1974 (Public Law 93–319) [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93–319, June 22, 1974, 88 Stat. 246], shall be construed to refer to section 113(d) of the Clean Air Act [section 7413(d) of Title 42] and to paragraph (5) thereof in particular. Any certification or notification required to be given by the Administrator of the Environmental Protection Agency under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act, shall be given only when the Governor of the State in which is located the source to which the proposed order under section 113(d)(5) of the Clean Air Act [section 7413(d)(5) of Title 42] is to be issued gives his prior written concurrence.

"(2) In the case of any major stationary source to which any requirement is applicable under section 113(d)(5)(B) of the Clean Air Act [section 7413(d)(5)(B) of Title 42] and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93–319], the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such source will be able to comply with all such requirements. In the case of any plant or installation which the Administrator of the Environmental Protection Agency determines (after consultation with the State) will not be subject to an order under section 113(d) of the Clean Air Act [section 7413(d) of Title 42] and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93–319], the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such plant or installation will be able to burn coal in compliance with all applicable emission limitations under the implementation plan.

"(3) Any certification required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 [this section] or any amendment thereto, or any subsequent enactment which supersedes such Act [Pub. L. 93–319], or under this subsection may be provided in an order under section 113(d) of the Clean Air Act [section 7413(d) of Title 42]."

<sup>1</sup> [\*See References in Text note below.\*](#)

## **§793. Protection of public health and environment**

### **(a) Distribution of low sulfur fuel**

Any allocation program provided for in section 792 of this title or in the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.],<sup>1</sup> shall, to the maximum extent practicable, include measures to assure that available low sulfur fuel will be distributed on a priority basis to those areas of the United States designated by the Administrator of the Environmental Protection Agency as requiring low sulfur fuel to avoid or minimize adverse impact on public health.

### **(b) Study of chronic effects of sulfur oxide emissions among exposed populations**

In order to determine the health effects of emissions of sulfur oxides to the air resulting from any conversions to burning coal to which section 119<sup>1</sup> of the Clean Air Act [42 U.S.C. 1857c–10] applies, the Department of Health and Human Services shall, through the National Institute of Environmental Health Sciences and in cooperation with the Environmental Protection Agency, conduct a study of chronic effects among exposed populations. The sum of \$3,500,000 is authorized to be appropriated for such a study. In order to assure that long-term studies can be conducted without interruption, such sums as are appropriated shall be available until expended.

### **(c) Major Federal actions significantly affecting the quality of the human environment**

(1) No action taken under the Clean Air Act [42 U.S.C. 7401 et seq.] shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(2) No action under section 792 of this title for a period of one year after initiation of such action shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.]. However, before any action under section 792 of this title that has a significant impact on the environment is taken, if practicable, or in any event within sixty days after such action is taken, an environmental evaluation with analysis equivalent to that required under section 102(2)(C) of the National Environmental Policy Act [42 U.S.C. 4332(2)(C)], to the greatest extent practicable within this time constraint, shall be prepared and circulated to appropriate Federal, State, and local government agencies and to the public for a thirty-day comment period after which a public hearing shall be held upon request to review outstanding environmental issues. Such an evaluation shall not be required where the action in question has been preceded by compliance with the National Environmental Policy Act by the appropriate Federal agency. Any action taken under section 792 of this title which will be in effect for more than a one-year period or any action to extend an action taken under section 792 of this title to a total period of more than one year shall be subject to the full provisions of the National Environmental Policy Act, notwithstanding any other provision of this chapter.

#### **(d) Importation of hydroelectric energy**

In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 [42 U.S.C. 4332] for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

(Pub. L. 93-319, §7, June 22, 1974, 88 Stat. 259; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

Section 119 of the Clean Air Act [42 U.S.C. 1857c-10], referred to in subsec. (b), was repealed by Pub. L. 95-95, §112(b)(1), Aug. 7, 1977, 91 Stat. 709, which is set out as a Compliance Orders note under section 792 of this title. A new section 119 of the Clean Air Act was added by Pub. L. 95-95, §117(b), and is classified to section 7419 of Title 42, The Public Health and Welfare.

The Clean Air Act, referred to in subsec. (c), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of Title 42. For complete classification of this Act of the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (c), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, which is classified generally to chapter 55 (§4321 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note under section 4321 of Title 42 and Tables.

This chapter, referred to in subsec. (c)(2), was in the original "this Act", meaning Pub. L. 93-319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title and Tables.

Executive Order 10485 of September 3, 1953, referred to in subsec. (d), is Ex. Ord. No. 10485, Sept. 3, 1953, 18 F.R. 5397, which is set out as a note under section 717b of this title.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **CHANGE OF NAME**



"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (b), pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

### TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated, and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

<sup>1</sup> [See References in Text note below.](#)

## §794. Energy conservation study

### (a) Study of conservation methods

The Federal Energy Administrator shall conduct a study on potential methods of energy conservation and, not later than six months after June 22, 1974, shall submit to Congress a report on the results of such study. The study shall include, but not be limited to, the following:

- (1) the energy conservation potential of restricting exports of fuels or energy-intensive products, or goods, including an analysis of balance-of-payments and foreign relations implications of any such restrictions;
- (2) alternative requirements, incentives, or disincentives for increasing industrial recycling and resource recovery in order to reduce energy demand, including the economic costs and fuel consumption tradeoff which may be associated with such recycling and resource recovery in lieu of transportation and use of virgin materials; and
- (3) means for incentives or disincentives to increase efficiency of industrial use of energy.

### (b) Emergency mass transportation assistance plan

Within ninety days of June 22, 1974, the Secretary of Transportation, after consultation with the Federal Energy Administrator, shall submit to the Congress for appropriate action an "Emergency Mass Transportation Assistance Plan" for the purpose of conserving energy by expanding and improving public mass transportation systems and encouraging increased ridership as alternatives to automobile travel.

### (c) Recommendations in plan

Such plan shall include, but shall not be limited to—

- (1) recommendations for emergency temporary grants to assist States and local public bodies and agencies thereof in the payment of operating expenses incurred in connection with the provision of expanded mass transportation service in urban areas;
- (2) recommendations for additional emergency assistance for the purchase of buses and rolling stock for fixed rail, including the feasibility of accelerating the timetable for such assistance under section 142(a)(2) of title 23 for the purpose of providing additional capacity for and encouraging increased use of public mass transportation systems;
- (3) recommendations for a program of demonstration projects to determine the feasibility of fare-free and low-fare urban mass transportation systems, including reduced rates for elderly and handicapped persons during nonpeak hours of transportation;
- (4) recommendations for additional emergency assistance for the construction of fringe and transportation corridor parking facilities to serve bus and other mass transportation passengers;
- (5) recommendations on the feasibility of providing tax incentives for persons who use public mass transportation systems.

(Pub. L. 93-319, §8, June 22, 1974, 88 Stat. 260.)

## TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

### **§795. Report to Congress by January 31, 1975**

The Administrator of the Environmental Protection Agency shall report to Congress not later than January 31, 1975, on the implementation of sections 3 through 7 of the Energy Supply and Environmental Coordination Act of 1974.

(Pub. L. 93-319, §9, June 22, 1974, 88 Stat. 261.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Sections 3 through 7 of the Energy Supply and Environmental Coordination Act of 1974, referred to in text, are sections 3 through 7 of Pub. L. 93-319, June 22, 1974, 88 Stat. 248-260, which sections enacted section 793 of this title and section 1857c-10 of Title 42, The Public Health and Welfare, and amended sections 1857c-5, 1857c-8, 1857c-9, 1857d-1, 1857f-1, and 1857h-5 of Title 42. Section 1857c-10 of Title 42 was repealed by Pub. L. 95-95, §112(b)(1). On enactment of Pub. L. 95-95, sections 1857c-5, 1857c-8, 1857c-9, 1857d-1, 1857f-1, and 1857h-5 were reclassified to sections 7410, 7413, 7414, 7416, 7521, and 7607, respectively, of Title 42.

### **§796. Reporting of energy information**

#### **(a) Authority of Federal Energy Administrator to request, acquire, and collect energy information; rules and regulations**

For the purpose of assuring that the Federal Energy Administrator, the Congress, the States, and the public have access to and are able to obtain reliable energy information, the Federal Energy Administrator shall request, acquire, and collect such energy information as he determines to be necessary to assist in the formulation of energy policy or to carry out the purposes of this chapter or the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.].<sup>1</sup> The Federal Energy Administrator shall promptly promulgate rules pursuant to subsection (b)(1)(A) of this section requiring reports of such information to be submitted to the Federal Energy Administrator at least every ninety calendar days.

#### **(b) Powers of Federal Energy Administrator in obtaining energy information; verification of accuracy; compliance orders**

(1) In order to obtain energy information for the purpose of carrying out the provisions of subsection (a), the Federal Energy Administrator is authorized—

(A) to require, by rule, any person who is engaged in the production, processing, refining, transportation by pipeline, or distribution (at other than the retail level) of energy resources to submit reports;

(B) to sign and issue subpoenas for the attendance and testimony of witnesses and the production of books, records, papers, and other documents;

(C) to require any person, by general or special order, to submit answers in writing to interrogatories, requests for reports or for other information; and such answers or other submissions shall be made within such reasonable period, and under oath or otherwise, as the Federal Energy Administrator may determine; and

(D) to administer oaths.

(2) For the purpose of verifying the accuracy of any energy information requested, acquired, or

collected by the Federal Energy Administrator, the Federal Energy Administrator, or any officer or employer <sup>2</sup> duly designated by him, upon presenting appropriate credentials and a written notice from the Federal Energy Administrator to the owner, operator, or agent in charge, may—

(A) enter, at reasonable times, any business premise or facility; and

(B) inspect, at reasonable times and in a reasonable manner, any such premise or facility, inventory and sample any stock of energy resources therein, and examine and copy books, records, papers, or other documents, relating to any such energy information.

(3) Any United States district court within the jurisdiction of which any inquiry is carried on may, upon petition by the Attorney General at the request of the Federal Energy Administrator, in the case of refusal to obey a subpoena or order of the Federal Energy Administrator issued under this section, issue an order requiring compliance therewith; and any failure to obey the order of the court may be punished by the court as a contempt thereof.

**(c) Development of initial report; quarterly reports; accounting practices**

(1) The Federal Energy Administrator shall exercise the authorities granted to him under subsection (b)(1)(A) to develop, within thirty days after June 22, 1974, as full and accurate a measure as is reasonably practicable of—

(A) domestic reserves and production;

(B) imports; and

(C) inventories;

of crude oil, residual fuel oil, refined petroleum products, natural gas, and coal.

(2) For each calendar quarter beginning with the first complete calendar quarter following June 22, 1974, the Federal Energy Administrator shall develop and publish a report containing the following energy information:

(A) Imports of crude oil, residual fuel oil, refined petroleum products (by product), natural gas, and coal, identifying (with respect to each such oil, product, gas, or coal) country of origin, arrival point, quantity received, and the geographic distribution within the United States.

(B) Domestic reserves and production of crude oil, natural gas, and coal.

(C) Refinery activities, showing for each refinery within the United States (i) the amounts of crude oil run by such refinery, (ii) amounts of crude oil allocated to such refinery pursuant to regulations and orders of the Federal Energy Administrator, his delegate pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.], <sup>1</sup> or any other person authorized by law to issue regulations and orders with respect to the allocation of crude oil, (iii) percentage of refinery capacity utilized, and (iv) amounts of products refined from such crude oil.

(D) Report of inventories, on a national, regional, and State-by-State basis—

(i) of various refined petroleum products, related refiners, refineries, suppliers to refiners, share of market, and allocation fractions;

(ii) of various refined petroleum products, previous quarter deliveries and anticipated three-month available supplies;

(iii) of anticipated monthly supply of refined petroleum products, amount of set-aside for assignment by the State, anticipated State requirements, excess or shortfall of supply, and allocation fraction of base year; and

(iv) of LPG by State and owner: quantities stored, and existing capacities, and previous priorities on types, inventories of suppliers, and changes in supplier inventories.

(3) In order to carry out his responsibilities under subsection (a) of this section, the Federal Energy Administrator shall require, pursuant to subsection (b)(1)(A) of this section, that persons engaged, in whole or in part, in the production of crude oil or natural gas—

(A) keep energy information in accordance with the accounting practices developed pursuant to section 503 of the Energy Policy and Conservation Act [42 U.S.C. 6383], and

(B) submit reports with respect to energy information kept in accordance with such practices.

The Administrator shall file quarterly reports with the President and the Congress compiled from accounts kept in accordance with such section 503 and submitted to the Administrator in accordance with this paragraph. Such reports shall present energy information in the categories specified in subsection (c) of such section 503 to the extent that such information may be compiled from such accounts. Such energy information shall be collected and such quarterly reports made for each calendar quarter which begins 6 months after the date on which the accounting practices developed pursuant to such section 503 are made effective.

**(d) Confidential information**

Upon a showing satisfactory to the Federal Energy Administrator by any person that any energy information obtained under this section from such person would, if made public, divulge methods or processes entitled to protection as trade secrets or other proprietary information of such person, such information, or portion thereof, shall be confidential in accordance with the provisions of section 1905 of title 18; except that such information, or part thereof, shall not be deemed confidential for purposes of disclosure, upon request, to (1) any delegate of the Federal Energy Administrator for the purpose of carrying out this chapter and the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.],<sup>1</sup> (2) the Attorney General, the Secretary of the Interior, the Federal Trade Commission, the Federal Power Commission, or the Government Accountability Office, when necessary to carry out those agencies' duties and responsibilities under this and other statutes, and (3) the Congress, or any committee of Congress upon request of the Chairman.

**(e) Definitions**

As used in this section:

(1) The term "energy information" includes (A) all information in whatever form on (i) fuel reserves, exploration, extraction, and energy resources (including petrochemical feedstocks) wherever located; (ii) production, distribution, and consumption of energy and fuels wherever carried on; and (B) matters relating to energy and fuels, such as corporate structure and proprietary relationships, costs, prices, capital investment, and assets, and other matters directly related thereto, wherever they exist.

(2) The term "person" means any natural person, corporation, partnership, association, consortium, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business, who directly or through other persons subject to their control does business in any part of the United States.

(3) The term "United States" when used in the geographical sense means the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

**(f) Availability of energy information**

Information obtained by the Administration under authority of this chapter shall be available to the public in accordance with the provisions of section 552 of title 5.

**(g) Independent nature of authority to gather energy information**

The authority contained in this section is in addition to, independent of, not limited by, and not in limitation of, any other authority of the Federal Energy Administrator.

(Pub. L. 93-319, §11, June 22, 1974, 88 Stat. 262; Pub. L. 94-163, title V, §§505(a), 506, Dec. 22, 1975, 89 Stat. 960; Pub. L. 95-620, title VII, §762(d), Nov. 9, 1978, 92 Stat. 3346; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 93-319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title and Tables.

The Emergency Petroleum Allocation Act of 1973, referred to in subsecs. (a), (c)(2)(C), and (d), is Pub. L.

93-159, Nov. 27, 1973, 87 Stat. 628, which was classified generally to chapter 16A (§751 et seq.) of this title, was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that chapter on Sept. 30, 1981.

### AMENDMENTS

**2004**—Subsec. (d). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

**1978**—Subsec. (g). Pub. L. 95-620 struck out provisions comprising par. (2) relating to termination of this section at midnight, Dec. 31, 1979, and designated remaining provisions as subsec. (g).

**1975**—Subsec. (c)(3). Pub. L. 94-163, §505(a), added par. (3).

Subsec. (g)(2). Pub. L. 94-163, §506, substituted "December 31, 1979" for "June 30, 1975" in two places.

### STATUTORY NOTES AND RELATED SUBSIDIARIES

#### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-620 effective 180 days after Nov. 9, 1978, see section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of Title 42, The Public Health and Welfare.

#### EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-163, title V, §505(b), Dec. 22, 1975, 89 Stat. 960, provided that: "The amendment made by subsection (a) to section 11(c) of the Energy Supply and Environmental Coordination Act of 1974 [subsec. (c) of this section] shall take effect on the first day of the first accounting quarter to which such practices apply."

#### TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to Secretary of Energy (except for certain functions transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42.

<sup>1</sup> [See References in Text note below.](#)

<sup>2</sup> [So in original. Probably should be "employee".](#)

## §797. Enforcement

### (a) Violations

It shall be unlawful for any person to violate any provision of section 792 of this title (relating to coal conversion and allocation) or section 796 of this title (relating to energy information) or to violate any rule, regulation, or order issued pursuant to any such provision.

### (b) Penalties; injunctions; declaratory judgments

(1) Whoever violates any provision of subsection (a) shall be subject to a civil penalty of not more than \$2,500 for each violation.

(2) Whoever willfully violates any provision of subsection (a) shall be fined not more than \$5,000 for each violation.

(3) It shall be unlawful for any person to offer for sale or distribute in commerce any coal in violation of an order or regulation issued pursuant to section 792(d) of this title. Any person who knowingly and willfully violates this paragraph after having been subjected to a civil penalty for a prior violation of the same provision of any order or regulation issued pursuant to section 792(d) of this title shall be fined not more than \$50,000, or imprisoned not more than six months, or both.

(4) Whenever it appears to the Federal Energy Administrator or any person authorized by the Federal Energy Administrator to exercise authority under section 792 of this title or section 796 of this title that any individual or organization has engaged, is engaged, or is about to engage in acts or



practices constituting a violation of subsection (a) the Federal Energy Administrator or such person may request the Attorney General to bring a civil action to enjoin such acts or practices, and upon a proper showing, a temporary restraining order or a preliminary or permanent injunction shall be granted without bond. In such action, the court may also issue mandatory injunctions commanding any person to comply with any provision, the violation of which is prohibited by subsection (a).

(5) Any person suffering legal wrong because of any act or practice arising out of any violation of subsection (a) may bring a civil action for appropriate relief, including an action for a declaratory judgment or writ of injunction. United States district courts shall have jurisdiction of actions under this paragraph without regard to the amount in controversy. Nothing in this paragraph shall authorize any person to recover damages.

(Pub. L. 93-319, §12, June 22, 1974, 88 Stat. 264.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

## §798. Definitions

(a) For purposes of this chapter and the Clean Air Act [42 U.S.C. 7401 et seq.] the term "Federal Energy Administrator" means the Administrator of the Federal Energy Administration established by Federal Energy Administration Act of 1974 [15 U.S.C. 761 et seq.]; except that until such Administrator takes office and after such Administration ceases to exist, such term means any officer of the United States designated as Federal Energy Administrator by the President for purposes of this chapter and section 119 <sup>1</sup> of the Clean Air Act [42 U.S.C. 1857c-10].

(b) For purposes of this chapter, the term "petroleum product" means crude oil, residual fuel oil, or any refined petroleum product (as defined in section 752(5) <sup>1</sup> of this title).

(Pub. L. 93-319, §14, June 22, 1974, 88 Stat. 265.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 93-319. For complete classification of this Act to the Code, see Short Title note set out under section 791 of this title and Tables.

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 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 7401 of Title 42 and Tables.

Section 119 of the Clean Air Act [42 U.S.C. 1857c-10], referred to in subsec. (a), was repealed by Pub. L. 95-95, §112(b)(1), Aug. 7, 1977, 91 Stat. 709, which is set out as a Compliance Orders note under section 792 of this title. A new section 119 of the Clean Air Act was added by Pub. L. 95-95, §117(b), and is classified to section 7419 of Title 42.

The Federal Energy Administration Act of 1974, referred to in subsec. (a), is Pub. L. 93-275, May 7, 1974, 88 Stat. 96, which is classified generally to chapter 16B (§761 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 761 of this title and Tables.

Section 752 of this title, referred to in subsec. (b), was omitted from the Code pursuant to section 760g of this title, which provided for the expiration of the President's authority under that section on Sept. 30, 1981.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### TRANSFER OF FUNCTIONS

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

<sup>1</sup> [See References in Text note below.](#)

## **CHAPTER 17—PRODUCTION, MARKETING, AND USE OF BITUMINOUS COAL**

### **SUBCHAPTER A—BITUMINOUS COAL CONSERVATION ACT OF 1935**

#### **§§801 to 827. Repealed. Apr. 26, 1937, ch. 127, §20(a), 50 Stat. 90**

Sections, act Aug. 30, 1935, ch. 824, §§1–23, 49 Stat. 991, comprised the Bituminous Coal Conservation Act of 1935.

### **SUBCHAPTER B—BITUMINOUS COAL ACT OF 1937**

#### **§§828 to 852. Repealed. Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 649, 651**

Sections, act Apr. 26, 1937, ch. 127, §§1–22, 50 Stat. 75–91, related to the regulation of interstate commerce of bituminous coal.

Section 849 of this title was amended by acts Apr. 11, 1941, ch. 64, §1(a), 55 Stat. 134; Apr. 24, 1943, ch. 68, 57 Stat. 68; May 21, 1943, ch. 97, 57 Stat. 82.

Section 852 of this title was added by act Apr. 11, 1941, ch. 64, §2, 55 Stat. 134.

## **CHAPTER 18—TRANSPORTATION OF FIREARMS**

#### **§§901 to 910. Repealed. Pub. L. 90–351, title IV, §906, June 19, 1968, 82 Stat. 234**

Section 901, acts June 30, 1938, ch. 850, §1, 52 Stat. 1250; Aug. 6, 1939, ch. 500, 53 Stat. 1222; Mar. 10, 1947, ch. 15, 61 Stat. 11; Oct. 3, 1961, Pub. L. 87–342, §1, 75 Stat. 757, defined in pars. (1) to (7) the terms "person", "interstate or foreign commerce", "firearm", "manufacturer", "dealer", "fugitive from justice", and "ammunition". See section 921(a)(1) to (3), (9), (10), (11), (14), and (16) of Title 18, Crimes and Criminal Procedure, respectively.

Section 902, acts June 30, 1938, ch. 850, §2, 52 Stat. 1250; Oct. 3, 1961, Pub. L. 87–342, §2, 75 Stat. 757, prohibited certain enumerated acts, including transporting, shipping, or receiving firearms or ammunition in commerce, subsecs. (a), (d) to (i) of which are covered in section 922(a)(1), (c), (e) to (i) of Title 18, Crimes and Criminal Procedure, respectively, such subsecs. (d) to (i) also being covered generally in section 922(d) and such subsec. (i) in section 923(f), the presumption from possession rule of subsecs. (f) and (i) being omitted, and subsecs. (b) and (c) of which prohibited receipt with knowledge that transportation or shipment was in violation of former subsec. (a) or that the transportation or shipment was to a person without a license where State laws require prospective purchaser to exhibit a license to licensed manufacturer or dealer, respectively.

Section 903, act June 30, 1938, ch. 850, §3, 52 Stat. 1251, provided for licenses to transport, ship, or receive firearms or ammunition. For subsecs. (a), (b), and (d), see sections 923(a), (b), 922(b)(5), (k), 923(d),

(f) of Title 18, respectively.

Section 904, act June 30, 1938, ch. 850, §4, 52 Stat. 1252, excepted certain persons from the provisions of the chapter. See section 925(a) of Title 18.

Section 905, acts June 30, 1938, ch. 850, §5, 52 Stat. 1252; Feb. 7, 1950, ch. 2, 64 Stat. 3, prescribed penalties for violations. See section 924(a) and (c) of Title 18.

Section 906, act June 30, 1938, ch. 850, §6, 52 Stat. 1252, provided for effective date of chapter 18. Similar provisions are set out as a note under section 921 of Title 18.

Section 907, act June 30, 1938, ch. 850, §7, 52 Stat. 1252, authorized rules and regulations. See section 926 of Title 18.

Section 908, act June 30, 1938, ch. 850, §8, 52 Stat. 1252, contained separability clause. See section 928 of Title 18.

Section 909, act June 30, 1938, ch. 850, §9, 52 Stat. 1252, provided for the Federal Firearms Act as the short title for chapter 18.

Section 910, act June 30, 1938, ch. 850, §10, as added Sept. 15, 1965, Pub. L. 89-184, 79 Stat. 788, provided for relief from disabilities resulting from conviction, application of provisions, public interest, and publication in Federal Register. See section 925(c) of Title 18.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF REPEAL

Repeal effective 180 days after June 19, 1968, except that valid license issued thereunder shall not terminate until expiration according to terms of license unless sooner revoked or terminated pursuant to applicable law, see section 907 of Pub. L. 90-351, set out as a note under section 921 of Title 18, Crimes and Criminal Procedure.

## CHAPTER 19—MISCELLANEOUS

Sec.

- 1001. Prize-fight films as subjects of interstate or foreign commerce.
- 1002. Golden Gate Bridge tolls; Government traffic and personnel in performance of office business not subject to tolls.
- 1003. Authorization for free travel on Golden Gate Bridge; issuance, presentation, and acceptance; other authorization devices.
- 1004. Penalties.
- 1005. San Francisco-Oakland Bay Bridge tolls; Government traffic and personnel on official business exempted; Government personnel on Yerba Buena Island or Treasure Island exempted.
- 1006. Authorization for free travel on San Francisco-Oakland Bay Bridge; issuance, presentation, and acceptance; other authorization devices.
- 1007. Penalties.

### **§1001. Prize-fight films as subjects of interstate or foreign commerce**

Every film or other pictorial representation of any prize fight or encounter of pugilists, under whatever name, transported into any State, Territory, or possession, for use, sale, storage, exhibition, or other disposition therein is divested of its character as a subject of interstate or foreign commerce to the extent that it shall upon crossing the boundary of such State, Territory, or possession, be subject to the operation and effect of the laws of such State, Territory, or possession enacted in the exercise of its police power.

(June 29, 1940, ch. 443, §1, 54 Stat. 686.)

### **§1002. Golden Gate Bridge tolls; Government traffic and personnel in**



### **performance of office business not subject to tolls**

Tolls may be charged for the passage or transit over the Golden Gate Bridge of Government traffic, of military or naval personnel and their dependents, and of civilian employees of the Army and Navy traveling on Government business, but such tolls shall not be in excess of the tolls charged for the passage or transit of other like traffic over such bridge: *Provided, however*, That subject to the provisions of section 1003 of this title, military and naval personnel, and civilian employees of the Army and Navy, when such personnel or employees are engaged in the performance of official duties requiring the use of such bridge, together with the conveyances being used by them in the performance of such duties, shall have the use of such bridge free of toll.

(Mar. 14, 1944, ch. 92, §1, 58 Stat. 116.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE**

Act Mar. 14, 1944, ch. 92, §4, 58 Stat. 116, provided: "The provisions of this Act [sections 1002 to 1004 of this title] shall take effect thirty days after the date of its enactment."

### **§1003. Authorization for free travel on Golden Gate Bridge; issuance, presentation, and acceptance; other authorization devices**

(a) The use of the Golden Gate Bridge free of toll, provided for in section 1002 of this title, shall be granted upon the presentation and surrender at the toll lanes of an authorization certifying that the traffic in question is entitled to such right. Such authorization shall be issued and signed by any military or naval officer designated for such purpose in accordance with regulations which shall be prescribed by the Secretary of the Army and the Secretary of the Navy, respectively. The names and signatures of officers so designated shall be furnished to the Golden Gate Bridge and Highway District, and thereafter authorizations signed by them shall be accepted by such bridge and highway district as prima facie evidence of the facts stated therein.

(b) Notwithstanding the provisions of subsection (a), such right to use the Golden Gate Bridge free of toll may be established by any other device or means which may be acceptable to the Golden Gate Bridge and Highway District; and the Secretary of the Army and the Golden Gate Bridge and Highway District, and the Secretary of the Navy and the Golden Gate Bridge and Highway District, may enter into any appropriate agreements to secure the effective, convenient, and just exercise of such right.

(Mar. 14, 1944, ch. 92, §2, 58 Stat. 116.)

## **EDITORIAL NOTES**

### **CODIFICATION**

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011 to 3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

## **EXECUTIVE DOCUMENTS**

### **SECRETARY OF THE AIR FORCE**

For transfer of certain functions relating to finance and fiscal matters, insofar as they pertain to Secretary of the Air Force, from Secretary of the Army to Secretary of the Air Force, see Secretary of Defense Transfer Order Nos. 25, Oct. 14, 1948, and 40 [App. B(61)], July 22, 1949.

## **§1004. Penalties**

Whoever secures or attempts to secure the exemption from toll provided for in sections 1002 to 1004 of this title or an authorization referred to in section 1003 of this title, knowing that he is not entitled thereto, and whoever signs or issues any such authorization certifying to such right of exemption, knowing that such right does not exist, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than \$100 or by imprisonment for not more than ten days, or by both such fine and imprisonment.

(Mar. 14, 1944, ch. 92, §3, 58 Stat. 116.)

## **§1005. San Francisco-Oakland Bay Bridge tolls; Government traffic and personnel on official business exempted; Government personnel on Yerba Buena Island or Treasure Island exempted**

Tolls may be charged for the passage or transit over the San Francisco-Oakland Bay Bridge of Government traffic, or military, naval, or civilian personnel and their dependents, and of civilian employees of the Army and Navy traveling on Government business, but such tolls shall not be in excess of the tolls charged for the passage or transit of other like traffic over such bridge: *Provided, however,* That subject to the provisions of section 1006 of this title, military, Coast Guard, and naval personnel, and civilian employees of the Army and Navy and Coast Guard and personnel and employees of the National Ocean Survey, when such personnel or employees are engaged in the performance of official duties requiring the use of such bridge, together with the conveyances being used by them in the performance of such duties, shall have the use of such bridge free of toll: *Provided further,* That subject to the provisions of section 1006 of this title, military, Coast Guard, and naval personnel, civilian employees of the Army and Navy and Coast Guard and personnel and employees of the National Ocean Survey, and their dependents, when such personnel, employees, or dependents are resident or employed on Yerba Buena Island or Treasure Island, or on any vessel berthed at any point on said islands, together with the conveyances being used by them, when proceeding to or from said islands, shall have the use of such bridge free of toll.

(July 1, 1946, ch. 528, §1, 60 Stat. 347.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE**

Section 4 of act July 1, 1946, provided that sections 1005 to 1007 of this title shall be effective thirty days after July 1, 1946.

### **TRANSFER OF FUNCTIONS**

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

Coast and Geodetic Survey consolidated with Weather Bureau of Department of Commerce to form new agency in Department of Commerce known as Environmental Science Services Administration and offices of Director and Deputy Director of Coast and Geodetic Survey abolished by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. All functions of Survey, Director of Survey, and officers, employees, and organizational entities of Survey transferred to Secretary of Commerce and all personnel (including commissioned officers) and

property of Survey, not already transferred by 1950 Reorg. Plan No. 5, deemed transferred to Administration. Subsequently, Environmental Science Services Administration abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to title 5, which created National Oceanic and Atmospheric Administration in Department of Commerce. By order of Acting Associate Administrator of NOAA, organization name of Coast and Geodetic Survey changed to National Ocean Survey.

### **§1006. Authorization for free travel on San Francisco-Oakland Bay Bridge; issuance, presentation, and acceptance; other authorization devices**

(a) The use of the San Francisco-Oakland Bay Bridge free of toll, provided for in section 1005 of this title, shall be granted upon the presentation and surrender at the toll lanes of an authorization certifying that the traffic or person in question is entitled to such right. Such authorization shall be issued and signed by any officer or official designated for such purpose in accordance with regulations which shall be prescribed by the Secretary of the Department having control of the personnel exempted by section 1005 of this title. The names and signatures of officers so designated shall be furnished to the California Toll Bridge Authority and thereafter authorizations signed by them shall be accepted by such authority as prima facie evidence of the facts stated therein.

(b) Notwithstanding the provisions of subsection (a), such right to use the San Francisco-Oakland Bay Bridge free of toll may be established by any other device or means which may be acceptable to the California Toll Bridge Authority; and the Secretary of the appropriate Department and the California Toll Bridge Authority may enter into any appropriate agreements to secure the effective, convenient, and just exercise of such right.

(July 1, 1946, ch. 528, §2, 60 Stat. 348.)

### **§1007. Penalties**

Whoever secures or attempts to secure the exemption from toll provided for in sections 1005 to 1007 of this title or an authorization referred to in section 1006 of this title, knowing that he is not entitled thereto, and whoever signs or issues any such authorization certifying to such right of exemption, knowing that such right does not exist, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than \$100 or by imprisonment for not more than ten days, or by both such fine and imprisonment.

(July 1, 1946, ch. 528, §3, 60 Stat. 348.)

## **CHAPTER 20—REGULATION OF INSURANCE**

Sec.

- 1011. Declaration of policy.
- 1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948.
- 1013. Suspension until June 30, 1948, of application of certain Federal laws; Sherman Act applicable to agreements to, or acts of, boycott, coercion, or intimidation.
- 1014. Effect on other laws.
- 1015. "State" defined.

### **§1011. Declaration of policy**

Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.

(Mar. 9, 1945, ch. 20, §1, 59 Stat. 33.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### SHORT TITLE OF 2021 AMENDMENT

Pub. L. 116–327, §1, Jan. 13, 2021, 134 Stat. 5097, provided that: "This Act [amending section 1013 of this title and enacting provisions set out as a note under section 1013 of this title] may be cited as the 'Competitive Health Insurance Reform Act of 2020'."

### SHORT TITLE

Act Mar. 9, 1945, ch. 20, 59 Stat. 33, which is classified to this chapter, is popularly known as the "McCarran-Ferguson Act".

### SEPARABILITY

Act Mar. 9, 1945, ch. 20, §6, 59 Stat. 34, provided: "If any provision of this Act [this chapter], or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected."

## **§1012. Regulation by State law; Federal law relating specifically to insurance; applicability of certain Federal laws after June 30, 1948**

### **(a) State regulation**

The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

### **(b) Federal regulation**

No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: *Provided*, That after June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended [15 U.S.C. 41 et seq.], shall be applicable to the business of insurance to the extent that such business is not regulated by State Law.

(Mar. 9, 1945, ch. 20, §2, 59 Stat. 34; July 25, 1947, ch. 326, 61 Stat. 448.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Act of July 2, 1890, as amended, known as the Sherman Act, referred to in subsec. (b), is classified to sections 1 to 7 of this title.

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

Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, referred to in subsec. (b), 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

**1947**—Act July 25, 1947, substituted "June 30, 1948" for "January 1, 1948".

## **§1013. Suspension until June 30, 1948, of application of certain Federal laws; Sherman Act applicable to agreements to, or acts of, boycott, coercion, or**

## **intimidation**

(a) Until June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act, and the Act of October 15, 1914, as amended, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act [15 U.S.C. 41 et seq.], and the Act of June 19, 1936, known as the Robinson-Patman Anti-Discrimination Act, shall not apply to the business of insurance or to acts in the conduct thereof.

(b) Nothing contained in this chapter shall render the said Sherman Act inapplicable to any agreement to boycott, coerce, or intimidate, or act of boycott, coercion, or intimidation.

(c)(1) Nothing contained in this chapter shall modify, impair, or supersede the operation of any of the antitrust laws with respect to the business of health insurance (including the business of dental insurance and limited-scope dental benefits).

(2) Paragraph (1) shall not apply with respect to making a contract, or engaging in a combination or conspiracy—

(A) to collect, compile, or disseminate historical loss data;

(B) to determine a loss development factor applicable to historical loss data;

(C) to perform actuarial services if such contract, combination, or conspiracy does not involve a restraint of trade; or

(D) to develop or disseminate a standard insurance policy form (including a standard addendum to an insurance policy form and standard terminology in an insurance policy form) if such contract, combination, or conspiracy is not to adhere to such standard form or require adherence to such standard form.

(3) For purposes of this subsection—

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

(B) the term "business of health insurance (including the business of dental insurance and limited-scope dental benefits)" does not include—

(i) the business of life insurance (including annuities); or

(ii) the business of property or casualty insurance, including but not limited to—

(I) any insurance or benefits defined as "excepted benefits" under paragraph (1), subparagraph (B) or (C) of paragraph (2), or paragraph (3) of section 9832(c) of title 26 whether offered separately or in combination with insurance or benefits described in paragraph (2)(A) of such section; and

(II) any other line of insurance that is classified as property or casualty insurance under State law;

(C) the term "historical loss data" means information respecting claims paid, or reserves held for claims reported, by any person engaged in the business of insurance; and

(D) the term "loss development factor" means an adjustment to be made to reserves held for losses incurred for claims reported by any person engaged in the business of insurance, for the purpose of bringing such reserves to an ultimate paid basis.

(Mar. 9, 1945, ch. 20, §3, 59 Stat. 34; July 25, 1947, ch. 326, 61 Stat. 448; Pub. L. 116–327, §2(a), Jan. 13, 2021, 134 Stat. 5097.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Act of July 2, 1890, as amended, known as the Sherman Act, referred to in subsecs. (a) and (b), is classified to sections 1 to 7 of this title.

Act of October 15, 1914, as amended, known as the Clayton Act, referred to in subsec. (a), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title and to sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to

the Code, see References in Text note set out under section 12 of this title and Tables.

Act of September 26, 1914, known as the Federal Trade Commission Act, referred to in subsec. (a), is generally classified 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.

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

#### AMENDMENTS

**2021**—Subsec. (c). Pub. L. 116–327 added subsec. (c).

**1947**—Act July 25, 1947, substituted "June 30, 1948" for "January 1, 1948".

#### STATUTORY NOTES AND RELATED SUBSIDIARIES

##### RELATED PROVISION

Pub. L. 116–327, §2(b), Jan. 13, 2021, 134 Stat. 5098, provided that: "For purposes of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section applies to unfair methods of competition, section 3(c) of the McCarran-Ferguson Act [15 U.S.C. 1013(c)] shall apply with respect to the business of health insurance without regard to whether such business is carried on for profit, notwithstanding the definition of 'Corporation' contained in section 4 of the Federal Trade Commission Act [15 U.S.C. 44]."

#### §1014. Effect on other laws

Nothing contained in this chapter shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act [29 U.S.C. 151 et seq.], or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], or the Act of June 5, 1920, known as the Merchant Marine Act, 1920.

(Mar. 9, 1945, ch. 20, §4, 59 Stat. 34.)

#### EDITORIAL NOTES

##### REFERENCES IN TEXT

Act of July 5, 1935, as amended, known as the National Labor Relations Act, referred to in text, is act July 5, 1935, ch. 372, 49 Stat. 449, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

Act of June 25, 1938, as amended, known as the Fair Labor Standards Act, referred to in text, is classified generally to chapter 8 (§201 et seq.) of Title 29. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

Act of June 5, 1920, known as the Merchant Marine Act, 1920, referred to in text, is ch. 250, 41 Stat. 988, which was classified principally to chapter 24 (§861 et seq.) of former Title 46, Shipping, which became chapter 24 of the former Appendix to Title 46. The Act was substantially repealed and the provisions thereof restated in Title 46, Shipping, by Pub. L. 98–89, Aug. 26, 1983, 97 Stat. 500, and Pub. L. 109–304, Oct. 6, 2006, 120 Stat. 1485. Section 29 of the Act was transferred and is now classified to section 38 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 46 and of the former Appendix to Title 46, see Disposition Table preceding section 101 of Title 46.

#### §1015. "State" defined

As used in this chapter, the term "State" includes the several States, Alaska, Hawaii, Puerto Rico, Guam, and the District of Columbia.

(Mar. 9, 1945, ch. 20, §5, 59 Stat. 34; Aug. 1, 1956, ch. 852, §4, 70 Stat. 908.)

## EDITORIAL NOTES

### AMENDMENTS

**1956**—Act Aug. 1, 1956, included "Guam" in definition of State.

## EXECUTIVE DOCUMENTS

### ADMISSION OF ALASKA AND HAWAII TO STATEHOOD

Alaska was admitted into the Union on Jan. 3, 1959, on issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, and Hawaii was admitted into the Union on Aug. 21, 1959, on issuance of Proc. No. 3309, Aug. 21, 1959, 24 F.R. 6868, 73 Stat. c74. For Alaska Statehood Law, see Pub. L. 85-508, July 7, 1958, 72 Stat. 339, set out as a note preceding section 21 of Title 48, Territories and Insular Possessions. For Hawaii Statehood Law, see Pub. L. 86-3, Mar. 18, 1959, 73 Stat. 4, set out as a note preceding section 491 of Title 48.

## CHAPTER 21—NATIONAL POLICY ON EMPLOYMENT AND PRODUCTIVITY

Sec.

- 1021. Congressional declarations.
- 1022. Economic Report of President; coverage; supplementary reports; reference to Congressional joint committee; percentage rate of unemployment; definitions.
- 1022a. Medium-term economic goals and policies respecting full employment and balanced growth.
- 1022b. Presentation of analysis respecting short-term and medium-term goals in Economic Report of President; mutually reinforcing means.
- 1022c. Inclusion of priority policies and programs in President's Budget.
- 1022d. President's Budget.
- 1022e. Inflation.
- 1022f. Advisory board or boards.
- 1023. Council of Economic Advisers.
- 1024. Joint Economic Committee.
- 1025. Printing of monthly publication by Joint Economic Committee entitled "Economic Indicators"; distribution.
- 1026. Repealed.

### §1021. Congressional declarations

#### (a) Generally

The Congress declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means, consistent with its needs and obligations and other essential national policies, and with the assistance and cooperation of both small and larger businesses, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions which promote useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability as provided in section 1022b(b) of this title.

**(b) Full opportunities for employment**

The Congress further declares and establishes as a national goal the fulfillment of the right to full opportunities for useful paid employment at fair rates of compensation of all individuals able, willing, and seeking to work.

**(c) Inflation**

The Congress further declares that inflation is a major national problem requiring improved government policies relating to food, energy, improved and coordinated fiscal and monetary management, the reform of outmoded rules and regulations of the Federal Government, the correction of structural defects in the economy that prevent or seriously impede competition in private markets, and other measures to reduce the rate of inflation.

**(d) Coordination of Federal policies and programs**

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to improve the coordination and integration of the policies and programs of the Federal Government toward achievement of the objectives of such Act through better management, increased efficiency, and attention to long-range as well as short-range problems and to balancing the Federal budget.

**(e) Federal controls**

The Congress further declares that, although it is the purpose under the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to seek diligently and to encourage the voluntary cooperation of the private sector in helping to achieve the objectives of such Act, no provisions of such Act or this chapter shall be used, with respect to any portion of the private sector of the economy, to provide for Federal Government control of production, employment, allocation of resources, or wages and prices, except to the extent authorized under other Federal laws.

**(f) Expansion of private employment**

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to maximize and place primary emphasis upon the expansion of private employment, and all programs and policies under such Act shall be in accord with such purpose. Toward this end, the effort to expand jobs to the full employment level shall be in this order of priority to the extent consistent with balanced growth—

(1) expansion of conventional private jobs through improved use of general economic and structural policies, including measures to encourage private sector investment and capital formation;

(2) expansion of private employment through Federal assistance in connection with the priority programs in such Act;

(3) expansion of public employment other than through the provisions of section 206 of such Act [15 U.S.C. 3116]; and

(4) when recommended by the President under section 206 of such Act [15 U.S.C. 3116] and subject to the limitations in such section, the creation of employment through the methods set forth in such section.

**(g) Trade deficits**

The Congress further declares that trade deficits are a major national problem requiring a strong national export policy including improved Government policies relating to the promotion, facilitation, and financing of commercial and agricultural exports, Government policies designed to reduce foreign barriers to exports through international negotiation and agreement, Federal support for research, development, and diffusion of new technologies to promote innovation in agriculture, business, and industry, the elimination or modification of Government rules or regulations that burden or disadvantage exports and the national and international competitiveness of agriculture, business, and industry, the reexamination of antitrust laws and policies when necessary to enable



agriculture, business, and industry to meet foreign competition in the United States and abroad, and the achievement of a free and fair international trading system and a sound and stable international monetary order.

**(h) Balanced Federal budget**

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to achieve a balanced Federal budget consistent with the achievement of the medium-term goals specified in section 1022a of this title.

**(i) Investment needs of private enterprise**

The Congress further declares that it is the continuing policy and responsibility of the Federal Government, in cooperation with State and local governments, to use all practical means consistent with other essential considerations of national policy to provide sufficient incentives to assure meeting the investment needs of private enterprise, including the needs of small and medium sized businesses, in order to increase the production of goods, the provision of services, employment, the opportunity for profit, the payment of taxes, and to reduce and control inflation. To the extent it is reasonably possible to do so, private enterprise investments in depressed urban and rural areas should be promoted to reduce the high levels of unemployment that exist there.

**(j) Reliance on private sector**

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] to rely principally on the private sector for expansion of economic activity and creation of new jobs for a growing labor force. Toward this end, it is the purpose of this chapter to encourage the adoption of fiscal policies that would establish the share of the gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities.

(Feb. 20, 1946, ch. 33, §2, 60 Stat. 23; Pub. L. 95-523, title I, §102, Oct. 27, 1978, 92 Stat. 1890.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Full Employment and Balanced Growth Act of 1978, referred to in subsecs. (d), (e), (f), (h), and (j), is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

**AMENDMENTS**

**1978**—Pub. L. 95-523 designated existing provisions as subsec. (a), inserted provisions relating to promotion of balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, improvement in trade balance, and reasonable price stability, and added subsecs. (b) to (j).

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**SHORT TITLE**

Act Feb. 20, 1946, ch. 33, §1, 60 Stat. 23, provided: "This Act [enacting this chapter] may be cited as the 'Employment Act of 1946'."

**STATEMENT OF PURPOSE**

Pub. L. 95-523, title I, §101, Oct. 27, 1978, 92 Stat. 1890, provided that: "It is the purpose of this title [enacting sections 1022a to 1022f of this title, amending sections 1021, 1022 and 1023 of this title and section 225a of Title 12, Banks and Banking, and enacting provisions set out as a note under section 225a of Title 12]—

"(1) to declare the general policies of this Act [see Short Title note under section 3101 of this title];

"(2) to provide an open process under which economic goals and policies are proposed, reviewed, and established;

"(3) to provide for yearly review of national economic policies to ensure their consistency with these

goals to the maximum extent possible; and

"(4) to strengthen and supplement the purposes and policies of the Employment Act of 1946 [this chapter]."

## **§1022. Economic Report of President; coverage; supplementary reports; reference to Congressional joint committee; percentage rate of unemployment; definitions**

### **(a) Time of submission; contents**

The President shall annually transmit to the Congress not later than 10 days after the submission of the budget under section 1105(a) of title 31, with copies transmitted to the Governor of each State and to other appropriate State and local officials, an economic report (hereinafter in this chapter referred to as the "Economic Report") together with the annual report of the Council of Economic Advisers submitted in accord with section 1023(c) of this title, setting forth—

(1) the current and foreseeable trends in the levels of employment, unemployment, production, capital formation, real income, Federal budget outlays and receipts, productivity, international trade and payments, and prices, and a review and analysis of recent domestic and international developments affecting economic trends in the Nation;

(2)(A) annual numerical goals for employment and unemployment, production, real income, productivity, Federal outlays as a proportion of gross national product, and prices for the calendar year in which the Economic Report is transmitted and for the following calendar year, designated as short-term goals, which shall be consistent with achieving as rapidly as feasible the goals of full employment and production, increased real income, balanced growth, fiscal policies that would establish the share of an expanding gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities, a balanced Federal budget, adequate productivity growth, price stability, achievement of an improved trade balance, and proper attention to national priorities; and

(B) annual numerical goals as specified in subparagraph (A) for the three successive calendar years, designated as medium term goals;

(3) employment objectives for certain significant subgroups of the labor force, including youth, women, minorities, handicapped persons, veterans, and middle-aged and older persons; and

(4) a program for carrying out the policy declared in section 1021 of this title, together with such recommendations for legislation as the President may deem necessary or desirable.

### **(b) Supplementary reports**

The President may transmit from time to time to the Congress reports supplementary to the Economic Report, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 1021 of this title.

### **(c) Referral to joint committee**

The Economic Report, and all supplementary reports transmitted under subsection (b), shall, when transmitted to Congress, be referred to the joint committee created by section 1024 of this title.

### **(d) Rate of unemployment**

For the purposes of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.] the percentage rate of unemployment as <sup>1</sup> a percentage of the civilian labor force as set forth by the Bureau of Labor Statistics in the Department of Labor as computed under the procedures in effect as of October 27, 1978.

### **(e) "Inflation"; "prices"; "reasonable price stability" defined**

For the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], the terms "inflation", "prices", and "reasonable price stability" refer to the rate of change or level of the consumer price index as set forth by the Bureau of Labor Statistics, United States Department of Labor.

(Feb. 20, 1946, ch. 33, §3, 60 Stat. 24; Aug. 2, 1946, ch. 753, title II, §226, 60 Stat. 838; June 18, 1956, ch. 399, §1, 70 Stat. 289; Pub. L. 95-523, title I, §103, Oct. 27, 1978, 92 Stat. 1892; Pub. L. 96-10, §6(d), May 10, 1979, 93 Stat. 24; Pub. L. 101-508, title XIII, §13112(e), Nov. 5, 1990, 104 Stat. 1388-609.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsecs. (d) and (e), is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

### CODIFICATION

In subsec. (a), "section 1023(c) of this title" was in the original "section 11(c) of this Act", which is classified to section 1024(c) of this title. The citation has been editorially translated as indicated to reflect the probable intent of Congress because the reporting requirements appear in section 10(c) of the Act, which is classified to section 1023(c) of this title.

### AMENDMENTS

**1990**—Subsec. (a). Pub. L. 101-508, which directed the substitution of "annually transmit to the Congress not later than 10 days after the submission of the budget under section 1105(a) of title 31" for "transmit to the Congress during the first twenty days of each regular session" in section "103(a) of the Full Employment and Balanced Growth Act of 1978 (15 U.S.C. 1022(a)", was executed to this section, section 3 of the Employment Act of 1946, as amended by that Act, to reflect the probable intent of Congress.

**1979**—Subsec. (a)(2)(A). Pub. L. 96-10 inserted reference to Federal outlays as a proportion of gross national product.

**1978**—Subsec. (a). Pub. L. 95-523, §103(a), among other changes, inserted provisions relating to the annual report of the Council of Economic Advisers and the inclusion in the President's Economic Report of annual numerical goals for employment, unemployment, production etc., and employment objectives for certain subgroups and struck out provisions relating to the review of the Federal Government's economic program and economic conditions affecting employment in the United States.

Subsecs. (d), (e). Pub. L. 95-523, §103(b), added subsecs. (d) and (e).

**1956**—Subsec. (a). Act June 18, 1956, substituted "not later than January 20 of each year" for "at the beginning of each regular session (commencing with the year 1947)".

**1946**—Subsec. (a). Act Aug. 2, 1946, substituted "at" for "within 60 days after".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1946 AMENDMENT

Amendment by act Aug. 2, 1946, effective Aug. 2, 1946, see section 245 of that act, set out as a note under section 4301 of Title 2, The Congress.

<sup>1</sup> So in original. Probably should be "is".

## §1022a. Medium-term economic goals and policies respecting full employment and balanced growth

### (a) Incorporation of necessary programs and policies

In each Economic Report after October 27, 1978, the President shall incorporate (as part of the five-year numerical goals in each Economic Report) medium-term annual numerical goals specified in section 1022(a)(2)(B) of this title, and in each President's Budget submitted immediately prior

thereto, the President shall incorporate the programs and policies the President deems necessary to achieve such medium-term goals and a balanced Federal budget and to achieve reasonable price stability as rapidly as feasible as provided for in section 1022(b) of this title.

**(b) Interim numerical goals for initial Economic Reports**

The medium-term goals in the first three Economic Reports and, subject to the provisions of subsection (d), in each Economic Report thereafter shall include (as part of the five-year goals in each Economic Report) interim numerical goals for—

(1) reducing the rate of unemployment, as set forth pursuant to section 1022(d) of this title, to not more than 3 per centum among individuals aged twenty and over and 4 per centum among individuals aged sixteen and over within a period not extending beyond the fifth calendar year after the first such Economic Report;

(2) reducing the rate of inflation, as set forth pursuant to section 1022(e) of this title, to not more than 3 per centum within a period not extending beyond the fifth calendar year after the first such Economic Report: *Provided*, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment; and

(3) reducing the share of the Nation's gross national product accounted for by Federal outlays to 21 per centum or less by 1981, and to 20 per centum or less by 1983 and thereafter, or the lowest level consistent with national needs and priorities: *Provided*, That policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

For purposes of this subsection, the first Economic Report shall be the Report issued in the first calendar year after October 27, 1978.

**(c) Achievement of full employment, balanced budget, zero inflation rate, and 20 per centum level of Federal outlays as a proportion of gross national product for succeeding Economic Reports**

(1) Upon achievement of the 3 and 4 per centum goals specified in subsection (b)(1), each succeeding Economic Report shall have the goal of achieving as soon as practicable and maintaining thereafter full employment and a balanced budget.

(2) Upon achievement of the 3 per centum goal specified in subsection (b)(2), each succeeding Economic Report shall have the goal of achieving by 1988 a rate of inflation of zero per centum: *Provided*, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

(3) Upon achievement of the 20 per centum goal specified in subsection (b)(3), each succeeding Economic Report shall have the goal of establishing the share of an expanding gross national product accounted for by Federal outlays at a level of 20 per centum or less, or the lowest level consistent with national needs and priorities: *Provided*, That policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in subsection (b)(1) for the reduction of unemployment.

**(d) Review by President; report to Congress; modification of timetables**

In the second Economic Report after October 27, 1978, the President shall review the numerical goals and timetables for the reduction of unemployment, inflation, and Federal outlays as a proportion of gross national product, and the goal of balancing the Federal budget; report to the Congress on the degree of progress being made, the programs and policies being used, and any obstacles to achieving such goals and timetables; and, if necessary, propose corrective economic measures toward achievement of such goals and timetables: *Provided*, That beginning with the second Report and in any subsequent Reports, if the President finds it necessary, the President may recommend modification of the timetable or timetables for the achievement of the goals provided for

in subsection (b) and the annual numerical goals to make them consistent with the modified timetable or timetables, and the Congress may take such action as it deems appropriate consistent with title III of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3131 et seq.].

**(e) Interim numerical goals for succeeding Economic Reports**

If, after achievement of the 3 and 4 per centum goals specified in subsection (b), the unemployment rate for a year as set forth pursuant to section 1022(d) of this title is more than 3 per centum among individuals aged twenty and over or more than 4 per centum among individuals aged sixteen and over, the next Economic Report after such rate is set forth and each succeeding Economic Report shall include (as part of the five-year goals in each Economic Report) the interim numerical goal of reducing unemployment to not more than the levels specified in subsection (b)(1) as soon as practicable but not later than the fifth calendar year after the first such Economic Report, counting as the first calendar year the year in which such Economic Report is issued: *Provided*, That, if the President finds it necessary, the President may, under the authority provided in subsection (d), recommend modification of the timetable provided for in this subsection for the reduction of unemployment, and for the purposes of section 304 of the Full Employment and Balanced Growth Act of 1978, such recommendation by the President shall be treated as a recommendation made under subsection (d) of this section.

**(f) Action taken to reduce unemployment**

(1) In taking action to reduce unemployment in accord with the numerical goals and timetable established under section <sup>1</sup>(b), every effort shall be made to reduce those differences between the rates of unemployment among youth, women <sup>2</sup>minorities, handicapped persons, veterans, middle-aged and older persons and other labor force groups and the overall rate of unemployment which are caused by any improper factors with the ultimate objective of removing such differentials to the extent possible.

(2) Insofar as the differences specified in the preceding paragraph are due to lack of training and skills, occupational practices, and other relevant factors, the Secretary of Labor shall—

(A) take such action as practicable to achieve the objectives of this subsection;

(B) make studies, develop information, and make recommendations toward remedying these differences in rates of unemployment, and prepare and submit to the President an annual report containing the recommendations; and

(C) make recommendations, as deemed necessary, to the Congress related to the objectives of this paragraph.

**(g) Definitions**

(1) The term "middle-aged and older persons" as used in this section includes any individual forty-five years of age or older.

(2) For purposes of this section, the term "veteran" shall mean the same as defined in section 4211(1) or (2) of title 38.

(Feb. 20, 1946, ch. 33, §4, as added Pub. L. 95-523, title I, §104, Oct. 27, 1978, 92 Stat. 1893; amended Pub. L. 96-10, §6(a)-(c), May 10, 1979, 93 Stat. 23, 24; Pub. L. 103-446, title XII, §1203(c)(4), Nov. 2, 1994, 108 Stat. 4690; Pub. L. 105-277, div. A, §101(f) [title VIII, §405(d)(11)], Oct. 21, 1998, 112 Stat. 2681-337, 2681-420.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (d), is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887. Title III of the Full Employment and Balanced Growth Act of 1978 is classified principally to subchapter II (§3131 et seq.) of chapter 58 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

Section 304 of the Full Employment and Balanced Growth Act of 1978, referred to in subsec. (e), is Pub. L. 95-523, §304, Oct. 27, 1978, 92 Stat. 1906, which amended section 632 of Title 2, The Congress.

## PRIOR PROVISIONS

A prior section 4 of act Feb. 20, 1946, was renumbered section 10 and is classified to section 1023 of this title.

## AMENDMENTS

**1998**—Subsec. (f)(2)(B). Pub. L. 105–277 substituted "and prepare and submit to the President an annual report containing the recommendations" for "and include these in the annual Employment and Training Report of the President required under section 705(a) of the Comprehensive Employment and Training Act of 1973 (hereinafter in this chapter referred to as 'CETA')".

**1994**—Subsec. (g)(2). Pub. L. 103–446 substituted "this section" for "this subsection" and "section 4211(1) or (2) of title 38" for "section 2011(1) or (2)(A) of title 38".

**1979**—Subsec. (b)(3). Pub. L. 96–10, §6(a), added par. (3).

Subsec. (c)(3). Pub. L. 96–10, §6(b), added par. (3).

Subsec. (d). Pub. L. 96–10, §6(c), inserted reference to Federal outlays as a proportion of gross national product.

<sup>1</sup> So in original. Probably should be "subsection".

<sup>2</sup> So in original. Probably should be followed by a comma.

## **§1022b. Presentation of analysis respecting short-term and medium-term goals in Economic Report of President; mutually reinforcing means**

### **(a) Analysis of goals**

To aid in determining the short-term and medium-term goals for employment, production, real income, and prices, analysis shall be presented in the Economic Report with respect to major aspects of the appropriate composition or structure of each goal, and as to the appropriate apportionment of total national production among its major components (private investment, consumer expenditures, and public outlays) as affected by relative income flows and other factors, in order to promote balanced growth and a balanced Federal budget, reduce cyclical disturbances, and achieve the other purposes of this chapter and the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.].

### **(b) Means to achieve goals**

In choosing means to achieve the goal for the reduction of unemployment and choosing means to achieve the goal of reasonable price stability, those means which are mutually reinforcing shall be used to the extent practicable.

(Feb. 20, 1946, ch. 33, §5, as added Pub. L. 95–523, title I, §105, Oct. 27, 1978, 92 Stat. 1895.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (a), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

## PRIOR PROVISIONS

A prior section 5 of act Feb. 20, 1946, was renumbered section 11 and is classified to section 1024 of this title.

## **§1022c. Inclusion of priority policies and programs in President's Budget**

To contribute to the achievement of the goals under the Full Employment and Balanced Growth

Act of 1978 [15 U.S.C. 3101 et seq.], the President's Budget for each fiscal year beginning after October 27, 1978, shall include priority policies and programs, which shall include, to the extent deemed appropriate by the President, consideration of the following—

(A) development of energy sources and supplies, transportation, and environmental improvement;

(B) proper attention to the problems and needs of smaller businesses including (i) the availability of investment capital, management and technical expertise, and technology and labor needs, (ii) analysis of economic and social trends which may affect smaller businesses, (iii) government policies and programs (including agency regulations and excessive paperwork requirements) that may create undue hardship for or reduce the competitiveness of smaller businesses, and (iv) other policies and programs to remove barriers to competition and to strengthen and promote the creation and growth of smaller businesses;

(C) development of a comprehensive national agricultural policy that assures—

(i) production levels adequate to meet the nutritional needs of all Americans and respond to rising food requirements throughout the world;

(ii) farm and ranch income at full parity levels that will improve opportunities for farm families, encourage production, provide for essential capital investment in farming, and provide for farm prices at full parity in the market place;

(iii) renewed commitment to the protection and conservation of rural land and water through support for improved conservation practices and research, and attention to agricultural land use in the formulation of plans for energy, water and mineral resources, transportation, and commercial, industrial, and residential development; and

(iv) support for programs and public services designed to respond to the unique economic and social conditions of rural communities;

(D) proper attention to the relationship between Federal programs and policies and the problems and needs of urban areas, including inner cities and the employment problems of their residents, especially youths;

(E) proper attention to the quality and quantity of health care, education and training programs, child care and other human services, and housing, essential to a full employment economy and to moving toward their availability for all individuals at costs within their means;

(F) policies concerning Federal aid to State and local governments, especially for public investment and unemployment related costs;

(G) national defense and other needed international programs;

(H) proper attention to the relationship between Federal grants, contracts, and procurement and the closure of military bases and other Federal facilities and the distribution of jobs and income among different regions of the Nation, and among urban, suburban, and rural areas;

(I) proper attention to balancing the Federal budget;

(J) proper attention to the dislocation of jobs caused by Federal laws, regulations, and policies;

(K) policies and programs designed to increase exports and improve the international competitive position of agriculture, business, and industry, including measures to promote a free and fair international trading system, a sound and stable international monetary system and innovation in agriculture, business, and industry;

(L) such other priority policies and programs as the President deems appropriate.

(Feb. 20, 1946, ch. 33, §6, as added Pub. L. 95-523, title I, §106, Oct. 27, 1978, 92 Stat. 1895.)

## EDITORIAL NOTES

## REFERENCES IN TEXT

The Full Employment and Balanced Growth Act of 1978, referred to in provision preceding par. (A), is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.



## **§1022d. President's Budget**

### **(a) Recommendations**

The President's Budget shall recommend levels of outlays and receipts which shall be consistent with the short-term economic goals of section 1022(a)(2)(A) of this title.

### **(b) Five-year projections of outlays and receipts**

The President's Budget shall provide five-year projections of outlays and receipts consistent with the medium-term goals of section 1022a(b) of this title.

### **(c) Inclusion in Economic Report of President; purposeful development of expenditure and revenue elements; considerations governing determination of size of President's expenditures and revenue proposals**

The principal elements in the President's Budget shall be set forth briefly in each Economic Report, toward the end of making clear the relationship between the President's Budget and the goals and policies set forth in such Economic Report. Both the expenditure and revenue elements of the President's Budget shall be developed to promote the purposes, policies, and goals of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.]. The size of the President's expenditure and revenue proposals, and the relationships between such proposals, shall be determined in a manner which gives consideration to the needs of the economy and the people in the priority areas set forth in section 1022c of this title, and the relationship between the President's expenditure and revenue proposals shall be guided accordingly.

(Feb. 20, 1946, ch. 33, §7, as added Pub. L. 95-523, title I, §107, Oct. 27, 1978, 92 Stat. 1896.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (c), is Pub. L. 95-523, Oct. 27, 1978, 92 Stat. 1887, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

## **§1022e. Inflation**

### **(a) Methods and requirements for achieving price stability**

The Congress determines that the objective of achieving reasonable price stability as soon as feasible, as set forth in section 1022(a)(3) of this title and section 1022a(a) of this title, shall be pursued by the methods and subject to the requirements of section 1022b(b) of this title.

### **(b) Coordination of fiscal or monetary policies with specific targeted policies**

The Congress finds that sole dependence upon fiscal or monetary policies or both to combat inflation can exacerbate both inflation and unemployment. The Congress finds that the coordinated use of fiscal and monetary policies in conjunction with specific targeted policies are necessary to combat inflation.

### **(c) Policy initiation and recommendations; elements of structural policies**

The President shall initiate specific policies to reduce the rate of inflation, including recommendations to the Congress where necessary, and include recommendations within the Economic Report and the President's budget to the extent practicable. Structural policies to reduce the rate of inflation may include—

- (1) an effective information system to monitor and analyze inflationary trends in individual economic sectors, so that the President and Congress can be alerted to developing inflation problems especially those caused by bottlenecks inhibiting the flow of goods and services;



(2) programs and policies for alleviating shortages of goods, services, labor, and capital, with particular emphasis on food, energy, and critical industrial materials to aid in stabilizing prices;

(3) the establishment of stockpiles of agricultural commodities and other critical materials to help stabilize prices, meet emergency needs, and promote adequate income to producers;

(4) encouragement to labor and management to increase productivity within the national framework of full employment through voluntary arrangements in industries and economic sectors;

(5) recommendations to increase competition in the private sector and to improve the economic climate for the creation and growth of smaller businesses, including recommendations to strengthen and enforce the antitrust laws, the patent laws, and the internal revenue laws and regulations;

(6) removal or proper modification of such Government restrictions and regulations as added unnecessarily to inflationary costs;

(7) increasing exports and improving the international competitive position of agriculture, business, and industry; and

(8) such other administrative actions and recommendations for legislation as the President deems desirable, to promote reasonable price stability.

(Feb. 20, 1946, ch. 33, §8, as added Pub. L. 95–523, title I, §109, Oct. 27, 1978, 92 Stat. 1898.)

## **§1022f. Advisory board or boards**

### **(a) Establishment**

An advisory board or boards (including regional advisory boards) may be established as the President deems appropriate, to advise and consult periodically with one or more of the following: The President, the Council of Economic Advisers, and such other departments and agencies of the executive branch of the Federal Government as the President shall determine.

### **(b) Composition; duties; compensation**

Such advisory board or boards shall include appropriate representation of labor, small and larger businesses and industries, agriculture, consumers, State and local officials, and the public at large, and shall advise and consult with respect to matters related to this chapter, the Full Employment and <sup>1</sup> Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], and other appropriate matters related to national economic programs and policies. The President shall, in accordance with applicable provisions of law, take the steps necessary to provide appropriate compensation to the members of such advisory board or boards.

(Feb. 20, 1946, ch. 33, §9, as added Pub. L. 95–523, title I, §111, Oct. 27, 1978, 92 Stat. 1899.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (b), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

## **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.

<sup>1</sup> So in original. Probably should be "and".

## **§1023. Council of Economic Advisers**

### **(a) Creation; composition; qualifications; chairman and vice chairman**

#### **(1) Creation**

There is created in the Executive Office of the President a Council of Economic Advisers (hereinafter called the "Council").

#### **(2) Composition**

The Council shall be composed of three members, of whom—

(A) 1 shall be the chairman who shall be appointed by the President by and with the advice and consent of the Senate; and

(B) 2 shall be appointed by the President.

#### **(3) Qualifications**

Each member shall be a person who, as a result of training, experience, and attainments, is exceptionally qualified to analyze and interpret economic developments, to appraise programs and activities of the Government in the light of the policy declared in section 1021 of this title, and to formulate and recommend national economic policy to promote full employment, production, and purchasing power under free competitive enterprise.

#### **(4) Vice chairman**

The President shall designate 1 of the members of the Council as vice chairman, who shall act as chairman in the absence of the chairman.

### **(b) Employment of specialists, experts, and other personnel**

The Council is authorized to employ, and fix the compensation of, such specialists and other experts as may be necessary for the carrying out of its functions under this chapter, without regard to the civil-service laws, and is authorized, subject to the civil-service laws, to employ such other officers and employees as may be necessary for carrying out its functions under this chapter, and fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

### **(c) Duties**

It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Economic Report;

(2) to gather timely and authoritative information concerning economic developments and economic trends, both current and prospective, to analyze and interpret such information in the light of the policy declared in section 1021 of this title for the purpose of determining whether such developments and trends are interfering, or are likely to interfere, with the achievement of such policy, and to compile and submit to the President studies relating to such developments and trends;

(3) to appraise the various programs and activities of the Federal Government in the light of the policy declared in section 1021 of this title for the purpose of determining the extent to which such programs and activities are contributing, and the extent to which they are not contributing, to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national economic policies to foster and promote free competitive enterprise including small and larger business, to avoid economic fluctuations or to diminish the effects thereof, and to maintain full employment, production, and purchasing power;

(5) to make and furnish such studies, reports thereon, and recommendations with respect to matters of Federal economic policy and legislation as the President may request.

### **(d) Annual report**

The Council shall make an annual report to the President in December of each year.

**(e) Consultation with other groups and agencies; utilization of Government services and private research agencies**

In exercising its powers, functions and duties under this chapter—

(1) the Council may constitute such advisory committees and may consult with such representatives of industry, agriculture, labor, consumers, State and local governments, and other groups, as it deems advisable, and shall consult with the board or boards established under section 1022f of this title;

(2) the Council shall, to the fullest extent possible, utilize the services, facilities, and information (including statistical information) of other Government agencies as well as of private research agencies, in order that duplication of effort and expense may be avoided.

In its work under this chapter and the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. 3101 et seq.], the Council is authorized and directed to seek and obtain the cooperation of the various executive and independent agencies in the development of specialized studies essential to its responsibilities.

**(f) Appropriations**

To enable the Council to exercise its powers, functions, and duties under this chapter, there are authorized to be appropriated such sums as may be necessary.

(Feb. 20, 1946, ch. 33, §10, formerly §4, 60 Stat. 24; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 87–49, June 16, 1961, 75 Stat. 93; renumbered §10 and amended Pub. L. 95–523, title I, §§104, 110, Oct. 27, 1978, 92 Stat. 1893, 1899; Pub. L. 112–166, §2(o), Aug. 10, 2012, 126 Stat. 1287.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Full Employment and Balanced Growth Act of 1978, referred to in subsec. (e), is Pub. L. 95–523, Oct. 27, 1978, 92 Stat. 1887, which is classified principally to chapter 58 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3101 of this title and Tables.

**CODIFICATION**

In subsec. (a), provisions that fixed the compensation of members of the Council have been omitted as obsolete. The positions of chairman and members of the Council are under the Executive Schedule, see sections 5313 and 5315 of Title 5, Government Organization and Employees.

In subsec. (b), provisions that authorized the Council to fix the compensation of such specialists and other experts as may be necessary for the carrying out of its functions under this chapter, without regard to "the Classification Act of 1923, as amended", were omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While section 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exceptions contained in this subsection because of section 1106(b) which provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by section 1106(a). The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, §8(a), 80 Stat. 632 (of which section 1 revised and enacted Title 5, Government Organization and Employees, into law). Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

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

**AMENDMENTS**

**2012**—Subsec. (a). Pub. L. 112–166 added subsec. (a) and struck out former subsec. (a). Prior to amendment, text read as follows: "There is created in the Executive Office of the President a Council of

Economic Advisers (hereinafter called the "Council"). The Council shall be composed of three members who shall be appointed by the President by and with the advice and consent of the Senate, and each of whom shall be a person who, as a result of his training, experience, and attainments, is exceptionally qualified to analyze and interpret economic developments, to appraise programs and activities of the Government in the light of the policy declared in section 1021 of this title, and to formulate and recommend national economic policy to promote full employment, production, and purchasing power under free competitive enterprise. The President shall designate one of the members of the Council as chairman and one as vice chairman, who shall act as chairman in the absence of the chairman."

**1978**—Subsec. (a). Pub. L. 95–523, §110(a)(1), inserted "full" after "policy to promote".

Subsec. (c)(4). Pub. L. 95–523, §110(a)(2), inserted "including small and larger business" after "free competitive enterprise" and inserted "full" after "and to maintain".

Subsec. (e). Pub. L. 95–523, §110(a)(3), (4), inserted in par. (1) ", and shall consult with the board or boards established under section 1022f of this title" after "as it deems advisable" and after par. (2) inserted provisions authorizing and directing the Council to seek and obtain the cooperation of executive and independent agencies in the development of specialized studies essential to its responsibilities.

**1961**—Subsec. (f). Pub. L. 87–49 struck out provisions which limited the appropriations for salaries of the members and officers and employees of the Council to not more than \$345,000 for each fiscal year.

**1949**—Subsec. (b). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2012 AMENDMENT**

Amendment by Pub. L. 112–166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112–166, set out as a note under section 113 of Title 6, Domestic Security.

### **REPEALS**

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

### **TERMINATION OF ADVISORY COMMITTEES**

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, 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.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

Certain functions of Council of Economic Advisers transferred to Chairman, see 1953 Reorg. Plan No. 9, eff. Aug. 1, 1953, 18 F.R. 4542, set out below. 1953 Reorg. Plan No. 9 also abolished office of Vice Chairman.

## **REORGANIZATION PLAN NO. 9 OF 1953**

EFF. AUG. 1, 1953, 18 F.R. 4543, 67 STAT. 644

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 1, 1953, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949, as amended [see 5 U.S.C. 901 et seq.].

## **COUNCIL OF ECONOMIC ADVISERS**

The functions vested in the Council of Economic Advisers by section 4(b) of the Employment Act of 1946 (60 Stat. 24) [subsec. (b) of this section], and so much of the functions vested in the Council by section 4(c) of that Act [subsec. (c) of this section] as consists of reporting to the President with respect to any function of the Council under the said section 4(c) [subsec. (c) of this section], are hereby transferred to the Chairman of the

Council of Economic Advisers. The position of Vice Chairman of the Council of Economic Advisers, provided for in the last sentence of section 4(a) of the said Act [subsec. (a) of this section] is hereby abolished.

#### **EXECUTIVE ORDER NO. 10802**

Ex. Ord. No. 10802, Jan. 23, 1959, 24 F.R. 557, which established the Committee on Government Activities Affecting Prices and Costs, was revoked by Ex. Ord. No. 10928, Mar. 23, 1961, 26 F.R. 2547.

#### **EXECUTIVE ORDER NO. 11453**

Ex. Ord. No. 11453, Jan. 24, 1969, 34 F.R. 1301, which established the Cabinet Committee on Economic Policy, was revoked by Ex. Ord. No. 11702, Jan. 25, 1973, 38 F.R. 2957, set out as a note under section 887d of Title 20, Education.

#### **EXECUTIVE ORDER NO. 12296**

Ex. Ord. No. 12296, Mar. 2, 1981, 46 F.R. 15129, as amended by Ex. Ord. No. 12309, June 9, 1981, 46 F.R. 30997, which related to the establishment, functions, administration, and termination of the President's Economic Policy Advisory Board, was revoked by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

#### **EXTENSION OF TERM OF PRESIDENT'S ECONOMIC POLICY ADVISORY BOARD**

Term of President's Economic Policy Advisory Board extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

Previous extensions of term of President's Economic Policy Advisory Board were contained in the following prior Executive Orders:

Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, extended term until Sept. 30, 1987.

Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, extended term until Sept. 30, 1985.

Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, extended term until Sept. 30, 1984.

#### **EX. ORD. NO. 12835. ESTABLISHMENT OF NATIONAL ECONOMIC COUNCIL**

Ex. Ord. No. 12835, Jan. 25, 1993, 58 F.R. 6189, as amended by Ex. Ord. No. 13286, §27, Feb. 28, 2003, 68 F.R. 10625; Ex. Ord. No. 13499, Feb. 5, 2009, 74 F.R. 6979; Ex. Ord. No. 13569, §2, Apr. 5, 2011, 76 F.R. 19891, provided:

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, including sections 105, 107, and 301 of title 3, United States Code, it is hereby ordered as follows:

SECTION 1. *Establishment.* There is established the National Economic Council ("the Council").

SEC. 2. *Membership.* The Council shall comprise the:

- (a) President, who shall serve as Chairman of the Council;
- (b) Vice President;
- (c) Secretary of State;
- (d) Secretary of the Treasury;
- (e) Secretary of Agriculture;
- (f) Secretary of Commerce;
- (g) Secretary of Labor;
- (h) Secretary of Housing and Urban Development;
- (i) Secretary of Transportation;
- (j) Secretary of Energy;
- (k) Secretary of Homeland Security;
- (l) Secretary of Health and Human Services;
- (m) Secretary of Education;
- (n) Senior Advisor and Assistant to the President for Intergovernmental Affairs and Public Liaison;
- (o) Chair of the Council on Environmental Quality;
- (p) Assistant to the President and Chief Technology Officer;
- (q) Administrator of the Small Business Administration[;]
- (r) Administrator of the Environmental Protection Agency;
- (s) Chair of the Council of Economic Advisers;
- (t) Director of the Office of Management and Budget;
- (u) United States Trade Representative;
- (v) Assistant to the President for Economic Policy;

- (w) Assistant to the President for Domestic Policy;
- (x) National Security Adviser;
- (y) Assistant to the President for Science and Technology Policy; and
- (z) Such other officials of executive departments and agencies as the President may, from time to time, designate.

SEC. 3. *Meetings of the Council.* The President, or upon his direction, the Assistant to the President for Economic Policy ("the Assistant"), may convene meetings of the Council. The President shall preside over the meetings of the Council, provided that in his absence the Vice President, and in his absence the Assistant, will preside.

SEC. 4. *Functions.* (a) The principal functions of the Council are: (1) to coordinate the economic policy-making process with respect to domestic and international economic issues; (2) to coordinate economic policy advice to the President; (3) to ensure that economic policy decisions and programs are consistent with the President's stated goals, and to ensure that those goals are being effectively pursued; and (4) to monitor implementation of the President's economic policy agenda. The Assistant may take such actions, including drafting a Charter, as may be necessary or appropriate to implement such functions.

(b) All executive departments and agencies, whether or not represented on the Council, shall coordinate economic policy through the Council.

(c) In performing the foregoing functions, the Assistant will, when appropriate, work in conjunction with the Assistant to the President for Domestic Policy and the Assistant to the President for National Security.

(d) The Secretary of the Treasury will continue to be the senior economic official in the executive branch and the President's chief economic spokesperson. The Director of the Office of Management and Budget, as the President's principal budget spokesperson, will continue to be the senior budget official in the executive branch. The Council of Economic Advisers will continue its traditional analytic, forecasting and advisory functions.

SEC. 5. *Administration.* (a) The Council may function through established or ad hoc committees, task forces or interagency groups.

(b) The Council shall have a staff to be headed by the Assistant to the President for Economic Policy. The Council shall have such staff and other assistance as may be necessary to carry out the provisions of this order.

(c) All executive departments and agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

## **§1024. Joint Economic Committee**

### **(a) Composition**

There is established a Joint Economic Committee, to be composed of ten Members of the Senate, to be appointed by the President of the Senate, and ten Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives. In each case, the majority party shall be represented by six Members and the minority party shall be represented by four Members.

### **(b) Functions**

It shall be the function of the joint committee—

- (1) to make a continuing study of matters relating to the Economic Report;
- (2) to study means of coordinating programs in order to further the policy of this chapter; and
- (3) as a guide to the several committees of the Congress dealing with legislation relating to the Economic Report, not later than March 1 of each year (beginning with the year 1947) to file a report with the Senate and the House of Representatives containing its findings and recommendations with respect to each of the main recommendations made by the President in the Economic Report, and from time to time to make such other reports and recommendations to the Senate and House of Representatives as it deems advisable.

### **(c) Vacancies; selection of chairman and vice chairman**

Vacancies in the membership of the joint committee shall not affect the power of the remaining members to execute the functions of the joint committee, and shall be filled in the same manner as in the case of the original selection. The joint committee shall select a chairman and a vice chairman from among its members.

**(d) Hearings; employment and compensation of personnel; cost of stenographic services; utilization of Government services and private research agencies**

The joint committee, or any duly authorized subcommittee thereof, is authorized to hold such hearings as it deems advisable, and, within the limitations of its appropriations, the joint committee is empowered to appoint and fix the compensation of such experts, consultants, technicians, and clerical and stenographic assistants, to procure such printing and binding, and to make such expenditures, as it deems necessary and advisable. The cost of stenographic services to report hearings of the joint committee, or any subcommittee thereof, shall not exceed 25 cents per hundred words. The joint committee is authorized to utilize the services, information, and facilities of the departments and establishments of the Government, and also of private research agencies.

**(e) Appropriations**

To enable the joint committee to exercise its powers, functions, and duties under this chapter, there are authorized to be appropriated for each fiscal year such sums as may be necessary, to be disbursed by the Secretary of the Senate on vouchers signed by the chairman or vice chairman, except that vouchers shall not be required for the disbursement of salaries of employees paid at an annual rate.

**(f) Service as attorney or expert for committee**

Service of one individual, until the completion of the investigation authorized by Senate Concurrent Resolution 26, Eighty-first Congress, as an attorney or expert for the joint committee, in any business or professional field, on a part-time basis, with or without compensation, shall not be considered as service or employment bringing such individual within the provisions of section 281, 283, or 284 of title 18,<sup>1</sup> or of any other Federal law imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with any claim, proceeding, or matter involving the United States.

(Feb. 20, 1946, ch. 33, §11, formerly §5, 60 Stat. 25; Aug. 2, 1946, ch. 753, title II, §225, 60 Stat. 838; Feb. 2, 1948, ch. 42, 62 Stat. 16; Oct. 6, 1949, ch. 627, §§1, 2, 63 Stat. 721; June 18, 1956, ch. 399, §2, 70 Stat. 290; Pub. L. 86-1, Feb. 17, 1959, 73 Stat. 3; Pub. L. 88-661, Oct. 13, 1964, 78 Stat. 1093; Pub. L. 90-2, Jan. 25, 1967, 81 Stat. 4; Pub. L. 93-554, title I, ch. III, Dec. 27, 1974, 88 Stat. 1776; renumbered §11, Pub. L. 95-523, §104, Oct. 27, 1978, 92 Stat. 1893.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Sections 281 and 283 of title 18, referred to in subsec. (f), were repealed by Pub. L. 87-849, §2, Oct. 23, 1962, 76 Stat. 1126, except as they may apply to retired officers of the armed forces of the United States, and were supplanted by sections 203 and 205 of Title 18, Crimes and Criminal Procedure.

Section 284 of title 18, referred to in subsec. (f), was repealed by Pub. L. 87-849, §2, Oct. 23, 1962, 76 Stat. 1126, and was supplanted by section 207 of title 18.

**AMENDMENTS**

**1974**—Subsec. (e). Pub. L. 93-554 inserted exception relating to requirement of vouchers for the disbursement of salaries of employees paid at an annual rate.

**1967**—Subsec. (a). Pub. L. 90-2 substituted "ten", "six", and "four" for "eight", "five", and "three", respectively.

**1964**—Subsec. (e). Pub. L. 88-661 authorized appropriations for such sums as may be necessary for each fiscal year and eliminated provisions which limited the authorization to a maximum of \$125,000 yearly.

**1959**—Subsec. (a). Pub. L. 86-1 added one additional Senator and one Representative to the Committee, and substituted provisions requiring the majority party to be represented by five Members and the minority party to be represented by three Members for provisions which required representation to reflect as nearly as may be feasible the relative membership of the majority and minority parties.

**1956**—Subsec. (a). Act June 19, 1956, substituted "Joint Economic Committee" for "Joint Committee on the Economic Report".

**1949**—Subsec. (e). Act Oct. 6, 1949, §1, substituted "\$125,000" for "\$50,000".



Subsec. (f). Act Oct. 6, 1949, §2, added subsec. (f).

**1948**—Subsec. (b)(3). Act Feb. 2, 1948, substituted "March 1" for "February 1".

**1946**—Subsec. (b)(3). Act Aug. 2, 1946, substituted "February 1" for "May 1".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1974 AMENDMENT**

Pub. L. 93–554 provided that the amendment made by Pub. L. 93–554 is effective Jan. 1, 1975.

### **EFFECTIVE DATE OF 1946 AMENDMENT**

Amendment by act Aug. 2, 1946, effective Aug. 2, 1946, see section 245 of that act, set out as a note under section 4301 of Title 2, The Congress.

### **SENATE MEMBERS OF JOINT ECONOMIC COMMITTEE FOR 107TH CONGRESS**

Pub. L. 107–20, title II, §2806, July 24, 2001, 115 Stat. 185, provided: "That notwithstanding any other provision of law, and specifically section 5(a) of the Employment Act of 1946 (15 U.S.C. 1024(a)), the Members of the Senate to be appointed by the President of the Senate shall for the duration of the One Hundred Seventh Congress, be represented by six Members of the majority party and five Members of the minority party."

Similar provisions were contained in Pub. L. 107–3, Mar. 13, 2001, 115 Stat. 5.

### **AGENCY CONTRIBUTIONS FOR EMPLOYEES OF JOINT ECONOMIC COMMITTEE**

Pub. L. 106–554, §1(a)(2) [title I, §7], Dec. 21, 2000, 114 Stat. 2763, 2763A–98, provided that:

"(a) Agency contributions for employees whose salaries are disbursed by the Secretary of the Senate from the appropriations account 'Joint Economic Committee' under the heading 'JOINT ITEMS' shall be paid from the Senate appropriations account for 'Salaries, Officers and Employees'.

"(b) This section shall apply to pay periods beginning on or after October 1, 2000."

<sup>1</sup> [See References in Text note below.](#)

## **§1025. Printing of monthly publication by Joint Economic Committee entitled "Economic Indicators"; distribution**

The Joint Economic Committee is authorized to issue a monthly publication entitled "Economic Indicators", and a sufficient quantity shall be printed to furnish one copy to each Member of Congress; the Secretary and the Sergeant at Arms of the Senate; the Clerk, Sergeant at Arms, and Chief Administrative Officer of the House of Representatives; two copies to the libraries of the Senate and House, and the Congressional Library; seven hundred copies to the Joint Economic Committee; and the required number of copies to the Superintendent of Documents for distribution to depository libraries; and the Superintendent of Documents is authorized to have copies printed for sale to the public.

(June 23, 1949, ch. 237, 63 Stat. 264; Pub. L. 104–186, title II, §217, Aug. 20, 1996, 110 Stat. 1747.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Section was not enacted as a part of the Employment Act of 1946 which comprises this chapter.

"Joint Economic Committee" substituted in text for "Joint Committee on the Economic Report" to conform to act June 18, 1956, ch. 399, §2, 70 Stat. 290. See section 1024(a) of this title.

### **AMENDMENTS**

**1996**—Pub. L. 104–186 substituted "Chief Administrative Officer" for "Doorkeeper".



**§1026. Repealed. Pub. L. 94–136, title VI, §601, Nov. 28, 1975, 89 Stat. 742**

Section, Pub. L. 92–210, §4, Dec. 22, 1971, 85 Stat. 753; Pub. L. 93–34, May 14, 1973, 87 Stat. 72, created the President's National Commission on Productivity and authorized appropriations for its operation through June 30, 1973. Thereafter, the Commission's name was changed to the National Commission on Productivity and Work Quality by Pub. L. 93–311, June 8, 1974, 88 Stat. 236 and appropriations were authorized to continue operations through November 30, 1975, by Pub. L. 94–42, §2, June 28, 1975, 89 Stat. 232, and Pub. L. 94–100, §2, Oct. 1, 1975, 89 Stat. 483. See section 2401 et seq. of this title.

**CHAPTER 22—TRADEMARKS**

**SUBCHAPTER I—THE PRINCIPAL REGISTER**

Sec.

- 1051. Application for registration; verification.
- 1052. Trademarks registrable on principal register; concurrent registration.
- 1053. Service marks registrable.
- 1054. Collective marks and certification marks registrable.
- 1055. Use by related companies affecting validity and registration.
- 1056. Disclaimer of unregistrable matter.
- 1057. Certificates of registration.
- 1058. Duration, affidavits and fees.
- 1059. Renewal of registration.
- 1060. Assignment.
- 1061. Execution of acknowledgments and verifications.
- 1062. Publication.
- 1063. Opposition to registration.
- 1064. Cancellation of registration.
- 1065. Incontestability of right to use mark under certain conditions.
- 1066. Interference; declaration by Director.
- 1066a. Ex parte expungement.
- 1066b. Ex parte reexamination.
- 1067. Interference, opposition, and proceedings for concurrent use registration or for cancellation; notice; Trademark Trial and Appeal Board.
- 1068. Action of Director in interference, opposition, and proceedings for concurrent use registration or for cancellation.
- 1069. Application of equitable principles in inter partes proceedings.
- 1070. Appeals to Trademark Trial and Appeal Board from decisions of examiners.
- 1071. Appeal to courts.
- 1072. Registration as constructive notice of claim of ownership.

**SUBCHAPTER II—THE SUPPLEMENTAL REGISTER**

- 1091. Supplemental register.
- 1092. Publication; not subject to opposition; cancellation.
- 1093. Registration certificates for marks on principal and supplemental registers to be different.
- 1094. Provisions of chapter applicable to registrations on supplemental register.
- 1095. Registration on principal register not precluded.
- 1096. Registration on supplemental register not used to stop importations.

**SUBCHAPTER III—GENERAL PROVISIONS**

- 1111. Notice of registration; display with mark; recovery of profits and damages in infringement suit.
- 1112. Classification of goods and services; registration in plurality of classes.
- 1113. Fees.

- 1114. Remedies; infringement; innocent infringement by printers and publishers.
- 1115. Registration on principal register as evidence of exclusive right to use mark; defenses.
- 1116. Injunctive relief.
- 1117. Recovery for violation of rights.
- 1118. Destruction of infringing articles.
- 1119. Power of court over registration.
- 1120. Civil liability for false or fraudulent registration.
- 1121. Jurisdiction of Federal courts; State and local requirements that registered trademarks be altered or displayed differently; prohibition.
- 1121a. Transferred.
- 1122. Liability of United States and States, and instrumentalities and officials thereof.
- 1123. Rules and regulations for conduct of proceedings in Patent and Trademark Office.
- 1124. Importation of goods bearing infringing marks or names forbidden.
- 1125. False designations of origin, false descriptions, and dilution forbidden.
- 1126. International conventions.
- 1127. Construction and definitions; intent of chapter.
- 1128. Repealed.
- 1129. Transferred.

#### **SUBCHAPTER IV—THE MADRID PROTOCOL**

- 1141. Definitions.
- 1141a. International applications based on United States applications or registrations.
- 1141b. Certification of the international application.
- 1141c. Restriction, abandonment, cancellation, or expiration of a basic application or basic registration.
- 1141d. Request for extension of protection subsequent to international registration.
- 1141e. Extension of protection of an international registration to the United States under the Madrid Protocol.
- 1141f. Effect of filing a request for extension of protection of an international registration to the United States.
- 1141g. Right of priority for request for extension of protection to the United States.
- 1141h. Examination of and opposition to request for extension of protection; notification of refusal.
- 1141i. Effect of extension of protection.
- 1141j. Dependence of extension of protection to the United States on the underlying international registration.
- 1141k. Duration, affidavits and fees.
- 1141l. Assignment of an extension of protection.
- 1141m. Incontestability.
- 1141n. Rights of extension of protection.

#### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

The Trade-Mark Act of 1905 superseded the Trade-Mark Act of Mar. 3, 1881, ch. 138, 21 Stat. 502, entitled "An Act to authorize the registration of trade-marks and protect the same," and also act Aug. 5, 1882, ch. 393, 22 Stat. 298, entitled "An Act relating to the registration of trade marks". Former section 109 of this title repealed all inconsistent acts and parts of acts, except so far as they might apply to certificates of registration issued under the Trade-Mark Act of Mar. 3, 1881, ch. 138, and act Aug. 5, 1882, ch. 393.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE**

This chapter, act July 5, 1946, ch. 540, 60 Stat. 427, became effective one year from July 5, 1946, and repealed chapter 3 of this title as of that date. See notes under section 1051 of this title.

## SUBCHAPTER I—THE PRINCIPAL REGISTER

### §1051. Application for registration; verification

#### (a) Application for use of trademark

(1) The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director, and such number of specimens or facsimiles of the mark as used as may be required by the Director.

(2) The application shall include specification of the applicant's domicile and citizenship, the date of the applicant's first use of the mark, the date of the applicant's first use of the mark in commerce, the goods in connection with which the mark is used, and a drawing of the mark.

(3) The statement shall be verified by the applicant and specify that—

(A) the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be the owner of the mark sought to be registered;

(B) to the best of the verifier's knowledge and belief, the facts recited in the application are accurate;

(C) the mark is in use in commerce; and

(D) to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive, except that, in the case of every application claiming concurrent use, the applicant shall—

(i) state exceptions to the claim of exclusive use; and

(ii) shall <sup>1</sup> specify, to the extent of the verifier's knowledge—

(I) any concurrent use by others;

(II) the goods on or in connection with which and the areas in which each concurrent use exists;

(III) the periods of each use; and

(IV) the goods and area for which the applicant desires registration.

(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.

#### (b) Application for bona fide intention to use trademark

(1) A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director.

(2) The application shall include specification of the applicant's domicile and citizenship, the goods in connection with which the applicant has a bona fide intention to use the mark, and a drawing of the mark.

(3) The statement shall be verified by the applicant and specify—

(A) that the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be entitled to use the mark in commerce;

(B) the applicant's bona fide intention to use the mark in commerce;

(C) that, to the best of the verifier's knowledge and belief, the facts recited in the application are accurate; and

(D) that, to the best of the verifier's knowledge and belief, no other person has the right to use

such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

Except for applications filed pursuant to section 1126 of this title, no mark shall be registered until the applicant has met the requirements of subsections (c) and (d) of this section.

(4) The applicant shall comply with such rules or regulations as may be prescribed by the Director. The Director shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.

**(c) Amendment of application under subsection (b) to conform to requirements of subsection (a)**

At any time during examination of an application filed under subsection (b), an applicant who has made use of the mark in commerce may claim the benefits of such use for purposes of this chapter, by amending his or her application to bring it into conformity with the requirements of subsection (a).

**(d) Verified statement that trademark is used in commerce**

(1) Within six months after the date on which the notice of allowance with respect to a mark is issued under section 1063(b)(2) of this title to an applicant under subsection (b) of this section, the applicant shall file in the Patent and Trademark Office, together with such number of specimens or facsimiles of the mark as used in commerce as may be required by the Director and payment of the prescribed fee, a verified statement that the mark is in use in commerce and specifying the date of the applicant's first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce. Subject to examination and acceptance of the statement of use, the mark shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued for those goods or services recited in the statement of use for which the mark is entitled to registration, and notice of registration shall be published in the Official Gazette of the Patent and Trademark Office. Such examination may include an examination of the factors set forth in subsections (a) through (e) of section 1052 of this title. The notice of registration shall specify the goods or services for which the mark is registered.

(2) The Director shall extend, for one additional 6-month period, the time for filing the statement of use under paragraph (1), upon written request of the applicant before the expiration of the 6-month period provided in paragraph (1). In addition to an extension under the preceding sentence, the Director may, upon a showing of good cause by the applicant, further extend the time for filing the statement of use under paragraph (1) for periods aggregating not more than 24 months, pursuant to written request of the applicant made before the expiration of the last extension granted under this paragraph. Any request for an extension under this paragraph shall be accompanied by a verified statement that the applicant has a continued bona fide intention to use the mark in commerce and specifying those goods or services identified in the notice of allowance on or in connection with which the applicant has a continued bona fide intention to use the mark in commerce. Any request for an extension under this paragraph shall be accompanied by payment of the prescribed fee. The Director shall issue regulations setting forth guidelines for determining what constitutes good cause for purposes of this paragraph.

(3) The Director shall notify any applicant who files a statement of use of the acceptance or refusal thereof and, if the statement of use is refused, the reasons for the refusal. An applicant may amend the statement of use.

(4) The failure to timely file a verified statement of use under paragraph (1) or an extension request under paragraph (2) shall result in abandonment of the application, unless it can be shown to the satisfaction of the Director that the delay in responding was unintentional, in which case the time for filing may be extended, but for a period not to exceed the period specified in paragraphs (1) and (2) for filing a statement of use.

**(e) Designation of resident for service of process and notices**

If the applicant is not domiciled in the United States the applicant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

**(f) Third-party submission of evidence**

A third party may submit for consideration for inclusion in the record of an application evidence relevant to a ground for refusal of registration. The third-party submission shall identify the ground for refusal and include a concise description of each piece of evidence submitted in support of each identified ground for refusal. Not later than 2 months after the date on which the submission is filed, the Director shall determine whether the evidence should be included in the record of the application. The Director shall establish by regulation appropriate procedures for the consideration of evidence submitted by a third party under this subsection and may prescribe a fee to accompany the submission. If the Director determines that the third-party evidence should be included in the record of the application, only the evidence and the ground for refusal to which the evidence relates may be so included. Any determination by the Director whether or not to include evidence in the record of an application shall be final and non-reviewable, and a determination to include or to not include evidence in the record shall not prejudice any party's right to raise any issue and rely on any evidence in any other proceeding.

(July 5, 1946, ch. 540, title I, §1, 60 Stat. 427; Pub. L. 87-772, §1, Oct. 9, 1962, 76 Stat. 769; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §103, Nov. 16, 1988, 102 Stat. 3935; Pub. L. 105-330, title I, §103, title II, §201(a)(1), Oct. 30, 1998, 112 Stat. 3064, 3069; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 107-273, div. C, title III, §13207(b)(1), (2), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 116-260, div. Q, title II, §223(a), Dec. 27, 2020, 134 Stat. 2201.)

**EDITORIAL NOTES**

**PRIOR PROVISIONS**

Subsecs. (a) to (c) are from acts Feb. 20, 1905, ch. 592, §§1, 2, 33 Stat. 724; May 4, 1906, ch. 2081, §1, 34 Stat. 168; Feb. 18, 1909, ch. 144, 35 Stat. 628; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155; June 10, 1938, ch. 332, §1, 52 Stat. 638.

Subsec. (d) is from act Feb. 20, 1905, ch. 592, §3, 33 Stat. 725.

**AMENDMENTS**

**2020**—Subsec. (f). Pub. L. 116-260 added subsec. (f).

**2002**—Subsec. (d)(1). Pub. L. 107-273, §13207(b)(1), in first sentence, substituted "specifying the date of the applicant's first use of the mark in commerce and those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce." for "specifying the date of the applicant's first use of the mark in commerce and,, those goods or services specified in the notice of allowance on or in connection with which the mark is used in commerce."

Subsec. (e). Pub. L. 107-273, §13207(b)(2), amended subsec. (e) generally. Prior to amendment, subsec. (e) required applicant not domiciled in United States to designate name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark and provided that notices or process be served by leaving with such person or mailing to him a copy, or upon Director if designated person cannot be found.

**1999**—Subsecs. (a), (b), (d), (e). Pub. L. 106-113 substituted "Director" for "Commissioner" wherever appearing.

**1998**—Subsec. (a). Pub. L. 105-330, §103(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to application by owner of a trademark used in commerce to register the trademark by filing in the

Patent and Trademark Office a written application in prescribed form and verified by applicant, by paying prescribed fee, and by complying with prescribed rules or regulations.

Subsec. (b). Pub. L. 105-330, §103(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to application, by person with bona fide intention, under circumstances showing good faith, to use a trademark in commerce, to register trademark by filing in the Patent and Trademark Office a written application in prescribed form and verified by applicant, by paying prescribed fee, and by complying with prescribed rules or regulations.

Subsec. (d)(1). Pub. L. 105-330, §201(a)(1)(A), inserted "and," after "specifying the date of the applicant's first use of the mark in commerce".

Pub. L. 105-330, §201(a)(1)(B), which directed the striking out of "and, the mode or manner in which the mark is used on or in connection with such goods or services", was executed by striking out ", and the mode or manner in which the mark is used on or in connection with such goods or services" after "notice of allowance on or in connection with which the mark is used in commerce", to reflect the probable intent of Congress.

Subsec. (d)(4). Pub. L. 105-330, §103(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The failure to timely file a verified statement of use under this subsection shall result in abandonment of the application."

**1988**—Subsec. (a). Pub. L. 100-667, §103(1) to (7), inserted "(a)" preceding introductory provisions and substituted "may apply to register his or her" for "may register his", redesignated former subsecs. (a) to (c) as pars. (1) to (3), respectively, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in par. (1)(A), substituted "used on or in connection with" for "applied to" and "goods on or in connection" for "goods in connection", in par. (1)(C), struck out "actually" after "the mark as", and in par. (2), substituted "prescribed" for "filing".

Subsecs. (b), (c). Pub. L. 100-667, §103(3), (9), added subsecs. (b) and (c) and redesignated former subsecs. (b) and (c) as pars. (2) and (3), respectively, of subsec. (a).

Subsecs. (d), (e). Pub. L. 100-667, §103(8), (9), added subsec. (d) and redesignated former subsec. (d) as (e).

**1975**—Subsecs. (a), (b), (d). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

**1962**—Subsec. (a)(1). Pub. L. 87-772 substituted "as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive" for "as might be calculated to deceive", and struck out "or services" after "use by others, the goods".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. Q, title II, §223(c), Dec. 27, 2020, 134 Stat. 2201, provided that: "The amendment made by subsection (a) [amending this section] shall take effect 1 year after the date of enactment of this Act [Dec. 27, 2020]."

### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

### EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-330, title I, §109(b), Oct. 30, 1998, 112 Stat. 3069, provided that: "This title [see Short Title of 1998 Amendment note below] and the amendments made by this title shall apply to any application for registration of a trademark pending on, or filed on or after, the effective date of this Act [probably should be "this title", see section 110 of Pub. L. 105-330, set out as an Effective Date of 1998 Amendment note below]."

Pub. L. 105-330, title I, §110, Oct. 30, 1998, 112 Stat. 3069, provided that: "This title [see Short Title of 1998 Amendment note below] and the amendments made by this title shall take effect—

"(1) on the date that is 1 year after the date of the enactment of this Act [Oct. 30, 1998], or

"(2) upon the entry into force of the Trademark Law Treaty with respect to the United States [Aug. 12, 2000],  
whichever occurs first."

Pub. L. 105-330, title II, §201(b), Oct. 30, 1998, 112 Stat. 3070, provided that: "The amendments made by this section [amending this section and sections 1052, 1057, 1064, 1091, 1094, 1113 to 1115, 1121, and 1124

of this title] shall take effect on the date of enactment of this Act [Oct. 30, 1998], and shall apply only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark."

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Pub. L. 100–667, title I, §136, Nov. 16, 1988, 102 Stat. 3948, provided that: "This title and the amendments made by this title [see Short Title of 1988 Amendment note below] shall become effective on the date which is one year after the date of enactment of this Act [Nov. 16, 1988]."

#### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

#### **EFFECTIVE DATE**

Section 46(a) of act July 5, 1946, provided that this chapter shall be in force and take effect one year from July 5, 1946.

#### **SHORT TITLE OF 2020 AMENDMENT**

Pub. L. 116–260, div. Q, title II, §221(a), Dec. 27, 2020, 134 Stat. 2200, provided that: "This subtitle [subtitle B (§§221–228) of title II of div. Q of Pub. L. 116–260, enacting sections 1066a and 1066b of this title, amending this section and sections 1062, 1064, 1065, 1068, 1070, 1071, 1092, 1094, and 1116 of this title, and enacting provisions set out as notes under this section and sections 1064, 1066a, 1068, and 1116 of this title] may be cited as the 'Trademark Modernization Act of 2020' or the 'TM Act of 2020'."

#### **SHORT TITLE OF 2010 AMENDMENT**

Pub. L. 111–146, §1, Mar. 17, 2010, 124 Stat. 66, provided that: "This Act [amending sections 1057, 1058, 1065, 1071, and 1141k of this title] may be cited as the 'Trademark Technical and Conforming Amendment Act of 2010'."

#### **SHORT TITLE OF 2006 AMENDMENT**

Pub. L. 109–312, §1(a), Oct. 6, 2006, 120 Stat. 1730, provided that: "This Act [amending sections 1052, 1063, 1064, 1092, 1125, and 1127 of this title] may be cited as the 'Trademark Dilution Revision Act of 2006'."

#### **SHORT TITLE OF 2004 AMENDMENT**

Pub. L. 108–482, §1, Dec. 23, 2004, 118 Stat. 3912, provided that: "This Act [amending section 1117 of this title, section 504 of Title 17, Copyrights, sections 2318 and 3559 of Title 18, Crimes and Criminal Procedure, and sections 85 and 112 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section, section 1117 of this title, sections 2311 and 2318 of Title 18, and listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28] may be cited as the 'Intellectual Property Protection and Courts Amendments Act of 2004'."

Pub. L. 108–482, title II, §201, Dec. 23, 2004, 118 Stat. 3916, provided that: "This title [amending section 1117 of this title, section 504 of Title 17, Copyrights, and section 3559 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as notes under section 1117 of this title and 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 'Fraudulent Online Identity Sanctions Act'."

#### **SHORT TITLE OF 2002 AMENDMENT**

Pub. L. 107–273, div. C, title III, §13401, Nov. 2, 2002, 116 Stat. 1913, provided that: "This subtitle [subtitle D (§§13401–13403) of title III of div. C of Pub. L. 107–273, enacting subchapter IV of this chapter and provisions set out as a note under section 1141 of this title] may be cited as the 'Madrid Protocol Implementation Act'."

#### **SHORT TITLE OF 1999 AMENDMENTS**

Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3001(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–545, provided that: "This title [enacting section 1129 of this title, amending sections 1114, 1116, 1117, 1125, and 1127 of this title, section 470a of Title 16, Conservation, and section 1338 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section and sections 1117 and 1125 of this title] may be cited as the 'Anticybersquatting Consumer Protection Act'."

Pub. L. 106–43, §1, Aug. 5, 1999, 113 Stat. 218, provided that: "This Act [amending sections 1052 to 1054,

1060, 1063, 1064, 1091, 1092, 1114, 1116 to 1118, 1122, and 1124 to 1127 of this title, enacting provisions set out as a note under section 1052 of this title, and amending provisions set out as a note under this section] may be cited as the 'Trademarks Amendments Act of 1999'."

#### **SHORT TITLE OF 1998 AMENDMENT**

Pub. L. 105–330, title I, §101, Oct. 30, 1998, 112 Stat. 3064, provided that: "This title [amending this section and sections 1058 to 1060, 1062, and 1126 of this title and enacting provisions set out as notes under this section and sections 1058 and 1059 of this title] may be cited as the 'Trademark Law Treaty Implementation Act'."

#### **SHORT TITLE OF 1996 AMENDMENT**

Pub. L. 104–98, §1, Jan. 16, 1996, 109 Stat. 985, provided that: "This Act [amending sections 1125 and 1127 of this title and enacting provisions set out as a note under section 1125 of this title] may be cited as the 'Federal Trademark Dilution Act of 1995'."

#### **SHORT TITLE OF 1992 AMENDMENT**

Pub. L. 102–542, §1, Oct. 27, 1992, 106 Stat. 3567, provided that: "This Act [enacting section 1122 of this title, amending sections 1114, 1125, and 1127 of this title, and enacting provisions set out as a note under section 1114 of this title] may be cited as the 'Trademark Remedy Clarification Act'."

#### **SHORT TITLE OF 1988 AMENDMENT**

Pub. L. 100–667, title I, §101, Nov. 16, 1988, 102 Stat. 3935, provided that: "This title [amending this section and sections 1052 to 1060, 1062 to 1066, 1068, 1069, 1071, 1091, 1092, 1094, 1095, 1111, 1112, 1114 to 1118, 1121, and 1125 to 1127 of this title, redesignating section 1121a of this title as section 1121(b) of this title, and enacting provisions set out as notes under sections 1051 and 1058 of this title] may be cited as the 'Trademark Law Revision Act of 1988'."

#### **SHORT TITLE OF 1984 AMENDMENT**

Pub. L. 98–620, title I, §101, Nov. 8, 1984, 98 Stat. 3335, provided that: "This title [amending sections 1064 and 1127 of this title and enacting provisions set out as a note under section 1064 of this title] may be cited as the 'Trademark Clarification Act of 1984'."

#### **SHORT TITLE**

Act July 5, 1946, ch. 540, 60 Stat. 427, which is classified to this chapter, is popularly known as the "Lanham Act" and also as the "Trademark Act of 1946".

#### **REPEAL OF INCONSISTENT PROVISIONS; CERTAIN PROVISIONS NOT AFFECTED**

Act July 5, 1946, ch. 540, title XI, §46(a), 60 Stat. 444, as amended by Pub. L. 106–43, §6(b), Aug. 5, 1999, 113 Stat. 220, provided in part that all acts and parts of acts inconsistent with this chapter are repealed effective one year from July 5, 1946, but that "nothing contained in this Act [this chapter] shall be construed as limiting, restricting, modifying, or repealing any statute in force on the effective date of this Act [July 5, 1947] which does not relate to trademarks, or as restricting or increasing the authority of any Federal department or regulatory agency except as may be specifically provided in this Act [this chapter]."

Act July 5, 1946, ch. 540, title XI, §48, 60 Stat. 446, provided that: "Section 4 of the Act of January 5, 1905 (U.S.C., title 36, sec. 4), as amended, entitled 'An Act to incorporate the National Red Cross' [see 18 U.S.C. 706], and section 7 of the Act of June 15, 1916 (U.S.C., title 36, sec. 27), entitled 'An Act to incorporate the Boy Scouts of America, and for other purposes' [see 36 U.S.C. 30905], and the Act of June 20, 1936 (U.S.C., title 22, sec. 248), entitled 'An Act to prohibit the commercial use of the coat of arms of the Swiss Confederation' [see former 18 U.S.C. 708], are not repealed or affected by this Act."

#### **SAVINGS PROVISION**

Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3008], Nov. 29, 1999, 113 Stat. 1536, 1501A–551, provided that: "Nothing in this title [see Short Title of 1999 Amendments note above] shall affect any defense available to a defendant under the Trademark Act of 1946 [15 U.S.C. 1051 et seq.] (including any defense under section 43(c)(4) of such Act [15 U.S.C. 1125(c)(4)] or relating to fair use) or a person's right of free speech or expression under the first amendment of the United States Constitution."

#### **SEPARABILITY**

Act July 5, 1946, ch. 540, title XI, §50, 60 Stat. 446, provided that: "If any provision of this Act [this chapter] or the application of such provision to any person or circumstance is held invalid, the remainder of



the Act shall not be affected thereby."

### **DEADLINE FOR PROCEDURES**

Pub. L. 116–260, div. Q, title II, §223(b), Dec. 27, 2020, 134 Stat. 2201, provided that: "Not later than 1 year after the date of enactment of this Act [Dec. 27, 2020], the Director shall establish the appropriate procedures described in section 1(f) of the Trademark Act of 1946 [15 U.S.C. 1051(f)], as added by subsection (a)."

[For definitions of terms used in section 223(b) of Pub. L. 116–260, set out above, see section 222 of Pub. L. 116–260, set out as a note below.]

### **PENDING PROCEEDINGS AND EXISTING REGISTRATION AND RIGHTS UNDER PRIOR ACTS**

Act July 5, 1946, ch. 540, title XI, §46(a), 60 Stat. 444, provided in part that this chapter, except as otherwise specifically provided therein, shall not affect any suit, proceeding or appeal pending on the effective date of this chapter and that the repeal of all inconsistent acts "shall not affect the validity of registrations granted or applied for under any of said Acts prior to the effective date of this Act [July 5, 1947], or rights or remedies thereunder except as provided in sections 8, 12, 14, 15, and 47 of this Act [sections 1058, 1062, 1064, and 1065 of this title and note under this section]."

Act July 5, 1946, ch. 540, title XI, §§46(b), 47, 60 Stat. 445, provided:

"(b) Registrations now existing under the Act of March 3, 1881, or the Act of February 20, 1905 [sections 81 to 109 of this title], shall continue in full force and effect for the unexpired terms thereof and may be renewed under the provisions of section 9 of this Act [section 1059 of this title]. Such registrations and the renewals thereof shall be subject to and shall be entitled to the benefits of the provisions of this Act [this chapter] to the same extent and with the same force and effect as though registered on the principal register established by this Act [this chapter] except as limited in sections 8, 12, 14, and 15 of this Act [sections 1058, 1062, 1064, 1065, of this title]. Marks registered under the 'ten-year proviso' of section 5 of the Act of February 20, 1905, as amended [former section 85 of this title], shall be deemed to have become distinctive of the registrant's goods in commerce under paragraph (f) of section 2 of this Act [section 1052 of this title] and may be renewed under section 9 hereof [section 1059 of this title] as marks coming within said paragraph.

"Registrations now existing under the Act of March 19, 1920 [former sections 121 to 128 of this title], shall expire six months after the effective date of this Act [July 5, 1947], or twenty years from the dates of their registrations, whichever date is later. Such registrations shall be subject to and entitled to the benefits of the provisions of this Act [this chapter] relating to marks registered on the supplemental register established by this Act [this chapter], and may not be renewed unless renewal is required to support foreign registrations. In that event renewal may be effected on the supplemental register under the provisions of section 9 of this Act [section 1059 of this title].

"Marks registered under previous Acts may, if eligible, also be registered under this Act [this chapter].

"SEC. 47. (a) All applications for registration pending in the Patent Office at the effective date of this Act [July 5, 1947] may be amended, if practicable, to bring them under the provisions of this Act [this chapter]. The prosecution of such applications so amended and the grant of registrations thereon shall be proceeded with in accordance with the provisions of this Act [this chapter]. If such amendments are not made, the prosecution of said applications shall be proceeded with and registrations thereon granted in accordance with the Acts under which said applications were filed, and said Acts are hereby continued in force to this extent and for this purpose only, notwithstanding the foregoing general repeal thereof.

"(b) In any case in which an appeal is pending before the United States Court of Customs and Patent Appeals or any United States Circuit Court of Appeals or the United States Court of Appeals for the District of Columbia or the United States Supreme Court at the effective date of this Act [July 5, 1947], the court, if it be of the opinion that the provisions of this Act [this chapter] are applicable to the subject matter of the appeal, may apply such provision or may remand the case to the Commissioner [now Director] or to the district court for the taking of additional evidence or a new trial or for reconsideration of the decision on the record as made, as the appellate court may deem proper."

Act July 5, 1946, ch. 540, title XI, §49, 60 Stat. 446, provided: "Nothing herein [in this chapter] shall adversely affect the rights or the enforcement of rights in marks acquired in good faith prior to the effective date of this Act [July 5, 1947]."

### **DEFINITIONS APPLICABLE TO SECTIONS OF PUB. L. 116–260**

Pub. L. 116–260, div. Q, title II, §222, Dec. 27, 2020, 134 Stat. 2200, provided that: "In this subtitle [subtitle B (§§221–228) of title II of div. Q of Pub. L. 116–260, see Short Title of 2020 Amendment note above]:

"(1) DIRECTOR.—The term 'Director' means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

"(2) TRADEMARK ACT OF 1946.—The term 'Trademark Act of 1946' means the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (15 U.S.C. 1051 et. seq) (commonly referred to as the 'Trademark Act of 1946' or the 'Lanham Act')."

#### **EMERGENCY RELIEF FROM POSTAL SITUATION AFFECTING TRADEMARK CASES**

Relief as to filing date of trademark application or registration and excusal of delayed fees or actions affected by postal situation beginning on Mar. 18, 1970, and ending on or about Mar. 30, 1970, see note set out under section 111 of Title 35, Patents.

### **EXECUTIVE DOCUMENTS**

#### **TRANSFER OF FUNCTIONS**

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

<sup>1</sup> So in original. The word "shall" probably should not appear.

### **§1052. Trademarks registrable on principal register; concurrent registration**

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods and is first used on or in connection with wines or spirits by the applicant on or after one year after the date on which the WTO Agreement (as defined in section 3501(9) of title 19) enters into force with respect to the United States.

(b) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any State or municipality, or of any foreign nation, or any simulation thereof.

(c) Consists of or comprises a name, portrait, or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the United States during the life of his widow, if any, except by the written consent of the widow.

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That if the Director determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods on or in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (1) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; (2) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (3) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Use prior to the filing date of any pending application or a registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant. Concurrent registrations may also be issued by the Director when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent

registrations, the Director shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods on or in connection with which such mark is registered to the respective persons.

(e) Consists of a mark which (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive of them, except as indications of regional origin may be registrable under section 1054 of this title, (3) when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them, (4) is primarily merely a surname, or (5) comprises any matter that, as a whole, is functional.

(f) Except as expressly excluded in subsections (a), (b), (c), (d), (e)(3), and (e)(5) of this section, nothing in this chapter shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant's goods in commerce. The Director may accept as prima facie evidence that the mark has become distinctive, as used on or in connection with the applicant's goods in commerce, proof of substantially exclusive and continuous use thereof as a mark by the applicant in commerce for the five years before the date on which the claim of distinctiveness is made. Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before December 8, 1993.

A mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be refused registration only pursuant to a proceeding brought under section 1063 of this title. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be canceled pursuant to a proceeding brought under either section 1064 of this title or section 1092 of this title.

(July 5, 1946, ch. 540, title I, §2, 60 Stat. 428; Pub. L. 87-772, §2, Oct. 9, 1962, 76 Stat. 769; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §104, Nov. 16, 1988, 102 Stat. 3937; Pub. L. 103-182, title III, §333(a), Dec. 8, 1993, 107 Stat. 2114; Pub. L. 103-465, title V, §522, Dec. 8, 1994, 108 Stat. 4982; Pub. L. 105-330, title II, §201(a)(2), (12), Oct. 30, 1998, 112 Stat. 3069, 3070; Pub. L. 106-43, §2(a), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 109-312, §3(a), Oct. 6, 2006, 120 Stat. 1732.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Acts March 3, 1881, and February 20, 1905, referred to in subsec. (d), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502, and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

### **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](http://constitution.congress.gov).

### **PRIOR PROVISIONS**

Acts Feb. 20, 1905, ch. 592, §5, 33 Stat. 725; Mar. 2, 1907, ch. 2573, §1, 34 Stat. 1251; Feb. 18, 1911, ch. 113, 36 Stat. 918; Jan. 8, 1913, ch. 7, 37 Stat. 649; Mar. 19, 1920, ch. 104, §9, 41 Stat. 535; June 7, 1924, ch. 341, 43 Stat. 647.

### **AMENDMENTS**

**2006**—Pub. L. 109-312, which directed substitution of "A mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be refused registration only pursuant to a proceeding brought under section 1063 of this title. A registration for a mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may be

canceled pursuant to a proceeding brought under either section 1064 of this title or section 1092 of this title." for last two sentences in subsec. (f) of this section, was executed by making the substitution for "A mark which when used would cause dilution under section 1125(c) of this title may be refused registration only pursuant to a proceeding brought under section 1063 of this title. A registration for a mark which when used would cause dilution under section 1125(c) of this title may be canceled pursuant to a proceeding brought under either section 1064 of this title or section 1092 of this title." in concluding provisions of section to reflect the probable intent of Congress.

**1999**—Pub. L. 106-43 inserted concluding provisions.

Subsecs. (d), (f). Pub. L. 106-113 substituted "Director" for "Commissioner" wherever appearing.

**1998**—Pub. L. 105-330, §201(a)(12), substituted "trademark" for "trade-mark" in introductory provisions.

Subsec. (e). Pub. L. 105-330, §201(a)(2)(A), struck out "or" before "(4)" and inserted ", or (5) comprises any matter that, as a whole, is functional" before period at end.

Subsec. (f). Pub. L. 105-330, §201(a)(2)(B), substituted "subsections (a), (b), (c), (d), (e)(3), and (e)(5)" for "paragraphs (a), (b), (c), (d), and (e)(3)".

**1994**—Subsec. (a). Pub. L. 103-465 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute."

**1993**—Subsec. (e). Pub. L. 103-182, §333(a)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "Consists of a mark which, (1) when used on or in connection with the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) when used on or in connection with the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 1054 of this title, or (3) is primarily merely a surname."

Subsec. (f). Pub. L. 103-182, §333(a)(2), substituted "(d), and (e)(3)" for "and (d)" and inserted at end "Nothing in this section shall prevent the registration of a mark which, when used on or in connection with the goods of the applicant, is primarily geographically deceptively misdescriptive of them, and which became distinctive of the applicant's goods in commerce before December 8, 1993."

**1988**—Subsec. (d). Pub. L. 100-667, §104(1), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That when the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; or (ii) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (iii) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioner shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons."

Subsec. (e). Pub. L. 100-667, §104(2), substituted "used on or in connection with" for "applied to" in two places.

Subsec. (f). Pub. L. 100-667, §104(3), substituted "used on or in connection with" for "applied to" and "five years before the date on which the claim of distinctiveness is made" for "five years next preceding the date of the filing of the application for its registration"

**1975**—Subsec. (d). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

**1962**—Subsec. (d). Pub. L. 87-772, among other changes, substituted provisions authorizing the issuance of concurrent registrations to persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to the earliest of the filing dates of the applications pending or of any registration issued under this chapter, or July 5, 1947, in the case of registrations previously issued under the act of Mar. 3, 1881, or Feb. 20, 1905, and continuing in full force and effect on that date, or July 5, 1947, in the case of applications under the act of Feb. 20, 1905, and registered after July 5, 1947, for provisions which restricted issuance of concurrent registrations to persons entitled to use such mark as a result of their

concurrent lawful use thereof in commerce prior to any of the filing dates of the applications involved, and provisions directing that issuance of the mark be upon such conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, for provisions which required issuance under conditions and limitations as to the mode or place of use of the goods in connection with which such registrations may be granted, and eliminated provisions which limited confusion, mistake, or deception to purchasers, required written notice of applications for concurrent registrations and of hearings thereon, and publication in the Official Gazette upon a decision to grant such a registration and permitted a court to order such a registration under section 4915 of the Revised Statutes.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENTS**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Pub. L. 106–43, §2(e), Aug. 5, 1999, 113 Stat. 218, provided that: "The amendments made by this section [amending this section and sections 1063, 1064, and 1092 of this title] shall take effect on the date of enactment of this Act [Aug. 5, 1999] and shall apply only to any application for registration filed on or after January 16, 1996."

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1994 AMENDMENT**

Pub. L. 103–465, title V, §523, Dec. 8, 1994, 108 Stat. 4982, provided that: "The amendments made by this subtitle [subtitle B (§§521–523) of title V of Pub. L. 103–465, amending this section and section 1127 of this title] take effect one year after the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995]."

### **EFFECTIVE DATE OF 1993 AMENDMENT**

Pub. L. 103–182, title III, §335, Dec. 8, 1993, 107 Stat. 2116, which provided that the amendments made: (1) by sections 332, 334, and 335 of Pub. L. 103–182 took effect on the date NAFTA entered into force with respect to the United States (Jan. 1, 1994); (2) by section 331 of Pub. L. 103–182 applied to patent applications filed on or after Dec. 8, 1993; and (3) by section 333 of Pub. L. 103–182 applied only to trademark applications filed on or after Dec. 8, 1993, was repealed by Pub. L. 116–113, title VI, §601, Jan. 29, 2020, 134 Stat. 78, effective on the date the USMCA entered into force (July 1, 2020).

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

## **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **MARKS REGISTERED UNDER TEN-YEAR PROVISIO OF TRADE-MARK ACT OF 1905**

Marks registered under the "ten-year proviso" of section 5 of the act of Feb. 20, 1905, as amended, deemed to have become distinctive of the registrant's goods in commerce under par. (f) of this section, see section 46(b) of act July 5, 1946, set out in note under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

## **TRANSFER OF FUNCTIONS**

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

## **URUGUAY ROUND AGREEMENTS: ENTRY INTO FORCE**

The Uruguay Round Agreements, including the World Trade Organization Agreement and agreements annexed to that Agreement, as referred to in section 3511(d) of Title 19, Customs Duties, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of Title 19.

### **§1053. Service marks registrable**

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, service marks shall be registrable, in the same manner and with the same effect as are trademarks, and when registered they shall be entitled to the protection provided in this chapter in the case of trademarks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

(July 5, 1946, ch. 540, title I, §3, 60 Stat. 429; Pub. L. 100-667, title I, §105, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 106-43, §6(b), Aug. 5, 1999, 113 Stat. 220.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1999**—Pub. L. 106-43 substituted "trademarks" for "trade-marks" wherever appearing.

**1988**—Pub. L. 100-667 struck out "used in commerce" after "applicable, service marks" and ", except when used so as to represent falsely that the owner thereof makes or sells the goods on which such mark is used. The Commissioner may establish a separate register for such service marks" after "case of trade-marks".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

## **TRANSFER OF FUNCTIONS**

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

### **§1054. Collective marks and certification marks registrable**

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, collective and certification marks, including indications of regional origin, shall be registrable under this chapter, in the same manner and with the same effect as are trademarks, by persons, and nations, States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when

registered they shall be entitled to the protection provided in this chapter in the case of trademarks, except in the case of certification marks when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

(July 5, 1946, ch. 540, title I, §4, 60 Stat. 429; Pub. L. 100-667, title I, §106, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 106-43, §6(b), Aug. 5, 1999, 113 Stat. 220.)

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

Acts Feb. 20, 1905, ch. 592, §1, 33 Stat. 724; May 4, 1906, ch. 2081, §1, 34 Stat. 168; Feb. 18, 1909, ch. 144, 35 Stat. 628; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155; June 10, 1938, ch. 332, §1, 52 Stat. 638.

### **AMENDMENTS**

**1999**—Pub. L. 106-43 substituted "trademarks" for "trade-marks" wherever appearing.

**1988**—Pub. L. 100-667 substituted "origin," for "origin used in commerce," and "except in the case of certification marks when" for "except when" and struck out after first sentence "The Commissioner may establish a separate register for such collective marks and certification marks."

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1055. Use by related companies affecting validity and registration**

Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public. If first use of a mark by a person is controlled by the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be.

(July 5, 1946, ch. 540, title I, §5, 60 Stat. 429; Pub. L. 100-667, title I, §107, Nov. 16, 1988, 102 Stat. 3938.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1988**—Pub. L. 100–667 inserted at end "If first use of a mark by a person is controlled by the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be."

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **§1056. Disclaimer of unregistrable matter**

### **(a) Compulsory and voluntary disclaimers**

The Director may require the applicant to disclaim an unregistrable component of a mark otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

### **(b) Prejudice of rights**

No disclaimer, including those made under subsection (e) of section 1057 of this title, shall prejudice or affect the applicant's or registrant's rights then existing or thereafter arising in the disclaimed matter, or his right of registration on another application if the disclaimed matter be or shall have become distinctive of his goods or services.

(July 5, 1946, ch. 540, title I, §6, 60 Stat. 429; Pub. L. 87–772, §3, Oct. 9, 1962, 76 Stat. 769; Pub. L. 100–667, title I, §108, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1999**—Subsec. (a). Pub. L. 106–113 substituted "Director" for "Commissioner".

**1988**—Subsec. (b). Pub. L. 100–667 substituted "subsection (e)" for "paragraph (d)".

**1962**—Pub. L. 87–772, among other changes, provided that an applicant may voluntarily disclaim a component of a mark sought to be registered.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**



## TRANSFER OF FUNCTIONS

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

### **§1057. Certificates of registration**

#### **(a) Issuance and form**

Certificates of registration of marks registered upon the principal register shall be issued in the name of the United States of America, under the seal of the United States Patent and Trademark Office, and shall be signed by the Director or have his signature placed thereon, and a record thereof shall be kept in the United States Patent and Trademark Office. The registration shall reproduce the mark, and state that the mark is registered on the principal register under this chapter, the date of the first use of the mark, the date of the first use of the mark in commerce, the particular goods or services for which it is registered, the number and date of the registration, the term thereof, the date on which the application for registration was received in the United States Patent and Trademark Office, and any conditions and limitations that may be imposed in the registration.

#### **(b) Certificate as prima facie evidence**

A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the owner's ownership of the mark, and of the owner's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate.

#### **(c) Application to register mark considered constructive use**

Contingent on the registration of a mark on the principal register provided by this chapter, the filing of the application to register such mark shall constitute constructive use of the mark, conferring a right of priority, nationwide in effect, on or in connection with the goods or services specified in the registration against any other person except for a person whose mark has not been abandoned and who, prior to such filing—

- (1) has used the mark;
- (2) has filed an application to register the mark which is pending or has resulted in registration of the mark; or
- (3) has filed a foreign application to register the mark on the basis of which he or she has acquired a right of priority, and timely files an application under section 1126(d) of this title to register the mark which is pending or has resulted in registration of the mark.

#### **(d) Issuance to assignee**

A certificate of registration of a mark may be issued to the assignee of the applicant, but the assignment must first be recorded in the United States Patent and Trademark Office. In case of change of ownership the Director shall, at the request of the owner and upon a proper showing and the payment of the prescribed fee, issue to such assignee a new certificate of registration of the said mark in the name of such assignee, and for the unexpired part of the original period.

#### **(e) Surrender, cancellation, or amendment by owner**

Upon application of the owner the Director may permit any registration to be surrendered for cancellation, and upon cancellation appropriate entry shall be made in the records of the United States Patent and Trademark Office. Upon application of the owner and payment of the prescribed fee, the Director for good cause may permit any registration to be amended or to be disclaimed in part: *Provided*, That the amendment or disclaimer does not alter materially the character of the mark. Appropriate entry shall be made in the records of the United States Patent and Trademark Office and upon the certificate of registration.

**(f) Copies of United States Patent and Trademark Office records as evidence**

Copies of any records, books, papers, or drawings belonging to the United States Patent and Trademark Office relating to marks, and copies of registrations, when authenticated by the seal of the United States Patent and Trademark Office and certified by the Director, or in his name by an employee of the Office duly designated by the Director, shall be evidence in all cases wherein the originals would be evidence; and any person making application therefor and paying the prescribed fee shall have such copies.

**(g) Correction of United States Patent and Trademark Office mistake**

Whenever a material mistake in a registration, incurred through the fault of the United States Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Director a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the United States Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.

**(h) Correction of applicant's mistake**

Whenever a mistake has been made in a registration and a showing has been made that such mistake occurred in good faith through the fault of the applicant, the Director is authorized to issue a certificate of correction or, in his discretion, a new certificate upon the payment of the prescribed fee: *Provided*, That the correction does not involve such changes in the registration as to require republication of the mark.

(July 5, 1946, ch. 540, title I, §7, 60 Stat. 430; Aug. 17, 1950, ch. 733, 64 Stat. 459; Pub. L. 87-772, §4, Oct. 9, 1962, 76 Stat. 769; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §109, Nov. 16, 1988, 102 Stat. 3938; Pub. L. 105-330, title II, §201(a)(3), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 111-146, §3(a), Mar. 17, 2010, 124 Stat. 66.)

**EDITORIAL NOTES**

**PRIOR PROVISIONS**

Subsecs. (a) and (c) are from acts Feb. 20, 1905, ch. 592, §11, 33 Stat. 727; Mar. 4, 1925, ch. 535, §3, 43 Stat. 1269.

Subsec. (e) is from act Mar. 19, 1920, ch. 104, §7, 41 Stat. 535.

Subsec. (f) is from act Mar. 4, 1925, ch. 535, §1, 43 Stat. 1268.

**AMENDMENTS**

**2010**—Subsec. (a). Pub. L. 111-146, §3(a)(1), inserted "United States" before "Patent and Trademark Office" wherever appearing.

Subsec. (b). Pub. L. 111-146, §3(a)(2), substituted "owner's" for "registrant's" in two places.

Subsec. (d). Pub. L. 111-146, §3(a)(1), inserted "United States" before "Patent and Trademark Office".

Subsec. (e). Pub. L. 111-146, §3(a)(1), (3), inserted "United States" before "Patent and Trademark Office" in two places, substituted "owner" for "registrant" in two places, and struck out "or, if said certificate is lost or destroyed, upon a certified copy thereof" after "certificate of registration".

Subsec. (f). Pub. L. 111-146, §3(a)(1), inserted "United States" before "Patent and Trademark Office" in two places.

Subsec. (g). Pub. L. 111-146, §3(a)(4), amended subsec. (g) generally. Prior to amendment, text read as follows: "Whenever a material mistake in a registration, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake, shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration certificate and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Director a new

certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute."

**1999**—Subsecs. (a), (d) to (h). Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

**1998**—Subsec. (a). Pub. L. 105–330 struck out second period at end of first sentence.

**1988**—Subsec. (b). Pub. L. 100–667, §109(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "A certificate of registration of a mark upon the principal register provided by this chapter shall be prima facie evidence of the validity of the registration, registrant's ownership of the mark, and of registrant's exclusive right to use the mark in commerce in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein."

Subsec. (c). Pub. L. 100–667, §109(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–667, §109(2), (4), redesignated former subsec. (c) as (d) and substituted "prescribed fee" for "fee herein provided". Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 100–667, §109(2), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 100–667, §109(2), (5), redesignated former subsec. (e) as (f) and substituted "prescribed fee" for "fee required by law". Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 100–667, §109(2), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 100–667, §109(2), (6), redesignated former subsec. (g) as (h) and substituted "prescribed fee" for "required fee".

**1975**—Subsecs. (a), (c) to (f). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

**1962**—Subsec. (a). Pub. L. 87–772 substituted "signature placed" for "name printed", and struck out provisions requiring an attestation by an assistant commissioner or by one of the law examiners designated by the Commissioner, together with printed copies of the drawing and statement of the applicant, to be kept in books for that purpose.

Subsec. (d). Pub. L. 87–772, among other charges, removed the requirement of a fee in connection with the voluntary surrender or cancellation of a registration.

Subsec. (e). Pub. L. 87–772 substituted "an employee of the Office" for "a chief of division", among other changes.

Subsec. (f). Pub. L. 87–772, among other changes, struck out ", signed by the Commissioner and sealed with the seal of the Patent Office" after "nature of such mistake".

**1950**—Subsec. (a). Act Aug. 17, 1950, made it unnecessary to include in the certificate a statement of the applicant.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

## REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

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

## §1058. Duration, affidavits and fees

### (a) Time periods for required affidavits

Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Director unless the owner of the registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the following time periods:

(1) Within the 1-year period immediately preceding the expiration of 6 years following the date of registration under this chapter or the date of the publication under section 1062(c) of this title.

(2) Within the 1-year period immediately preceding the expiration of 10 years following the date of registration, and each successive 10-year period following the date of registration.

(3) The owner may file the affidavit required under this section within the 6-month grace period immediately following the expiration of the periods established in paragraphs (1) and (2), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director.

### (b) Requirements for affidavit

The affidavit referred to in subsection (a) shall—

(1)(A) state that the mark is in use in commerce;

(B) set forth the goods and services recited in the registration on or in connection with which the mark is in use in commerce;

(C) be accompanied by such number of specimens or facsimiles showing current use of the mark in commerce as may be required by the Director; and

(D) be accompanied by the fee prescribed by the Director; or

(2)(A) set forth the goods and services recited in the registration on or in connection with which the mark is not in use in commerce;

(B) include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

(C) be accompanied by the fee prescribed by the Director.

### (c) Deficient affidavit

If any submission filed within the period set forth in subsection (a) is deficient, including that the affidavit was not filed in the name of the owner of the registration, the deficiency may be corrected after the statutory time period, within the time prescribed after notification of the deficiency. Such submission shall be accompanied by the additional deficiency surcharge prescribed by the Director.

### (d) Notice of requirement

Special notice of the requirement for such affidavit shall be attached to each certificate of registration and notice of publication under section 1062(c) of this title.

### (e) Notification of acceptance or refusal

The Director shall notify any owner who files any affidavit required by this section of the

Director's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

**(f) Designation of resident for service of process and notices**

If the owner is not domiciled in the United States, the owner may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the last designated address, or if the owner does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

(July 5, 1946, ch. 540, title I, §8, 60 Stat. 431; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 97-247, §8, Aug. 27, 1982, 96 Stat. 320; Pub. L. 100-667, title I, §110, Nov. 16, 1988, 102 Stat. 3939; Pub. L. 105-330, title I, §105, Oct. 30, 1998, 112 Stat. 3066; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B), (C)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 107-273, div. C, title III, §13207(b)(3), Nov. 2, 2002, 116 Stat. 1906; Pub. L. 111-146, §3(d)(1), Mar. 17, 2010, 124 Stat. 67.)

**EDITORIAL NOTES**

**PRIOR PROVISIONS**

Act Feb. 20, 1905, ch. 592, §12, 33 Stat. 727.

**AMENDMENTS**

**2010**—Pub. L. 111-146 amended section generally. Prior to amendment, section related to duration of registrations, affidavits of continuing use, grace period for submissions and correction of deficiencies, certain notice requirements related to affidavits, and designation of resident for service of process and notices.

**2002**—Subsec. (f). Pub. L. 107-273 amended subsec. (f) generally. Prior to amendment, text read as follows: "If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director."

**1999**—Subsecs. (a) to (c). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner" wherever appearing.

Subsec. (e). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(b)(1)(B), (C)], amended subsec. (e) identically, substituting "Director" for "Commissioner".

Subsec. (f). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner".

**1998**—Pub. L. 105-330 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (c) relating to affidavits of continuing use, registrations published under other provisions of law, and notification of acceptance or refusal of affidavits.

**1988**—Subsec. (a). Pub. L. 100-667 substituted "ten" for "twenty" and "setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and attaching to the affidavit a specimen or facsimile showing current use of the mark, or showing that any" for "showing that said mark is in use in commerce or showing that its".

**1982**—Subsecs. (a), (b). Pub. L. 97-247 struck out "still" after "showing that said mark is", and inserted "in commerce" after "use".

**1975**—Subsecs. (a), (b). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV,

§4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

#### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105–330, set out as a note under section 1051 of this title.

Pub. L. 105–330, title I, §109(a), Oct. 30, 1998, 112 Stat. 3069, provided that: "The provisions of section 8 of the Trademark Act of 1946 [15 U.S.C. 1058], as amended by section 105 of this Act, shall apply to a registration for trademark issued or renewed for a 20-year term, if the expiration date of the registration is on or after the effective date of this Act [probably should be "this title", see section 110 of Pub. L. 105–330, set out as an Effective Date of 1998 Amendment note under section 1051 of this title]."

For provisions relating to applicability of amendment by Pub. L. 105–330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

Pub. L. 105–330, title I, §109(c), Oct. 30, 1998, 112 Stat. 3069, provided that: "The provisions of section 8 of the Trademark Act of 1946 [15 U.S.C. 1058], as amended by section 105 of this Act, shall apply to the filing of an affidavit if the sixth or tenth anniversary of the registration, or the sixth anniversary of publication of the registration under section 12(c) of the Trademark Act of 1946 [15 U.S.C. 1062(c)], for which the affidavit is filed is on or after the effective date of this Act [probably should be "this title", see section 110 of Pub. L. 105–330, set out as an Effective Date of 1998 Amendment note under section 1051 of this title]."

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

#### **EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by Pub. L. 97–247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97–247, set out as a note under section 294 of Title 35, Patents.

#### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

#### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, and saving clause, see notes set out under section 1051 of this title.

#### **REFERENCES TO TRADEMARK ACT OF 1946**

Pub. L. 105–330, title I, §102, Oct. 30, 1998, 112 Stat. 3064, provided that: "For purposes of this title [see Short Title of 1998 Amendment note set out under section 1051 of this title], the Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (15 U.S.C. 1051 et seq.), shall be referred to as the 'Trademark Act of 1946'."

#### **PENDING APPLICATIONS**

Act July 5, 1946, ch. 540, title XI, §51, as added Nov. 16, 1988, Pub. L. 100–667, title I, §135, 102 Stat. 3948, provided that: "All certificates of registration based upon applications for registration pending in the Patent and Trademark Office on the effective date of the Trademark Law Revision Act of 1988 [see Effective Date of 1988 Amendment note set out under section 1051 of this title] shall remain in force for a period of 10 years."

#### **EXECUTIVE DOCUMENTS**

#### **TRANSFER OF FUNCTIONS**

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

## **§1059. Renewal of registration**

### **(a) Period of renewal; time for renewal**

Subject to the provisions of section 1058 of this title, each registration may be renewed for periods of 10 years at the end of each successive 10-year period following the date of registration upon payment of the prescribed fee and the filing of a written application, in such form as may be prescribed by the Director. Such application may be made at any time within 1 year before the end of each successive 10-year period for which the registration was issued or renewed, or it may be made within a grace period of 6 months after the end of each successive 10-year period, upon payment of a fee and surcharge prescribed therefor. If any application filed under this section is deficient, the deficiency may be corrected within the time prescribed after notification of the deficiency, upon payment of a surcharge prescribed therefor.

### **(b) Notification of refusal of renewal**

If the Director refuses to renew the registration, the Director shall notify the registrant of the Commissioner's <sup>1</sup> refusal and the reasons therefor.

### **(c) Designation of resident for service of process and notices**

If the registrant is not domiciled in the United States the registrant may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the registrant does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

(July 5, 1946, ch. 540, title I, §9, 60 Stat. 431; Pub. L. 87-772, §5, Oct. 9, 1962, 76 Stat. 770; Pub. L. 100-667, title I, §111, Nov. 16, 1988, 102 Stat. 3939; Pub. L. 105-330, title I, §106, Oct. 30, 1998, 112 Stat. 3067; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B), (C)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 107-273, div. C, title III, §13207(b)(4), Nov. 2, 2002, 116 Stat. 1907.)

## **EDITORIAL NOTES**

## **PRIOR PROVISIONS**

Act Feb. 20, 1905, ch. 592, §12, 33 Stat. 727.

## **AMENDMENTS**

**2002**—Subsec. (c). Pub. L. 107-273 amended subsec. (c) generally. Prior to amendment, text read as follows: "If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director."

**1999**—Subsec. (a). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner".

Subsec. (b). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(b)(1)(B), (C)], amended subsec. (b) identically, substituting "Director" for "Commissioner" in two places.

Subsec. (c). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner".

**1998**—Pub. L. 105-330 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (c) relating to period of renewal and time for renewal, notification of refusal of renewal, and applicants for renewal not domiciled in the United States.

**1988**—Subsec. (a). Pub. L. 100–667, §111(1), substituted "ten" for "twenty".

Subsec. (c). Pub. L. 100–667, §111(2), substituted "1051(e)" for "1051(d)".

**1962**—Pub. L. 87–772 designated existing provisions as subsecs. (a) and (c), added subsec. (b), and among other changes, amended subsec. (a) by substituting provisions requiring a verified application specifying the goods or services recited in the registration on or in connection with which the mark is still in use in commerce and having attached a specimen showing current use of the mark, or showing that any nonuse is due to special circumstances which excuse the nonuse and that it's not due to an intention to abandon the mark, for provisions requiring an affidavit by the registrant stating that the mark is still in use in commerce.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105–330, set out as a note under section 1051 of this title.

For provisions relating to applicability of amendment by Pub. L. 105–330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

Pub. L. 105–330, title I, §109(d), Oct. 30, 1998, 112 Stat. 3069, provided that: "The amendment made by section 106 [amending this section] shall apply to the filing of an application for renewal of a registration if the expiration date of the registration for which the renewal application is filed is on or after the effective date of this Act [probably should be "this title", see section 110 of Pub. L. 105–330, set out as an Effective Date of 1998 Amendment note under section 1051 of this title]."

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

### **RENEWAL UNDER PRIOR ACTS**

Renewal of registrations under prior acts, see section 46(b) of act July 5, 1946, set out as a note under section 1051 of this title.

### **EXTENSION OF TIME FOR RENEWAL BY FOREIGN REGISTRANT**

Act July 17, 1946, ch. 587, 60 Stat. 568, provided for extension of time for renewal by a foreign registrant and expired by its own terms July 17, 1949.

<sup>1</sup> So in original. Probably should be "Director's".

## **§1060. Assignment**

(a)(1) A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Notwithstanding the preceding sentence, no application to register a mark under section 1051(b) of this title shall be assignable prior to the filing of an amendment under section 1051(c) of this title to bring the application into conformity with section 1051(a) of this title or the filing of the verified statement of use under section 1051(d) of this title, except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing.

(2) In any assignment authorized by this section, it shall not be necessary to include the good will of the business connected with the use of and symbolized by any other mark used in the business or



by the name or style under which the business is conducted.

(3) Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment, and when the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office, the record shall be prima facie evidence of execution.

(4) An assignment shall be void against any subsequent purchaser for valuable consideration without notice, unless the prescribed information reporting the assignment is recorded in the United States Patent and Trademark Office within 3 months after the date of the assignment or prior to the subsequent purchase.

(5) The United States Patent and Trademark Office shall maintain a record of information on assignments, in such form as may be prescribed by the Director.

(b) An assignee not domiciled in the United States may designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, or if the assignee does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served upon the Director.

(July 5, 1946, ch. 540, title I, §10, 60 Stat. 431; Pub. L. 87-772, §6, Oct. 9, 1962, 76 Stat. 770; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §112, Nov. 16, 1988, 102 Stat. 3939; Pub. L. 105-330, title I, §107, Oct. 30, 1998, 112 Stat. 3068; Pub. L. 106-43, §6(a), Aug. 5, 1999, 113 Stat. 220; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 107-273, div. C, title III, §13207(b)(5), Nov. 2, 2002, 116 Stat. 1907.)

## EDITORIAL NOTES

### PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §10, 33 Stat. 727.

### AMENDMENTS

**2002**—Subsecs. (a), (b). Pub. L. 107-273 amended subsecs. (a) and (b) generally, in subsec. (a) substituting pars. (1) to (5) for substantially identical undesignated provisions, and in subsec. (b) adding provisions relating to service on Director if assignee does not designate name and address of a person resident in the United States on whom may be served notices or process.

**1999**—Pub. L. 106-43, §6(a)(2), (3), which directed the amendment of this section by substituting "mark." for "mark," in the first sentence and striking out a second period at the end of the third sentence, could not be executed because "mark," and the second period did not appear subsequent to amendment by Pub. L. 105-330. See 1998 Amendment note below.

Subsec. (a). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner" in last sentence.

Pub. L. 106-43, §6(a)(1), which directed the amendment of the penultimate sentence of this section by substituting "assignment" for "subsequent purchase", was executed by making the substitution for "subsequent purchase" in two places in the penultimate sentence of subsec. (a), after "date of the" and "prior to the", to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 106-113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner" in last sentence.

**1998**—Pub. L. 105-330 amended section catchline and text generally. Prior to amendment, text read as follows:

"A registered mark or a mark for which application to register has been filed shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark,. However, no application to register a mark under section 1051(b) of this title shall be assignable prior to the filing of the verified statement of use under section 1051(d)

of this title, except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. In any assignment authorized by this section it shall not be necessary to include the goodwill of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted. Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment and when recorded in the Patent and Trademark Office the record shall be prima facie evidence of execution. An assignment shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded in the Patent and Trademark Office within three months after the date thereof or prior to such subsequent purchase. A separate record of assignments submitted for recording hereunder shall be maintained in the Patent and Trademark Office.

"An assignee not domiciled in the United States shall be subject to and comply with the provisions of section 1051(e) of this title."

**1988**—Pub. L. 100-667 substituted ". However, no application to register a mark under section 1051(b) of this title shall be assignable prior to the filing of the verified statement of use under section 1051(d) of this title, except to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. In any assignment authorized by this section" for "and in any such assignment" in first par., and "1051(e)" for "1051(d)" in last par.

**1975**—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

**1962**—Pub. L. 87-772 substituted provisions which require a separate record of assignments to be kept in the Patent Office, for provisions which required the Commissioner to keep such record, and eliminated provisions permitting the cancellation of any assigned registration at any time if the registered mark is being used by, or with the permission of, the assignee so as to misrepresent the source of the goods or services in connection with which the mark is used.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105-330, set out as a note under section 1051 of this title.

For provisions relating to applicability of amendment by Pub. L. 105-330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105-330, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

## **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1061. Execution of acknowledgments and verifications**

Acknowledgments and verifications required under this chapter may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States or before any official authorized to administer oaths in the foreign country concerned whose authority is proved by a certificate of a diplomatic or consular officer of the United States, or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States, and shall be valid if they comply with the laws of the state or country where made.

(July 5, 1946, ch. 540, title I, §11, 60 Stat. 432; Pub. L. 97-247, §14(c), Aug. 27, 1982, 96 Stat. 321.)

### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

Acts Feb. 20, 1905, ch. 592, §2, 33 Stat. 724; Feb. 18, 1909, ch. 144, 35 Stat. 627.

#### **AMENDMENTS**

**1982**—Pub. L. 97-247 substituted "is" for "shall be" after "whose authority", and inserted ", or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States".

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by Pub. L. 97-247 effective Aug. 27, 1982, see section 17(a) of Pub. L. 97-247, set out as a note under section 41 of Title 35, Patents.

#### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **§1062. Publication**

### **(a) Examination and publication**

Upon the filing of an application for registration and payment of the prescribed fee, the Director shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and, if on such examination it shall appear that the applicant is entitled to registration, or would be entitled to registration upon the acceptance of the statement of use required by section 1051(d) of this title, the Director shall cause the mark to be published in the Official Gazette of the Patent and Trademark Office: *Provided*, That in the case of an applicant claiming concurrent use, or in the case of an application to be placed in an interference as provided for in section 1066 of this title the mark, if otherwise registrable, may be published subject to the determination of the rights of the parties to such proceedings.

### **(b) Refusal of registration; amendment of application; abandonment; extensions of time to respond**

(1) If the applicant is found not entitled to registration, the examiner shall notify the applicant thereof and of the reasons therefor. The applicant may reply or amend the application, which shall then be reexamined. This procedure may be repeated until the examiner finally refuses registration of the mark or the application is abandoned as described in paragraph (2).

(2) After notification under paragraph (1), the applicant shall have a period of 6 months in which to reply or amend the application, or such shorter time that is not less than 60 days, as prescribed by the Director by regulation. If the applicant fails to reply or amend or appeal within the relevant time period, including any extension under paragraph (3), the application shall be deemed to have been

abandoned, unless it can be shown to the satisfaction of the Director that the delay in responding was unintentional, in which case the application may be revived and such time may be extended. The Director may prescribe a fee to accompany any request to revive.

(3) The Director shall provide, by regulation, for extensions of time to respond to the examiner for any time period under paragraph (2) that is less than 6 months. The Director shall allow the applicant to obtain extensions of time to reply or amend aggregating 6 months from the date of notification under paragraph (1) when the applicant so requests. However, the Director may set by regulation the time for individual periods of extension, and prescribe a fee, by regulation, for any extension request. Any request for extension shall be filed on or before the date on which a reply or amendment is due under paragraph (1).

### **(c) Republication of marks registered under prior acts**

A registrant of a mark registered under the provisions of the Act of March 3, 1881, or the Act of February 20, 1905, may, at any time prior to the expiration of the registration thereof, upon the payment of the prescribed fee file with the Director an affidavit setting forth those goods stated in the registration on which said mark is in use in commerce and that the registrant claims the benefits of this chapter for said mark. The Director shall publish notice thereof with a reproduction of said mark in the Official Gazette, and notify the registrant of such publication and of the requirement for the affidavit of use or nonuse as provided for in subsection (b) of section 1058 of this title. Marks published under this subsection shall not be subject to the provisions of section 1063 of this title.

(July 5, 1946, ch. 540, title I, §12, 60 Stat. 432; Pub. L. 87-772, §7, Oct. 9, 1962, 76 Stat. 770; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §113, Nov. 16, 1988, 102 Stat. 3940; Pub. L. 105-330, title I, §104, Oct. 30, 1998, 112 Stat. 3066; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 116-260, div. Q, title II, §224, Dec. 27, 2020, 134 Stat. 2201.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Acts March 3, 1881 and February 20, 1905, referred to in subsec. (c), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

### **PRIOR PROVISIONS**

Acts Feb. 20, 1905, ch. 592, §6, 33 Stat. 726; Mar. 2, 1907, ch. 2573, §2, 34 Stat. 1252.

### **AMENDMENTS**

**2020**—Subsec. (b). Pub. L. 116-260 amended subsec. (b) generally. Prior to amendment, text read as follows: "If the applicant is found not entitled to registration, the examiner shall advise the applicant thereof and of the reasons therefor. The applicant shall have a period of six months in which to reply or amend his application, which shall then be reexamined. This procedure may be repeated until (1) the examiner finally refuses registration of the mark or (2) the applicant fails for a period of six months to reply or amend or appeal, whereupon the application shall be deemed to have been abandoned, unless it can be shown to the satisfaction of the Director that the delay in responding was unintentional, whereupon such time may be extended."

**1999**—Pub. L. 106-113 substituted "Director" for "Commissioner" wherever appearing.

**1998**—Subsec. (b). Pub. L. 105-330 substituted "unintentional" for "unavoidable" in last sentence.

**1988**—Subsec. (a). Pub. L. 100-667 substituted "prescribed fee" for "fee herein provided", and "entitled to registration, or would be entitled to registration upon the acceptance of the statement of use required by section 1051(d) of this title, the" for "entitled to registration, the".

**1975**—Subsec. (a). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

**1962**—Subsec. (a). Pub. L. 87-772 inserted proviso permitting publication of the mark in the case of an applicant claiming concurrent use, or an application to be placed in an interference, if such mark is otherwise registrable, subject to the determination of the rights of the parties.

Subsec. (c). Pub. L. 87-772 inserted "Marks published under" before "this subsection shall not be subject".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105–330, set out as a note under section 1051 of this title.

For provisions relating to applicability of amendment by Pub. L. 105–330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1063. Opposition to registration**

(a) Any person who believes that he would be damaged by the registration of a mark upon the principal register, including the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title, may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor, within thirty days after the publication under subsection (a) of section 1062 of this title of the mark sought to be registered. Upon written request prior to the expiration of the thirty-day period, the time for filing opposition shall be extended for an additional thirty days, and further extensions of time for filing opposition may be granted by the Director for good cause when requested prior to the expiration of an extension. The Director shall notify the applicant of each extension of the time for filing opposition. An opposition may be amended under such conditions as may be prescribed by the Director.

(b) Unless registration is successfully opposed—

(1) a mark entitled to registration on the principal register based on an application filed under section 1051(a) of this title or pursuant to section 1126 of this title shall be registered in the Patent and Trademark Office, a certificate of registration shall be issued, and notice of the registration shall be published in the Official Gazette of the Patent and Trademark Office; or

(2) a notice of allowance shall be issued to the applicant if the applicant applied for registration under section 1051(b) of this title.

(July 5, 1946, ch. 540, title I, §13, 60 Stat. 433; Pub. L. 87–772, §8, Oct. 9, 1962, 76 Stat. 771; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93–600, §1, Jan. 2, 1975, 88 Stat. 1955; Pub. L.

97–247, §9(a), Aug. 27, 1982, 96 Stat. 320; Pub. L. 100–667, title I, §114, Nov. 16, 1988, 102 Stat. 3940; Pub. L. 106–43, §2(b), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 109–312, §3(b), Oct. 6, 2006, 120 Stat. 1732.)

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

Acts Feb. 20, 1905, ch. 592, §§6, 7, 33 Stat. 726; Mar. 2, 1907, ch. 2573, §2, 34 Stat. 1252.

### **AMENDMENTS**

**2006**—Subsec. (a). Pub. L. 109–312 substituted "the registration of any mark which would be likely to cause dilution by blurring or dilution by tarnishment" for "as a result of dilution".

**1999**—Subsec. (a). Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing. Pub. L. 106–43 inserted ", including as a result of dilution under section 1125(c) of this title," after "principal register" in first sentence.

**1988**—Pub. L. 100–667 designated existing provisions as subsec. (a), substituted "prescribed fee" for "required fee", and added subsec. (b).

**1982**—Pub. L. 97–247 substituted "an" for "a verified" after "required fee, file", inserted "when requested prior to the expiration of an extension" after "Commissioner for good cause" and struck out provision that an unverified opposition could be filed by a duly authorized attorney, but such opposition would be null and void unless verified by the opposer within a reasonable time after such filing is fixed by the Commissioner.

**1975**—Pub. L. 93–600 substituted provisions relating to extensions of time for filing opposition upon written request prior to the expiration of the thirty-day period for an additional thirty days, and further extensions for good cause, for provisions relating to extensions of the time for filing opposition for good cause shown.

Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

**1962**—Pub. L. 87–772 inserted "An opposition may be amended under such conditions as may be prescribed by the Commissioner", and struck out "notice of" after "file a verified" and "time for filing".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENTS**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Amendment by Pub. L. 106–43 effective Aug. 5, 1999, and applicable only to any application for registration filed on or after Jan. 16, 1996, see section 2(e) of Pub. L. 106–43, set out as a note under section 1052 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by Pub. L. 97–247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97–247, set out as a note under section 294 of Title 35, Patents.

### **EFFECTIVE DATE OF 1975 AMENDMENTS**

Pub. L. 93–600, §4, Jan. 2, 1975, 88 Stat. 1955, provided that: "This Act [amending this section and sections 1071 and 1117 of this title] shall become effective upon enactment [Jan. 2, 1975], but shall not affect any suit, proceeding, or appeal then pending."

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

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

#### **§1064. Cancellation of registration**

A petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed as follows by any person who believes that he is or will be damaged, including as a result of a likelihood of dilution by blurring or dilution by tarnishment under section 1125(c) of this title, by the registration of a mark on the principal register established by this chapter, or under the Act of March 3, 1881, or the Act of February 20, 1905:

(1) Within five years from the date of the registration of the mark under this chapter.

(2) Within five years from the date of publication under section 1062(c) of this title of a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905.

(3) At any time if the registered mark becomes the generic name for the goods or services, or a portion thereof, for which it is registered, or is functional, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsection (a), (b), or (c) of section 1052 of this title for a registration under this chapter, or contrary to similar prohibitory provisions of such prior Acts for a registration under such Acts, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used. If the registered mark becomes the generic name for less than all of the goods or services for which it is registered, a petition to cancel the registration for only those goods or services may be filed. A registered mark shall not be deemed to be the generic name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.

(4) At any time if the mark is registered under the Act of March 3, 1881, or the Act of February 20, 1905, and has not been published under the provisions of subsection (c) of section 1062 of this title.

(5) At any time in the case of a certification mark on the ground that the registrant (A) does not control, or is not able legitimately to exercise control over, the use of such mark, or (B) engages in the production or marketing of any goods or services to which the certification mark is applied, or (C) permits the use of the certification mark for purposes other than to certify, or (D) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.

(6) At any time after the 3-year period following the date of registration, if the registered mark has never been used in commerce on or in connection with some or all of the goods or services recited in the registration:

*Provided*, That the Federal Trade Commission may apply to cancel on the grounds specified in paragraphs (3) and (5) of this section any mark registered on the principal register established by this chapter, and the prescribed fee shall not be required. Nothing in paragraph (5) shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of the goods or services meeting the certification standards of the registrant. Such uses of the certification mark shall not be grounds for cancellation under paragraph (5), so long as the registrant does not itself produce, manufacture, or sell any of the certified goods or services to

which its identical certification mark is applied. Nothing in paragraph (6) shall be construed to limit the timing applicable to any other ground for cancellation. A registration under section 1126(e) or 1141f of this title shall not be cancelled pursuant to paragraph (6) if the registrant demonstrates that any nonuse is due to special circumstances that excuse such nonuse.

(July 5, 1946, ch. 540, title I, §14, 60 Stat. 433; Pub. L. 87–772, §9, Oct. 9, 1962, 76 Stat. 771; Pub. L. 97–247, §9(b), Aug. 27, 1982, 96 Stat. 320; Pub. L. 98–620, title I, §102, Nov. 8, 1984, 98 Stat. 3335; Pub. L. 100–667, title I, §115, Nov. 16, 1988, 102 Stat. 3940; Pub. L. 105–330, title II, §201(a)(4), title III, §301, Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106–43, §2(c), Aug. 5, 1999, 113 Stat. 218; Pub. L. 109–312, §3(c), Oct. 6, 2006, 120 Stat. 1732; Pub. L. 116–260, div. Q, title II, §225(b), Dec. 27, 2020, 134 Stat. 2204.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Acts March 3, 1881 and February 20, 1905, referred to in opening par. and pars. (2) and (4), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

### PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §13, 33 Stat. 728.

### AMENDMENTS

**2020**—Pub. L. 116–260, §225(b)(3), in concluding proviso, inserted "Nothing in paragraph (6) shall be construed to limit the timing applicable to any other ground for cancellation. A registration under section 1126(e) or 1141f of this title shall not be cancelled pursuant to paragraph (6) if the registrant demonstrates that any nonuse is due to special circumstances that excuse such nonuse." after "identical certification mark is applied."

Par. (6). Pub. L. 116–260, §225(b)(1), (2), added par. (6).

**2006**—Pub. L. 109–312 substituted ", including as a result of a likelihood of dilution by blurring or dilution by tarnishment under section 1125(c) of this title," for ", including as a result of dilution under section 1125(c) of this title," in introductory provisions.

**1999**—Pub. L. 106–43 inserted ", including as a result of dilution under section 1125(c) of this title," after "damaged" in introductory provisions.

**1998**—Pub. L. 105–330, §301, inserted at end "Nothing in paragraph (5) shall be deemed to prohibit the registrant from using its certification mark in advertising or promoting recognition of the certification program or of the goods or services meeting the certification standards of the registrant. Such uses of the certification mark shall not be grounds for cancellation under paragraph (5), so long as the registrant does not itself produce, manufacture, or sell any of the certified goods or services to which its identical certification mark is applied."

Par. (3). Pub. L. 105–330, §201(a)(4), inserted "or is functional," before "or has been abandoned".

**1988**—Pub. L. 100–667, §115(1), (7), in introductory provisions, inserted "as follows" and substituted "1905:" for "1905—", and in concluding proviso substituted "paragraphs (3) and (5)" for "subsections (c) and (e)".

Par. (1). Pub. L. 100–667, §115(2), substituted "(1) Within" for "(a) within" and "chapter." for "chapter; or".

Par. (2). Pub. L. 100–667, §115(3), substituted "(2) Within" for "(b) within", and "1905." for "1905; or".

Par. (3). Pub. L. 100–667, §115(4), substituted "(3)" for "(c)" and amended text generally. Prior to amendment, text read as follows: "at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsections (a), (b), or (c) of section 1052 of this title for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used. A registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service. The primary significance of the registered mark



to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used; or".

Par. (4). Pub. L. 100-667, §115(5), substituted "(4) At" for "(d) at", and "title." for "title; or".

Par. (5). Pub. L. 100-667, §115(6), substituted "(5) At" for "(e) at" and redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively.

**1984**—Par. (c). Pub. L. 98-620 inserted provision that a registered mark shall not be deemed to be the common descriptive name of goods or services solely because such mark is also used as a name of or to identify a unique product or service, and that the primary significance of the registered mark to the relevant public rather than purchaser motivation shall be the test for determining whether the registered mark has become the common descriptive name of goods or services in connection with which it has been used.

**1982**—Pub. L. 97-247 struck out "verified" before "petition to cancel" in provision preceding par. (a).

**1962**—Pub. L. 87-772 inserted provisions which require a verified petition to cancel a registration, redesignated par. (d) as (e), added par. (d) which is composed of provisions formerly part of par. (c), and in said par. (c), substituted "registrant" for "assignee", and struck out "on which the patent has expired" before "or has been abandoned", and "has been assigned and" before "is being used by".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2020 AMENDMENT**

Pub. L. 116-260, div. Q, title II, §225(g), Dec. 27, 2020, 134 Stat. 2208, provided that: "The amendments made by this section [enacting sections 1066a and 1066b of this title and amending this section and sections 1065, 1070, 1071, and 1094 of this title] shall take effect upon the expiration of the 1-year period beginning on the date of enactment of this Act [Dec. 27, 2020], and shall apply to any mark registered before, on, or after that effective date."

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106-43 effective Aug. 5, 1999, and applicable only to any application for registration filed on or after Jan. 16, 1996, see section 2(e) of Pub. L. 106-43, set out as a note under section 1052 of this title.

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by section 201(a)(4) of Pub. L. 105-330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105-330, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by Pub. L. 97-247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97-247, set out as a note under section 294 of Title 35, Patents.

### **FINALITY OF JUDGMENTS PRIOR TO NOVEMBER 8, 1984**

Pub. L. 98-620, title I, §104, Nov. 8, 1984, 98 Stat. 3336, provided that: "Nothing in this title [amending this section and section 1127 of this title and enacting provisions set out as a note under section 1051 of this title] shall be construed to provide a basis for reopening of any final judgment entered prior to the date of enactment of this title [Nov. 8, 1984]."

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

### **RESTRICTION ON USE OF FUNDS TO CANCEL REGISTRATION OF TRADEMARKS**

For provisions restricting the use of funds authorized to be appropriated to carry out section 41 et seq. of this title for fiscal year 1980, 1981, or 1982, for the purpose of taking any action under this section with respect to the cancellation of the registration of any mark on the ground that such mark has become the

common descriptive name of an article or substance, see section 18 of Pub. L. 96–252, set out as a note under section 57c of this title.

## EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

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

### **§1065. Incontestability of right to use mark under certain conditions**

Except on a ground for which application to cancel may be filed at any time under paragraphs (3), (5), and (6) of section 1064 of this title, and except to the extent, if any, to which the use of a mark registered on the principal register infringes a valid right acquired under the law of any State or Territory by use of a mark or trade name continuing from a date prior to the date of registration under this chapter of such registered mark, the right of the owner to use such registered mark in commerce for the goods or services on or in connection with which such registered mark has been in continuous use for five consecutive years subsequent to the date of such registration and is still in use in commerce, shall be incontestable: *Provided*, That—

(1) there has been no final decision adverse to the owner's claim of ownership of such mark for such goods or services, or to the owner's right to register the same or to keep the same on the register; and

(2) there is no proceeding involving said rights pending in the United States Patent and Trademark Office or in a court and not finally disposed of; and

(3) an affidavit is filed with the Director within one year after the expiration of any such five-year period setting forth those goods or services stated in the registration on or in connection with which such mark has been in continuous use for such five consecutive years and is still in use in commerce, and other matters specified in paragraphs (1) and (2) hereof; and

(4) no incontestable right shall be acquired in a mark which is the generic name for the goods or services or a portion thereof, for which it is registered.

Subject to the conditions above specified in this section, the incontestable right with reference to a mark registered under this chapter shall apply to a mark registered under the Act of March 3, 1881, or the Act of February 20, 1905, upon the filing of the required affidavit with the Director within one year after the expiration of any period of five consecutive years after the date of publication of a mark under the provisions of subsection (c) of section 1062 of this title.

The Director shall notify any registrant who files the above-prescribed affidavit of the filing thereof.

(July 5, 1946, ch. 540, title I, §15, 60 Stat. 433; Pub. L. 87–772, §10, Oct. 9, 1962, 76 Stat. 771; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 97–247, §10, Aug. 27, 1982, 96 Stat. 320; Pub. L. 100–667, title I, §116, Nov. 16, 1988, 102 Stat. 3941; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 111–146, §3(b), Mar. 17, 2010, 124 Stat. 67; Pub. L. 116–260, div. Q, title II, §225(e)(1), Dec. 27, 2020, 134 Stat. 2207.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Acts March 3, 1881 and February 20, 1905, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

## AMENDMENTS

**2020**—Pub. L. 116–260 substituted "paragraphs (3), (5), and (6)" for "paragraphs (3) and (5)" in introductory provisions.

**2010**—Pub. L. 111–146, §3(b)(1), substituted "right of the owner" for "right of the registrant" in introductory provisions.

Par. (1). Pub. L. 111–146, §3(b)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register; and".

Par. (2). Pub. L. 111–146, §3(b)(3), inserted "United States" before "Patent and Trademark Office".

**1999**—Pub. L. 106–113 substituted "Director" for "Commissioner" in par. (3) and in two places in concluding provisions.

**1988**—Pub. L. 100–667, in introductory provisions, substituted "paragraphs (3) and (5)" for "subsections (c) and (e)", in par. (3) "paragraphs" for "subsections", and in par. (4) "the generic name for the goods or services or a portion thereof, for which it is registered" for "the common descriptive name of any article or substance, patented or otherwise".

**1982**—Pub. L. 97–247 substituted "registration" for "the publication" in provision preceding par. (1).

**1975**—Par. (2). Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

**1962**—Pub. L. 87–772 substituted "(c) and (e) of section 1064" for "(c) and (d) of section 1064" in provision preceding par. (1), and struck out "or trade name" after "in a mark" in par. (4).

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2020 AMENDMENT**

Amendment by Pub. L. 116–260 effective upon the expiration of the 1-year period beginning on Dec. 27, 2020, and applicable to any mark registered before, on, or after that effective date, see section 225(g) of div. Q of Pub. L. 116–260, set out as a note under section 1064 of this title.

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by Pub. L. 97–247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97–247, set out as a note under section 294 of Title 35, Patents.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1066. Interference; declaration by Director**

Upon petition showing extraordinary circumstances, the Director may declare that an interference

exists when application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when used on or in connection with the goods or services of the applicant to cause confusion or mistake or to deceive. No interference shall be declared between an application and the registration of a mark the right to the use of which has become incontestable.

(July 5, 1946, ch. 540, title I, §16, 60 Stat. 434; Pub. L. 87-772, §11, Oct. 9, 1962, 76 Stat. 771; Pub. L. 97-247, §11, Aug. 27, 1982, 96 Stat. 321; Pub. L. 100-667, title I, §117, Nov. 16, 1988, 102 Stat. 3941; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

Act Feb. 20, 1905, ch. 592, §7, 33 Stat. 726.

### **AMENDMENTS**

**1999**—Pub. L. 106-113 substituted "Director" for "Commissioner".

**1988**—Pub. L. 100-667 substituted "used on or in connection with the goods or services" for "applied to the goods or when used in connection with the services".

**1982**—Pub. L. 97-247 substituted "Upon petition showing extraordinary circumstances, the Commissioner may declare that an interference exists when application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive" for "Whenever application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive, the Commissioner may declare that an interference exists".

**1962**—Pub. L. 87-772 struck out "purchasers" after "or to deceive".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by Pub. L. 97-247 effective six months after Aug. 27, 1982, see section 17(c) of Pub. L. 97-247, set out as a note under section 294 of Title 35, Patents.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1066a. Ex parte expungement**

### **(a) Petition**

Notwithstanding sections 1057(b) and 1072 of this title, and subsections (a) and (b) of section 1115 of this title, any person may file a petition to expunge a registration of a mark on the basis that the mark has never been used in commerce on or in connection with some or all of the goods or services recited in the registration.

### **(b) Contents of petition**

A petition filed under subsection (a), together with any supporting documents, shall—

- (1) identify the registration that is the subject of the petition;
- (2) identify each good or service recited in the registration for which it is alleged that the mark has never been used in commerce;
- (3) include a verified statement that sets forth—
  - (A) the elements of the reasonable investigation the petitioner conducted to determine that the mark has never been used in commerce on or in connection with the goods and services identified in the petition; and
  - (B) any additional facts that support the allegation that the mark has never been used in commerce on or in connection with the identified goods and services;
- (4) include any supporting evidence on which the petitioner relies; and
- (5) be accompanied by the fee prescribed by the Director.

### **(c) Initial determination; institution**

#### **(1) Prima facie case determination, institution, and notification**

The Director shall, for each good or service identified under subsection (b)(2), determine whether the petition sets forth a prima facie case of the mark having never been used in commerce on or in connection with each such good or service, institute an ex parte expungement proceeding for each good or service for which the Director determines that a prima facie case has been set forth, and provide a notice to the registrant and petitioner of the determination of whether or not the proceeding was instituted. Such notice shall include a copy of the petition and any supporting documents and evidence that were included with the petition.

#### **(2) Reasonable investigation guidance**

The Director shall promulgate regulations regarding what constitutes a reasonable investigation under subsection (b)(3) and the general types of evidence that could support a prima facie case that a mark has never been used in commerce, but the Director shall retain the discretion to determine whether a prima facie case is set out in a particular proceeding.

#### **(3) Determination by Director**

Any determination by the Director whether or not to institute a proceeding under this section shall be final and non-reviewable, and shall not prejudice any party's right to raise any issue and rely on any evidence in any other proceeding, except as provided in subsection (j).

### **(d) Ex parte expungement procedures**

The procedures for ex parte expungement shall be the same as the procedures for examination under section 1062(b) of this title, except that the Director shall promulgate regulations establishing and governing a proceeding under this section, which may include regulations that—

- (1) set response and extension times particular to this type of proceeding, which, notwithstanding section 1062(b)(3) of this title, need not be extendable to 6 months;
- (2) set limits governing the timing and number of petitions filed for a particular registration or by a particular petitioner or real parties in interest; and
- (3) define the relation of a proceeding under this section to other proceedings concerning the

mark.

**(e) Registrant's evidence of use**

A registrant's documentary evidence of use shall be consistent with when a mark shall be deemed to be in use in commerce under the definition of "use in commerce" in section 1127 of this title, but shall not be limited in form to that of specimens as provided in section 1051(a) of this title.

**(f) Excusable nonuse**

During an ex parte expungement proceeding, for a mark registered under section 1126(e) of this title or an extension of protection under section 1141f of this title, the registrant may offer evidence showing that any nonuse is due to special circumstances that excuse such nonuse. In such a case, the examiner shall determine whether the facts and evidence demonstrate excusable nonuse and shall not find that the registration should be cancelled under subsection (g) for any good or service for which excusable nonuse is demonstrated.

**(g) Examiner's decision; order to cancel**

For each good or service for which it is determined that a mark has never been used in commerce, and for which the provisions of subsection (f) do not apply, the examiner shall find that the registration should be cancelled for each such good or service. A mark shall not be found to have never been used in commerce if there is evidence of use in commerce by the registrant that temporally would have supported registration at the time the application was filed or the relevant allegation of use was made, or after registration, but before the petition to expunge was filed under subsection (a), or an ex parte expungement proceeding was instituted by the Director under subsection (h). Unless overturned on review of the examiner's decision, the Director shall issue an order cancelling the registration, in whole or in part, after the time for appeal has expired or any appeal proceeding has terminated.

**(h) Ex parte expungement by the Director**

**(1) In general**

The Director may, on the Director's own initiative, institute an ex parte expungement proceeding if the Director discovers information that supports a prima facie case of a mark having never been used in commerce on or in connection with any good or service covered by a registration. The Director shall promptly notify the registrant of such determination, at which time the ex parte expungement proceeding shall proceed according to the same procedures for ex parte expungement established pursuant to subsection (d). If the Director determines, based on the Director's own initiative, to institute an expungement proceeding, the Director shall transmit or make available the information that formed the basis for that determination as part of the institution notice sent to the registrant.

**(2) Rule of construction**

Nothing in this subsection shall be construed to limit any other authority of the Director.

**(i) Time for institution**

**(1) When petition may be filed, ex parte expungement proceeding instituted**

A petition for ex parte expungement of a registration under subsection (a) may be filed, or the Director may institute on the Director's own initiative an ex parte expungement proceeding of a registration under subsection (h), at any time following the expiration of 3 years after the date of registration and before the expiration of 10 years following the date of registration.

**(2) Exception**

Notwithstanding paragraph (1), for a period of 3 years after December 27, 2020, a petition for expungement of a registration under subsection (a) may be filed, or the Director may institute on the Director's own initiative an ex parte expungement proceeding of a registration under subsection (h), at any time following the expiration of 3 years after the date of registration.

**(j) Limitation on later ex parte expungement proceedings**

**(1) No co-pending proceedings**

With respect to a particular registration, while an ex parte expungement proceeding is pending, no later ex parte expungement proceeding may be instituted with respect to the same goods or services that are the subject of a pending ex parte expungement proceeding.

**(2) Estoppel**

With respect to a particular registration, for goods or services previously subject to an instituted expungement proceeding for which, in that proceeding, it was determined that the registrant had used the mark for particular goods or services, as relevant, and the registration was not cancelled as to those goods or services, no further ex parte expungement proceedings may be initiated as to those goods or services, regardless of the identity of the petitioner.

**(k) Use in commerce requirement not altered**

Nothing in this section shall affect the requirement for use in commerce of a mark registered under section 1051(a) or 1091 of this title.

(July 5, 1946, ch. 540, title I, §16A, as added Pub. L. 116–260, div. Q, title II, §225(a), Dec. 27, 2020, 134 Stat. 2202.)

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective upon the expiration of the 1-year period beginning on Dec. 27, 2020, and applicable to any mark registered before, on, or after that effective date, see section 225(g) of div. Q of Pub. L. 116–260, set out as an Effective Date of 2020 Amendment note under section 1064 of this title.

**REGULATIONS**

Pub. L. 116–260, div. Q, title II, §225(f), Dec. 27, 2020, 134 Stat. 2207, provided that: "Not later than 1 year after the date of enactment of this Act [Dec. 27, 2020], the Director shall issue regulations to carry out sections 16A and 16B of the Trademark Act of 1946 [15 U.S.C. 1066a, 1066b], as added by subsections (a) and (c)."

[For definitions of terms used in section 225(f) of Pub. L. 116–260, set out above, see section 222 of Pub. L. 116–260, set out as a note under section 1051 of this title.]

**§1066b. Ex parte reexamination**

**(a) Petition for reexamination**

Any person may file a petition to reexamine a registration of a mark on the basis that the mark was not in use in commerce on or in connection with some or all of the goods or services recited in the registration on or before the relevant date.

**(b) Relevant date**

In this section, the term "relevant date" means, with respect to an application for the registration of a mark with an initial filing basis of—

(1) section 1051(a) of this title and not amended at any point to be filed pursuant to section 1051(b) of this title, the date on which the application was initially filed; or

(2) section 1051(b) of this title or amended at any point to be filed pursuant to section 1051(b) of this title, the date on which—

(A) an amendment to allege use under section 1051(c) of this title was filed; or

(B) the period for filing a statement of use under section 1051(d) of this title expired, including all approved extensions thereof.

**(c) Requirements for the petition**

A petition filed under subsection (a), together with any supporting documents, shall—

(1) identify the registration that is the subject of the petition;

(2) identify each good and service recited in the registration for which it is alleged that the mark was not in use in commerce on or in connection with on or before the relevant date;

(3) include a verified statement that sets forth—

(A) the elements of the reasonable investigation the petitioner conducted to determine that the mark was not in use in commerce on or in connection with the goods and services identified in the petition on or before the relevant date; and

(B) any additional facts that support the allegation that the mark was not in use in commerce on or before the relevant date on or in connection with the identified goods and services;

(4) include supporting evidence on which the petitioner relies; and

(5) be accompanied by the fee prescribed by the Director.

**(d) Initial determination; institution**

**(1) Prima facie case determination, institution, and notification**

The Director shall, for each good or service identified under subsection (c)(2), determine whether the petition sets forth a prima facie case of the mark having not been in use in commerce on or in connection with each such good or service, institute an ex parte reexamination proceeding for each good or service for which the Director determines that the prima facie case has been set forth, and provide a notice to the registrant and petitioner of the determination of whether or not the proceeding was instituted. Such notice shall include a copy of the petition and any supporting documents and evidence that were included with the petition.

**(2) Reasonable investigation guidance**

The Director shall promulgate regulations regarding what constitutes a reasonable investigation under subsection (c)(3) and the general types of evidence that could support a prima facie case that the mark was not in use in commerce on or in connection with a good or service on or before the relevant date, but the Director shall retain discretion to determine whether a prima facie case is set out in a particular proceeding.

**(3) Determination by Director**

Any determination by the Director whether or not to institute a reexamination proceeding under this section shall be final and non-reviewable, and shall not prejudice any party's right to raise any issue and rely on any evidence in any other proceeding, except as provided in subsection (j).

**(e) Reexamination procedures**

The procedures for reexamination shall be the same as the procedures established under section 1062(b) of this title except that the Director shall promulgate regulations establishing and governing a proceeding under this section, which may include regulations that—

(1) set response and extension times particular to this type of proceeding, which, notwithstanding section 1062(b)(3) of this title, need not be extendable to 6 months;

(2) set limits governing the timing and number of petitions filed for a particular registration or by a particular petitioner or real parties in interest; and

(3) define the relation of a reexamination proceeding under this section to other proceedings concerning the mark.

**(f) Registrant's evidence of use**

A registrant's documentary evidence of use shall be consistent with when a mark shall be deemed to be in use in commerce under the definition of "use in commerce" in section 1127 of this title, but shall not be limited in form to that of specimens as provided in section 1051(a) of this title.

**(g) Examiner's decision; order to cancel**

For each good or service for which it is determined that the registration should not have issued because the mark was not in use in commerce on or before the relevant date, the examiner shall find



that the registration should be cancelled for each such good or service. Unless overturned on review of the examiner's decision, the Director shall issue an order cancelling the registration, in whole or in part, after the time for appeal has expired or any appeal proceeding has terminated.

**(h) Reexamination by Director**

**(1) In general**

The Director may, on the Director's own initiative, institute an ex parte reexamination proceeding if the Director discovers information that supports a prima facie case of the mark having not been used in commerce on or in connection with some or all of the goods or services covered by the registration on or before the relevant date. The Director shall promptly notify the registrant of such determination, at which time reexamination shall proceed according to the same procedures established pursuant to subsection (e). If the Director determines, based on the Director's own initiative, to institute an ex parte reexamination proceeding, the Director shall transmit or make available the information that formed the basis for that determination as part of the institution notice.

**(2) Rule of construction**

Nothing in this subsection shall be construed to limit any other authority of the Director.

**(i) Time for institution**

A petition for ex parte reexamination may be filed, or the Director may institute on the Director's own initiative an ex parte reexamination proceeding, at any time not later than 5 years after the date of registration of a mark registered based on use in commerce.

**(j) Limitation on later ex parte reexamination proceedings**

**(1) No co-pending proceedings**

With respect to a particular registration, while an ex parte reexamination proceeding is pending, no later ex parte reexamination proceeding may be instituted with respect to the same goods or services that are the subject of a pending ex parte reexamination proceeding.

**(2) Estoppel**

With respect to a particular registration, for any goods or services previously subject to an instituted ex parte reexamination proceeding for which, in that proceeding, it was determined that the registrant had used the mark for particular goods or services before the relevant date, and the registration was not cancelled as to those goods or services, no further ex parte reexamination proceedings may be initiated as to those goods or services, regardless of the identity of the petitioner.

**(k) Supplemental register**

The provisions of subsection (b) apply, as appropriate, to registrations under section 1091 of this title. Nothing in this section shall be construed to limit the timing of a cancellation action under section 1092 of this title.

(July 5, 1946, ch. 540, title I, §16B, as added Pub. L. 116–260, div. Q, title II, §225(c), Dec. 27, 2020, 134 Stat. 2205.)

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective upon the expiration of the 1-year period beginning on Dec. 27, 2020, and applicable to any mark registered before, on, or after that effective date, see section 225(g) of div Q of Pub. L. 116–260, set out as an Effective Date of 2020 Amendment note under section 1064 of this title.

**REGULATIONS**

Director required to issue regulations to carry out this section no later than 1 year after Dec. 27, 2020, see section 225(f) of Pub. L. 116–260, set out as a note under section 1066a of this title.

## **§1067. Interference, opposition, and proceedings for concurrent use registration or for cancellation; notice; Trademark Trial and Appeal Board**

(a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Director shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

(b) The Trademark Trial and Appeal Board shall include the Director, Deputy <sup>1</sup> Director of the United States Patent and Trademark Office <sup>2</sup> the Commissioner for Patents, the Commissioner for Trademarks, and administrative trademark judges who are appointed by the Secretary of Commerce, in consultation with the Director.

(c) **AUTHORITY OF THE SECRETARY.**—The Secretary of Commerce may, in his or her discretion, deem the appointment of an administrative trademark judge who, before August 12, 2008, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative trademark judge.

(d) **DEFENSE TO CHALLENGE OF APPOINTMENT.**—It shall be a defense to a challenge to the appointment of an administrative trademark judge on the basis of the judge's having been originally appointed by the Director that the administrative trademark judge so appointed was acting as a de facto officer.

(July 5, 1946, ch. 540, title I, §17, 60 Stat. 434; Pub. L. 85–609, §1(a), Aug. 8, 1958, 72 Stat. 540; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 96–455, §1, Oct. 15, 1980, 94 Stat. 2024; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4716], Nov. 29, 1999, 113 Stat. 1536, 1501A–580; Pub. L. 107–273, div. C, title III, §13203(a)(1), Nov. 2, 2002, 116 Stat. 1902; Pub. L. 110–313, §1(b), Aug. 12, 2008, 122 Stat. 3014.)

### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

Act Feb. 20, 1905, ch. 592, §7, 33 Stat. 726.

#### **AMENDMENTS**

**2008**—Subsec. (b). Pub. L. 110–313, §1(b)(1), inserted "Deputy Director of the United States Patent and Trademark Office" after "Director," and substituted "appointed by the Secretary of Commerce, in consultation with the Director" for "appointed by the Director".

Subsecs. (c), (d). Pub. L. 110–313, §1(b)(2), added subsecs. (c) and (d).

**2002**—Subsec. (b). Pub. L. 107–273, which directed amendment of subsec. (b) by inserting "the Deputy Commissioner," after "Commissioner," could not be executed because "Commissioner," does not appear in text.

**1999**—Pub. L. 106–113 amended section generally. Prior to amendment, section read as follows:

"In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

"The Trademark Trial and Appeal Board shall include the Commissioner, the Deputy Commissioner, the Assistant Commissioners, and members appointed by the Commissioner. Employees of the Patent and Trademark Office and other persons, all of whom shall be competent in trademark law, shall be eligible for appointment as members. Each case shall be heard by at least three members of the Board, the members hearing such case to be designated by the Commissioner."

**1980**—Pub. L. 96–455 inserted provisions requiring that the Trademark Trial and Appeal Board include the Deputy Commissioner and members appointed by the Commissioner and provisions that employees of the Patent and Trademark Office and other persons, all of whom shall be competent in trademark law, shall be eligible for appointment as members; and struck out provision that the Board include Patent and Trademark Office employees, designated by the Commissioner and whose qualifications have been approved by the Civil Service Commission as being adequate for appointment to the position of examiner in charge of interferences.

**1975**—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

**1958**—Pub. L. 85–609 substituted "a Trademark Trial and Appeal Board" for "the examiner in charge of interferences" in first paragraph, and inserted second paragraph relating to the composition of the Board.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1980 AMENDMENT; BOARD MEMBERSHIP AS OF OCTOBER 15, 1980, UNAFFECTED**

Pub. L. 96–455, §2, Oct. 15, 1980, 94 Stat. 2024, provided that: "This amendment [amending this section] shall become effective on the date of its enactment [Oct. 15, 1980]. Members of the Trademark Trial and Appeal Board on the date of enactment shall continue to be members under and in accordance with the provisions of section 17 of the Act of July 5, 1946, as amended [this section], in effect immediately preceding the date of enactment."

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

### **EFFECTIVE DATE OF 1958 AMENDMENT**

Pub. L. 85–609, §3, Aug. 8, 1958, 72 Stat. 541, provided that: "This Act [amending this section and sections 1070, 1071, 1092, and 1113 of this title] shall take effect on approval [Aug. 8, 1958]; it shall apply to ex parte appeals taken to the Commissioner prior to the date of approval which have not been heard but shall not apply to any such appeal which has been heard or decided in which event further proceedings may be had as though this Act had not been passed; it shall apply to inter partes cases instituted prior to the date of approval which have not been heard by an examiner of interferences, but shall not apply to any such case which has been heard or decided by an examiner of interferences in which event further proceedings may be had as though this Act had not passed."

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

### **REORGANIZATION PLAN NO. 5 OF 1950**

Pub. L. 85–609, §2, Aug. 8, 1958, 72 Stat. 540, provided that: "The provisions of this Act [amending this section and sections 1070, 1071, 1092, and 1113 of this title] shall be subject to Reorganization Plan No. 5 of 1950 (64 Stat. 1263)."

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

<sup>1</sup> *So in original. Probably should be preceded by "the".*

<sup>2</sup> *So in original. Probably should be followed by a comma.*

## **§1068. Action of Director in interference, opposition, and proceedings for concurrent use registration or for cancellation**

In such proceedings the Director may refuse to register the opposed mark, may cancel the

registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register the registration of a registered mark, may refuse to register any or all of several interfering marks, or may register the mark or marks for the person or persons entitled thereto, as the rights of the parties under this chapter may be established in the proceedings. The authority of the Director under this section includes the authority to reconsider, and modify or set aside, a decision of the Trademark Trial and Appeal Board: *Provided*, That in the case of the registration of any mark based on concurrent use, the Director shall determine and fix the conditions and limitations provided for in subsection (d) of section 1052 of this title. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.

(July 5, 1946, ch. 540, title I, §18, 60 Stat. 434; Pub. L. 100–667, title I, §118, Nov. 16, 1988, 102 Stat. 3941; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 116–260, div. Q, title II, §228(a)(1), Dec. 27, 2020, 134 Stat. 2209.)

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

Act Feb. 20, 1905, ch. 592, §§7, 13, 33 Stat. 726, 728.

### **AMENDMENTS**

**2020**—Pub. L. 116–260 inserted ". The authority of the Director under this section includes the authority to reconsider, and modify or set aside, a decision of the Trademark Trial and Appeal Board" after "established in the proceedings".

**1999**—Pub. L. 106–113 substituted "Director" for "Commissioner" in two places.

**1988**—Pub. L. 100–667 substituted "the registration, in whole or in part, may modify the application or registration by limiting the goods or services specified therein, may otherwise restrict or rectify with respect to the register" for "or restrict", and "may refuse" for "or may refuse", and inserted provisions that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

### **CONSTRUCTION OF 2020 AMENDMENT**

Pub. L. 116–260, div. Q, title II, §228(b), Dec. 27, 2020, 134 Stat. 2210, provided that:

"(1) **AUTHORITY BEFORE DATE OF ENACTMENT.**—The amendments made by subsection (a) [amending this section and sections 1070 and 1092 of this title] shall not be construed to mean that the Director lacked the authority to reconsider, and modify or set aside, a decision of the Trademark Trial and Appeal Board before the date of enactment of this Act [Dec. 27, 2020].

"(2) **AUTHORITY WITH RESPECT TO PARTICULAR DECISIONS.**—The amendments made by subsection (a) shall not be construed to require the Director to reconsider, modify, or set aside any particular decision of the Trademark Trial and Appeal Board."

["Director" as used in section 228(b) of Pub. L. 116–260, set out above, means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, see

section 222 of Pub. L. 116–260, set out as a note under section 1051 of this title.]

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1069. Application of equitable principles in inter partes proceedings**

In all inter partes proceedings equitable principles of laches, estoppel, and acquiescence, where applicable may be considered and applied.

(July 5, 1946, ch. 540, title I, §19, 60 Stat. 434; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100–667, title I, §119, Nov. 16, 1988, 102 Stat. 3941.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1988**—Pub. L. 100–667 struck out at end "The provisions of this section shall also govern proceedings heretofore begun in the Patent and Trademark Office and not finally determined."

**1975**—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1070. Appeals to Trademark Trial and Appeal Board from decisions of examiners**

An appeal may be taken to the Trademark Trial and Appeal Board from any final decision of the examiner in charge of the registration of marks or a final decision by an examiner in an ex parte

expungement proceeding or ex parte reexamination proceeding upon the payment of the prescribed fee. The Director may reconsider, and modify or set aside, a decision of the Trademark Trial and Appeal Board under this section.

(July 5, 1946, ch. 540, title I, §20, 60 Stat. 435; Pub. L. 85–609, §1(b), Aug. 8, 1958, 72 Stat. 540; Pub. L. 116–260, div. Q, title II, §§225(d)(1), 228(a)(2), Dec. 27, 2020, 134 Stat. 2207, 2210.)

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

Act Feb. 20, 1905, ch. 592, §§8, 13, 33 Stat. 726, 728.

### **AMENDMENTS**

**2020**—Pub. L. 116–260, §228(a)(2), inserted "The Director may reconsider, and modify or set aside, a decision of the Trademark Trial and Appeal Board under this section." at end.

Pub. L. 116–260, §225(d)(1), inserted "or a final decision by an examiner in an ex parte expungement proceeding or ex parte reexamination proceeding" after "registration of marks".

**1958**—Pub. L. 85–609 substituted "Trademark Trial and Appeal Board" for "Commissioner in person" and "fee" for "fees", and struck out "of interferences or" after "examiner in charge".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2020 AMENDMENT**

Amendment by section 225(d)(1) of div. Q of Pub. L. 116–260 effective upon the expiration of the 1-year period beginning on Dec. 27, 2020, and applicable to any mark registered before, on, or after that effective date, see section 225(g) of div. Q of Pub. L. 116–260, set out as a note under section 1064 of this title.

### **EFFECTIVE DATE OF 1958 AMENDMENT**

For effective date and applicability of amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1067 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

### **CONSTRUCTION OF 2020 AMENDMENT**

For construction of amendment made by section 228(a)(2) of div. Q of Pub. L. 116–260 regarding Director's authority before Dec. 27, 2020, and authority with respect to particular decisions, see section 228(b) of div. Q of Pub. L. 116–260, set out as a note under section 1068 of this title.

### **REORGANIZATION PLAN NO. 5 OF 1950**

Amendment by Pub. L. 85–609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1071. Appeal to courts**

**(a) Persons entitled to appeal; United States Court of Appeals for the Federal Circuit; waiver of civil action; election of civil action by adverse party; procedure**

(1) An applicant for registration of a mark, party to an interference proceeding, party to an opposition proceeding, party to an application to register as a lawful concurrent user, party to a cancellation proceeding, a registrant who has filed an affidavit as provided in section 1058 of this title or section 1141k of this title, an applicant for renewal, or a registrant subject to an ex parte expungement proceeding or an ex parte reexamination proceeding, who is dissatisfied with the decision of the Director or Trademark Trial and Appeal Board, may appeal to the United States Court of Appeals for the Federal Circuit thereby waiving his right to proceed under subsection (b) of this section: *Provided*, That such appeal shall be dismissed if any adverse party to the proceeding, other than the Director, shall, within twenty days after the appellant has filed notice of appeal according to paragraph (2) of this subsection, files notice with the Director that he elects to have all further proceedings conducted as provided in subsection (b) of this section. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under subsection (b) of this section, in default of which the decision appealed from shall govern the further proceedings in the case.

(2) When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the United States Patent and Trademark Office a written notice of appeal directed to the Director, within such time after the date of the decision from which the appeal is taken as the Director prescribes, but in no case less than 60 days after that date.

(3) The Director shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the United States Patent and Trademark Office. The court may request that the Director forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Director shall submit to that court a brief explaining the grounds for the decision of the United States Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Director and the parties in the appeal.

(4) The United States Court of Appeals for the Federal Circuit shall review the decision from which the appeal is taken on the record before the United States Patent and Trademark Office. Upon its determination the court shall issue its mandate and opinion to the Director, which shall be entered of record in the United States Patent and Trademark Office and shall govern the further proceedings in the case. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.

**(b) Civil action; persons entitled to; jurisdiction of court; status of Director; procedure**

(1) Whenever a person authorized by subsection (a) of this section to appeal to the United States Court of Appeals for the Federal Circuit, except for a registrant subject to an ex parte expungement proceeding or an ex parte reexamination proceeding, is dissatisfied with the decision of the Director or Trademark Trial and Appeal Board, said person may, unless appeal has been taken to said United States Court of Appeals for the Federal Circuit, have remedy by a civil action if commenced within such time after such decision, not less than sixty days, as the Director appoints or as provided in subsection (a) of this section. The court may adjudge that an applicant is entitled to a registration upon the application involved, that a registration involved should be canceled, or such other matter as the issues in the proceeding require, as the facts in the case may appear. Such adjudication shall authorize the Director to take any necessary action, upon compliance with the requirements of law. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.

(2) The Director shall not be made a party to an inter partes proceeding under this subsection, but he shall be notified of the filing of the complaint by the clerk of the court in which it is filed and shall have the right to intervene in the action.

(3) In any case where there is no adverse party, a copy of the complaint shall be served on the Director, and, unless the court finds the expenses to be unreasonable, all the expenses of the proceeding shall be paid by the party bringing the case, whether the final decision is in favor of such party or not. In suits brought hereunder, the record in the United States Patent and Trademark Office

shall be admitted on motion of any party, upon such terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court imposes, without prejudice to the right of any party to take further testimony. The testimony and exhibits of the record in the United States Patent and Trademark Office, when admitted, shall have the same effect as if originally taken and produced in the suit.

(4) Where there is an adverse party, such suit may be instituted against the party in interest as shown by the records of the United States Patent and Trademark Office at the time of the decision complained of, but any party in interest may become a party to the action. If there are adverse parties residing in a plurality of districts not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the Eastern District of Virginia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs.

(July 5, 1946, ch. 540, title I, §21, 60 Stat. 435; July 19, 1952, ch. 950, §2, 66 Stat. 814; Pub. L. 85–609, §1(c), Aug. 8, 1958, 72 Stat. 540; Pub. L. 87–772, §12, Oct. 9, 1962, 76 Stat. 771; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93–600, §2, Jan. 2, 1975, 88 Stat. 1955; Pub. L. 97–164, title I, §162(1), Apr. 2, 1982, 96 Stat. 49; Pub. L. 98–620, title IV, §414(b), Nov. 8, 1984, 98 Stat. 3363; Pub. L. 100–667, title I, §120, Nov. 16, 1988, 102 Stat. 3942; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 111–146, §3(c), Mar. 17, 2010, 124 Stat. 67; Pub. L. 112–29, §9(a), Sept. 16, 2011, 125 Stat. 316; Pub. L. 116–260, div. Q, title II, §225(d)(2), Dec. 27, 2020, 134 Stat. 2207.)

## EDITORIAL NOTES

### CODIFICATION

Pub. L. 93–596, which provided for the substitution of "Patent and Trademark Office" for "Patent Office" each time appearing in this chapter, became effective Jan. 2, 1975, as did Pub. L. 93–600, which in the course of amending subsec. (a)(3) and (4) of this section, referred merely to "Patent Office". "Patent and Trademark Office" has been substituted for "Patent Office" in subsec. (a)(3) and (4) on authority of Pub. L. 93–596.

### PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§9, 22, 33 Stat. 727, 729; Mar. 2, 1929, ch. 488, §2(b), 45 Stat. 1478.

### AMENDMENTS

**2020**—Subsec. (a)(1). Pub. L. 116–260, §225(d)(2)(A), substituted "an applicant for renewal, or a registrant subject to an ex parte expungement proceeding or an ex parte reexamination proceeding" for "or an applicant for renewal".

Subsec. (b)(1). Pub. L. 116–260, §225(d)(2)(B), inserted ", except for a registrant subject to an ex parte expungement proceeding or an ex parte reexamination proceeding," before "is dissatisfied".

**2011**—Subsec. (b)(4). Pub. L. 112–29 substituted "United States District Court for the Eastern District of Virginia" for "United States District Court for the District of Columbia".

**2010**—Subsec. (a)(1). Pub. L. 111–146, §3(c)(2), inserted "or section 1141k of this title" after "section 1058 of this title".

Subsec. (a)(2) to (4). Pub. L. 111–146, §3(c)(1), inserted "United States" before "Patent and Trademark Office" wherever appearing.

Subsec. (b)(3). Pub. L. 111–146, §3(c)(1), inserted "United States" before "Patent and Trademark Office" in two places.

Subsec. (b)(4). Pub. L. 111–146, §3(c)(1), (3), inserted "United States" before "Patent and Trademark Office" and substituted "If there are" for "If there be".

**1999**—Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

**1988**—Subsec. (a)(1). Pub. L. 100–667, §120(1), made technical amendments to references in the original act to subsection (b) of this section resulting in no change in text, and substituted "paragraph (2) of this subsection" for "subsection (a)(2) of this section" and "action under subsection" for "action under said subsection".

Subsec. (a)(4). Pub. L. 100–667, §120(2), inserted provision that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.



Subsec. (b)(1). Pub. L. 100-667, §120(3), made technical amendments to references in the original act to subsection (a) of this section resulting in no change in text and inserted provision that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.

Subsec. (b)(3). Pub. L. 100-667, §120(4), amended first sentence generally. Prior to amendment, first sentence read as follows: "In all cases where there is no adverse party, a copy of the complaint shall be served on the Commissioner; and all the expenses of the proceedings shall be paid by the party bringing them, whether the final decision is in his favor or not."

**1984**—Subsec. (a)(2). Pub. L. 98-620 substituted provisions requiring the appellant to file a written notice of appeal in the Patent and Trademark Office directed to the Commissioner for provisions requiring the appellant to file the notice of appeal with the Commissioner, and struck out provision which required the notice of appeal to specify the party or parties taking the appeal, to designate the decision or part thereof appealed from, and to state that the appeal was being taken to the United States Court of Appeals for the Federal Circuit.

Subsec. (a)(3). Pub. L. 98-620 substituted provisions requiring the Commissioner to transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office for provisions which required the Commissioner to transmit to the court certified copies of all the necessary original papers and evidence in the case specified by the appellant, and any additional papers and evidence specified by the appellee, and inserted provision that the court may request that the Commissioner forward the original or certified copies of such documents during the pendency of the appeal.

Subsec. (a)(4). Pub. L. 98-620 substituted provisions requiring the court to review the decision from which the appeal is taken on the record before the Patent and Trademark Office, and, upon its determination, to issue its mandate and opinion to the Commissioner for provisions which required the court to decide such appeal on the evidence produced before the Patent and Trademark Office and to return to the Commissioner a certificate of its proceedings and decision.

**1982**—Subsecs. (a)(1), (2), (b)(1). Pub. L. 97-164 substituted "United States Court of Appeals for the Federal Circuit" for "United States Court of Customs and Patent Appeals" and "Court of Customs and Patent Appeals" wherever appearing.

**1975**—Subsec. (a)(2). Pub. L. 93-600 substituted provisions relating to filing of notice of appeal with the Commissioner and the contents of such notice of appeal, for provisions relating to giving notice of appeal to the Commissioner and requiring filing in the Patent Office reasons for appeal.

Subsec. (a)(3). Pub. L. 93-600 inserted provision requiring the Commissioner to furnish the court with a brief explaining the grounds of the decision of the Office.

Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (a)(4). Pub. L. 93-600 substituted "decide" for "hear and determine" and struck out "Upon its determination," before "the court shall return" and provision requiring the decision to be confined to the points set forth in the reasons of appeal.

Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places.

Subsec. (b)(3), (4). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

**1962**—Pub. L. 87-772 amended section generally, and among other changes, incorporated with necessary changes in language, the various provisions of Title 35, Patents, relating to the procedure of appeals to the Court of Customs and Patent Appeals and review by civil action in patent cases, which had previously been incorporated by reference only.

**1958**—Pub. L. 85-609 authorized appeals by persons dissatisfied with the decision of the Trademark Trial and Appeal Board, and substituted "Trademark Trial and Appeal Board" for "Commissioner" in proviso.

**1952**—Act July 19, 1952, substituted references to new title 35 for repealed section of title 35.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2020 AMENDMENT

Amendment by Pub. L. 116-260 effective upon the expiration of the 1-year period beginning on Dec. 27, 2020, and applicable to any mark registered before, on, or after that effective date, see section 225(g) of div. Q of Pub. L. 116-260, set out as a note under section 1064 of this title.

### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-29, §9(b), Sept. 16, 2011, 125 Stat. 316, provided that: "The amendments made by this section [amending this section and sections 32, 145, 146, 154, and 293 of Title 35, Patents] shall take effect on the date of the enactment of this Act [Sept. 16, 2011] and shall apply to any civil action commenced on or after

that date."

#### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

#### **EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98–620 applicable to proceedings pending in the Patent and Trademark Office on Nov. 8, 1984, and to appeals pending in the United States Court of Appeals for the Federal Circuit on that date, see section 414(c) of Pub. L. 98–620, set out as a note under section 142 of Title 35, Patents.

#### **EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

#### **EFFECTIVE DATE OF 1975 AMENDMENTS**

Amendment by Pub. L. 93–600 effective Jan. 2, 1975, but not to affect any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93–600, set out as a note under section 1063 of this title.

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

#### **EFFECTIVE DATE OF 1958 AMENDMENT**

For effective date and applicability of amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1067 of this title.

#### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

#### **REORGANIZATION PLAN NO. 5 OF 1950**

Amendment by Pub. L. 85–609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

#### **EXECUTIVE DOCUMENTS**

#### **TRANSFER OF FUNCTIONS**

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

### **§1072. Registration as constructive notice of claim of ownership**

Registration of a mark on the principal register provided by this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, shall be constructive notice of the registrant's claim of ownership thereof.

(July 5, 1946, ch. 540, title I, §22, 60 Stat. 435.)

#### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

Acts March 3, 1881, and February 20, 1905, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act

July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **SUBCHAPTER II—THE SUPPLEMENTAL REGISTER**

### **§1091. Supplemental register**

#### **(a) Marks registerable**

In addition to the principal register, the Director shall keep a continuation of the register provided in paragraph (b) of section 1 of the Act of March 19, 1920, entitled "An Act to give effect to certain provisions of the convention for the protection of trademarks and commercial names, made and signed in the city of Buenos Aires, in the Argentine Republic, August 20, 1910, and for other purposes", to be called the supplemental register. All marks capable of distinguishing applicant's goods or services and not registrable on the principal register provided in this chapter, except those declared to be unregistrable under subsections (a), (b), (c), (d), and (e)(3) of section 1052 of this title, which are in lawful use in commerce by the owner thereof, on or in connection with any goods or services may be registered on the supplemental register upon the payment of the prescribed fee and compliance with the provisions of subsections (a) and (e) of section 1051 of this title so far as they are applicable. Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant's goods or services and not registrable on the principal register under this chapter, that is declared to be unregistrable under section 1052(e)(3) of this title, if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before December 8, 1993.

#### **(b) Application and proceedings for registration**

Upon the filing of an application for registration on the supplemental register and payment of the prescribed fee the Director shall refer the application to the examiner in charge of the registration of marks, who shall cause an examination to be made and if on such examination it shall appear that the applicant is entitled to registration, the registration shall be granted. If the applicant is found not entitled to registration the provisions of subsection (b) of section 1062 of this title shall apply.

#### **(c) Nature of mark**

For the purposes of registration on the supplemental register, a mark may consist of any trademark, symbol, label, package, configuration of goods, name, word, slogan, phrase, surname, geographical name, numeral, device, any matter that as a whole is not functional, or any combination of any of the foregoing, but such mark must be capable of distinguishing the applicant's goods or services.

(July 5, 1946, ch. 540, title II, §23, 60 Stat. 435; Pub. L. 87-772, §13, Oct. 9, 1962, 76 Stat. 773; Pub. L. 100-667, title I, §121, Nov. 16, 1988, 102 Stat. 3942; Pub. L. 103-182, title III, §333(b), Dec. 8, 1993, 107 Stat. 2114; Pub. L. 105-330, title II, §201(a)(5), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106-43, §6(b), Aug. 5, 1999, 113 Stat. 220; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583; Pub. L. 107-273, div. C, title III, §13207(b)(6), Nov. 2, 2002, 116 Stat. 1908.)

## **EDITORIAL NOTES**

## REFERENCES IN TEXT

Paragraph (b) of section 1 of the Act of March 19, 1920, referred to in subsec. (a), is paragraph (b) of section 1 of act Mar. 19, 1920, ch. 104, 41 Stat. 533, which was classified to section 121(b) of this title, and repealed by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444, insofar as inconsistent.

## PRIOR PROVISIONS

Acts Mar. 19, 1920, ch. 104, §1, 41 Stat. 533; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155; June 10, 1938, ch. 332, §2, 52 Stat. 638.

## AMENDMENTS

**2002**—Subsec. (c). Pub. L. 107–273 struck out second comma after "numeral".

**1999**—Subsec. (a). Pub. L. 106–113 substituted "Director" for "Commissioner".

Pub. L. 106–43 substituted "trademarks" for "trade-marks".

Subsec. (b). Pub. L. 106–113 substituted "Director" for "Commissioner".

**1998**—Subsec. (c). Pub. L. 105–330 substituted ", device, any matter that as a whole is not functional," for "or device".

**1993**—Subsec. (a). Pub. L. 103–182 substituted "(d), and (e)(3)" for "and (d)" and inserted at end "Nothing in this section shall prevent the registration on the supplemental register of a mark, capable of distinguishing the applicant's goods or services and not registrable on the principal register under this chapter, that is declared to be unregistrable under section 1052(e)(3) of this title, if such mark has been in lawful use in commerce by the owner thereof, on or in connection with any goods or services, since before December 8, 1993."

**1988**—Pub. L. 100–667, §121(6), struck out undesignated concluding par. which read as follows: "Upon a proper showing by the applicant that he requires domestic registration as a basis for foreign protection of his mark, the Commissioner may waive the requirement of a full year's use and may grant registration forthwith."

Subsec. (a). Pub. L. 100–667, §121(1), (4), designated first par. as subsec. (a), made technical amendment to reference in the original act to subsections (a), (b), (c), and (d) of section 1052 of this title resulting in no change in text, substituted "are in lawful use in commerce by the owner thereof, on" for "have been in lawful use in commerce by the proprietor thereof, upon", struck out "for the year preceding the filing of the application" after "any goods and services", and inserted "subsections (a) and (e) of" before "section 1051".

Subsec. (b). Pub. L. 100–667, §121(2), (5), designated second par. as subsec. (b) and substituted "prescribed fee" for "fee herein provided".

Subsec. (c). Pub. L. 100–667, §121(3), designated third par. as subsec. (c).

**1962**—Pub. L. 87–772 struck out "has begun the lawful use of his mark in foreign commerce and that he" before "requires domestic registration" in last par.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–182 applicable only to trademark applications filed on or after Dec. 8, 1993, see section 335(c) of Pub. L. 103–182, formerly set out in a note under section 1052 of this title.

### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

## REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

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

### **§1092. Publication; not subject to opposition; cancellation**

Marks for the supplemental register shall not be published for or be subject to opposition, but shall be published on registration in the Official Gazette of the Patent and Trademark Office. Whenever any person believes that such person is or will be damaged by the registration of a mark on the supplemental register—

(1) for which the effective filing date is after the date on which such person's mark became famous and which would be likely to cause dilution by blurring or dilution by tarnishment under section 1125(c) of this title; or

(2) on grounds other than dilution by blurring or dilution by tarnishment,

such person may at any time, upon payment of the prescribed fee and the filing of a petition stating the ground therefor, apply to the Director to cancel such registration. The Director shall refer such application to the Trademark Trial and Appeal Board which shall give notice thereof to the registrant. If it is found after a hearing before the Board that the registrant is not entitled to registration, or that the mark has been abandoned, the registration shall be canceled by the Director, unless the Director reconsiders the decision of the Board, and modifies or sets aside, such decision. However, no final judgment shall be entered in favor of an applicant under section 1051(b) of this title before the mark is registered, if such applicant cannot prevail without establishing constructive use pursuant to section 1057(c) of this title.

(July 5, 1946, ch. 540, title II, §24, 60 Stat. 436; Pub. L. 85–609, §1(d), Aug. 8, 1958, 72 Stat. 540; Pub. L. 87–772, §14, Oct. 9, 1962, 76 Stat. 773; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100–667, title I, §122, Nov. 16, 1988, 102 Stat. 3943; Pub. L. 106–43, §2(d), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 109–312, §3(d), Oct. 6, 2006, 120 Stat. 1732; Pub. L. 116–260, div. Q, title II, §228(a)(3), Dec. 27, 2020, 134 Stat. 2210.)

## EDITORIAL NOTES

### PRIOR PROVISIONS

Act Mar. 19, 1920, ch. 104, §2, 41 Stat. 534.

### AMENDMENTS

**2020**—Pub. L. 116–260 inserted ", unless the Director reconsiders the decision of the Board, and modifies or sets aside, such decision" after "shall be canceled by the Director" in concluding provisions.

**2006**—Pub. L. 109–312 amended second sentence generally. Prior to amendment, second sentence read as follows: "Whenever any person believes that he is or will be damaged by the registration of a mark on this register, including as a result of dilution under section 1125(c) of this title, he may at any time, upon payment of the prescribed fee and the filing of a petition stating the ground therefor, apply to the Director to cancel such registration." The words following "tarnishment," in second sentence are shown as a flush provision notwithstanding directory language showing them as part of cl. (2), to reflect the probable intent of Congress.

**1999**—Pub. L. 106–113 substituted "Director" for "Commissioner" wherever appearing.

Pub. L. 106–43 inserted ", including as a result of dilution under section 1125(c) of this title," after "register" in second sentence.

**1988**—Pub. L. 100–667 struck out "verified" after "filing of a", substituted "is not entitled to registration,"

for "was not entitled to register the mark at the time of his application for registration thereof," struck out "is not used by the registrant or" after "that the mark", and inserted provision that no final judgment be entered before mark is registered if applicant cannot prevail without establishing constructive use.

**1975**—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

**1962**—Pub. L. 87–772 provided for payment of the prescribed fee and the filing of a verified petition.

**1958**—Pub. L. 85–609 substituted provisions requiring the Commissioner to refer applications to the Trademark Trial and Appeal Board for provisions which required referral to the examiner in charge of interferences.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENTS**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

Amendment by Pub. L. 106–43 effective Aug. 5, 1999, and applicable only to any application for registration filed on or after Jan. 16, 1996, see section 2(e) of Pub. L. 106–43, set out as a note under section 1052 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

### **EFFECTIVE DATE OF 1958 AMENDMENT**

For effective date and applicability of amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1067 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

### **CONSTRUCTION OF 2020 AMENDMENT**

For construction of amendment made by Pub. L. 116–260 regarding Director's authority before Dec. 27, 2020, and authority with respect to particular decisions, see section 228(b) of div. Q of Pub. L. 116–260, set out as a note under section 1068 of this title.

### **REORGANIZATION PLAN NO. 5 OF 1950**

Amendment by Pub. L. 85–609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1093. Registration certificates for marks on principal and supplemental registers to be different**

The certificates of registration for marks registered on the supplemental register shall be conspicuously different from certificates issued for marks registered on the principal register.

(July 5, 1946, ch. 540, title II, §25, 60 Stat. 436.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **§1094. Provisions of chapter applicable to registrations on supplemental register**

The provisions of this chapter shall govern so far as applicable applications for registration and registrations on the supplemental register as well as those on the principal register, but applications for and registrations on the supplemental register shall not be subject to or receive the advantages of sections 1051(b), 1052(e), 1052(f), 1057(b), 1057(c), 1062(a), 1063 to 1068, inclusive, 1072, 1115 and 1124 of this title. Registrations on the supplemental register shall be subject to ex parte expungement and ex parte reexamination under sections 1066a and 1066b of this title, respectively.

(July 5, 1946, ch. 540, title II, §26, 60 Stat. 436; Pub. L. 100–667, title I, §123, Nov. 16, 1988, 102 Stat. 3943; Pub. L. 105–330, title II, §201(a)(6), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 116–260, div. Q, title II, §225(e)(2), Dec. 27, 2020, 134 Stat. 2207.)

### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

Act Mar. 19, 1920, ch. 104, §6, 41 Stat. 535.

#### **AMENDMENTS**

**2020**—Pub. L. 116–260 inserted "Registrations on the supplemental register shall be subject to ex parte expungement and ex parte reexamination under sections 1066a and 1066b of this title, respectively." at end.

**1998**—Pub. L. 105–330 substituted ", 1057(c)," for "1057(c),,".

**1988**—Pub. L. 100–667 inserted reference to sections 1051(b) and 1057(c).

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2020 AMENDMENT**

Amendment by Pub. L. 116–260 effective upon the expiration of the 1-year period beginning on Dec. 27, 2020, and applicable to any mark registered before, on, or after that effective date, see section 225(g) of div. Q of Pub. L. 116–260, set out as a note under section 1064 of this title.

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **§1095. Registration on principal register not precluded**

Registration of a mark on the supplemental register, or under the Act of March 19, 1920, shall not preclude registration by the registrant on the principal register established by this chapter. Registration of a mark on the supplemental register shall not constitute an admission that the mark has not acquired distinctiveness.

(July 5, 1946, ch. 540, title II, §27, 60 Stat. 436; Pub. L. 100–667, title I, §124, Nov. 16, 1988, 102 Stat. 3943.)

#### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

Act of March 19, 1920, referred to in text, is act Mar. 19, 1920, ch. 104, §§1–9, 41 Stat. 533, which was generally classified to sections 121 to 128 of this title, and which was repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444.

#### **AMENDMENTS**

**1988**—Pub. L. 100–667 inserted at end "Registration of a mark on the supplemental register shall not constitute an admission that the mark has not acquired distinctiveness."

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

#### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

### **§1096. Registration on supplemental register not used to stop importations**

Registration on the supplemental register or under the Act of March 19, 1920, shall not be filed in the Department of the Treasury or be used to stop importations.

(July 5, 1946, ch. 540, title II, §28, 60 Stat. 436.)

#### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

Act of March 19, 1920, referred to in text, is act Mar. 19, 1920, ch. 104, §§1–9, 41 Stat. 533, which was generally classified to sections 121 to 128 of this title, and which was repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(b), 60 Stat. 444.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

### **SUBCHAPTER III—GENERAL PROVISIONS**

### **§1111. Notice of registration; display with mark; recovery of profits and damages**



## **in infringement suit**

Notwithstanding the provisions of section 1072 of this title, a registrant of a mark registered in the Patent and Trademark Office, may give notice that his mark is registered by displaying with the mark the words "Registered in U.S. Patent and Trademark Office" or "Reg. U.S. Pat. & Tm. Off." or the letter R enclosed within a circle, thus ®; and in any suit for infringement under this chapter by such a registrant failing to give such notice of registration, no profits and no damages shall be recovered under the provisions of this chapter unless the defendant had actual notice of the registration.

(July 5, 1946, ch. 540, title III, §29, 60 Stat. 436; Pub. L. 87-772, §15, Oct. 9, 1962, 76 Stat. 773; Pub. L. 93-596, §§1, 2, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §125, Nov. 16, 1988, 102 Stat. 3943.)

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

Acts Feb. 20, 1905, ch. 592, §28, 33 Stat. 730; Mar. 19, 1920, ch. 104, §§5, 6, 41 Stat. 534, 535.

### **AMENDMENTS**

**1988**—Pub. L. 100-667 struck out "as used" after "with the mark".

**1975**—Pub. L. 93-596 substituted "Patent and Trademark Office, may give notice that his mark is registered by displaying with the mark as used the words 'Registered in U.S. Patent and Trademark Office' or 'Reg. U.S. Pat. & Tm. Off.' " for "Patent Office, may give notice that his mark is registered by displaying with the mark as used the words 'Registered in U.S. Patent Office' or 'Reg. U.S. Pat. Off.' ".

**1962**—Pub. L. 87-772 substituted "in the Patent Office, may" for "under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register established by this chapter, shall", and "to give such notice of registration," for "so to mark goods bearing the registered mark, or by a registrant under the Act of March 19, 1920, or by the registrant of a mark on the supplemental register provided by this chapter".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Pub. L. 93-596, §4, Jan. 2, 1975, 88 Stat. 1949, provided that: "This Act [amending this section, sections 1051, 1052, 1057, 1058, 1060, 1062, 1063, 1065, 1067, 1069, 1071, 1092, 1112, 1113, 1116 to 1120, 1123, and 1127 of this title, and sections 2 to 4, 6 to 8, 10, 11, 21 to 26, 31 to 33, 41, 104, 119, 121, 122, 135, 142 to 144, 146, 152, 153, 253 to 255, 261, 288, and 293 of Title 35, Patents, and enacting provisions set out as a note under section 1 of title 35] shall become effective upon enactment [Jan. 2, 1975]. However, any registrant may continue to give notice of his registration in accordance with section 29 of the Trademark Act of 1946 (60 Stat. 427), as amended Oct. 9, 1962 (76 Stat. 769) [this section], as an alternative to notice in accordance with section 29 of the Trademark Act as amended by section 2 of this Act, regardless of whether his mark was registered before or after the effective date of this Act."

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **§1112. Classification of goods and services; registration in plurality of classes**

The Director may establish a classification of goods and services, for convenience of Patent and Trademark Office administration, but not to limit or extend the applicant's or registrant's rights. The applicant may apply to register a mark for any or all of the goods or services on or in connection with which he or she is using or has a bona fide intention to use the mark in commerce: *Provided*, That if the Director by regulation permits the filing of an application for the registration of a mark

for goods or services which fall within a plurality of classes, a fee equaling the sum of the fees for filing an application in each class shall be paid, and the Director may issue a single certificate of registration for such mark.

(July 5, 1946, ch. 540, title IV, §30, 60 Stat. 436; Pub. L. 87-772, §16, Oct. 9, 1962, 76 Stat. 773; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 100-667, title I, §126, Nov. 16, 1988, 102 Stat. 3943; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

Act May 4, 1906, ch. 2081, §2, 34 Stat. 169.

### **AMENDMENTS**

**1999**—Pub. L. 106-113 substituted "Director" for "Commissioner" wherever appearing.

**1988**—Pub. L. 100-667 inserted "or registrant's" after "applicant's" and substituted "may apply" for "may file an application", "goods or services on or in connection with which he or she is using or has a bona fide intention to use the mark in commerce:" for "goods and services upon or in connection with which he is actually using the mark:", and "*Provided*, That if the Commissioner by regulation permits the filing of an application for the registration of a mark for goods or services which fall" for "*Provided*, That when such goods or services fall".

**1975**—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

**1962**—Pub. L. 87-772, among other changes, substituted "may" for "shall".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106-113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106-113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93-596 effective Jan. 2, 1975, see section 4 of Pub. L. 93-596, set out as a note under section 1111 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1113. Fees**

### **(a) Applications; services; materials**

The Director shall establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the

Patent and Trademark Office related to trademarks and other marks. Fees established under this subsection may be adjusted by the Director once each year to reflect, in the aggregate, any fluctuations during the preceding 12 months in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 percent may be ignored. No fee established under this section shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

**(b) Waiver; Indian products**

The Director may waive the payment of any fee for any service or material related to trademarks or other marks in connection with an occasional request made by a department or agency of the Government, or any officer thereof. The Indian Arts and Crafts Board will not be charged any fee to register Government trademarks of genuineness and quality for Indian products or for products of particular Indian tribes and groups.

(July 5, 1946, ch. 540, title V, §31, 60 Stat. 437; Pub. L. 85-609, §1(e), Aug. 8, 1958, 72 Stat. 540; Pub. L. 89-83, §3, July 24, 1965, 79 Stat. 260; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 96-517, §5, Dec. 12, 1980, 94 Stat. 3018; Pub. L. 97-247, §3(f), Aug. 27, 1982, 96 Stat. 319; Pub. L. 97-256, title I, §103, Sept. 8, 1982, 96 Stat. 816; Pub. L. 102-204, §5(f)(1), Dec. 10, 1991, 105 Stat. 1640; Pub. L. 105-330, title II, §201(a)(7), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106-113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A-583.)

**EDITORIAL NOTES**

**PRIOR PROVISIONS**

Acts Feb. 20, 1905, ch. 592, §§14, 15, 33 Stat. 728; Mar. 19, 1920, ch. 104, §8, 41 Stat. 535; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155.

**AMENDMENTS**

**1999**—Pub. L. 106-113 substituted "Director" for "Commissioner" wherever appearing.

**1998**—Pub. L. 105-330 made technical amendment relating to section catchline.

**1991**—Subsec. (a). Pub. L. 102-204 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "The Commissioner will establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. However, no fee for the filing or processing of an application for the registration of a trademark or other mark or for the renewal or assignment of a trademark or other mark will be adjusted more than once every three years. No fee established under this section will take effect prior to sixty days following notice in the Federal Register."

**1982**—Subsec. (a). Pub. L. 97-256 struck out "of Patents" after "Commissioner".

Pub. L. 97-247 struck out provisions directing that fees be set and adjusted by the Commissioner to recover in aggregate 50 per centum of the estimated average cost to the Office of processing and that fees for all other services or materials related to trademarks and other marks recover the estimated average cost to the Office of performing the service or furnishing the material.

**1980**—Subsec. (a). Pub. L. 96-517 in revising fee provisions required the Commissioner to establish fees based on recovery of estimated average cost of processing applications, performing services and providing material; authorized triennial adjustments; and prescribed an effective date for fees; deleted prior provisions containing statutory schedule covering fees for filing: applications for registration and renewals, affidavits, revival petitions for abandoned applications, opposition or application for cancellation, disclaimers, and notice of benefits for a mark to be published; and fees covering: appeals from examiners in charge of registration, certificates of amendment, certifying, printed copies of registered marks, and recordation of documents and papers relating to property in a registration or application.

Subsec. (b). Pub. L. 96-517 added subsec. (b) and struck out former subsec. (b) authorizing Commissioner to establish charges for copies of records, publications, or services of Patent and Trademark Office. See subsec. (a).

Subsec. (c). Pub. L. 96-517 in revising fee provisions struck out subsec. (c) authorizing Commissioner to refund any mistaken or excessive payments.

**1975**—Subsec. (a). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

Subsec. (b). Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

**1965**—Pub. L. 89–83 increased fees for filing an application for registration of a mark from \$25 to \$35; for issuance of a new certificate of registration following a change of ownership of a mark or correction of a registrant's mistake from \$10 to \$15; for a certificate of correction of registrant's mistake from \$10 to \$15; for filing a disclaimer from \$10 to \$15; and for recording an assignment, agreement, or other paper relating to the property in a registration or application from \$3 for documents not exceeding six pages plus \$1 for each additional two pages or less and 50 cents additional for each additional registration or application included in one writing, to a \$20 fee for every document plus an additional fee of \$3 for each additional item where the document relates to more than one application or registration; eliminated provisions which established fees for the surrender or cancellation of a registration, for an abstract of title, for a title report required for office use, for certificates that marks have not been registered, and for copies of various specified records and documents; added the fees for filing and affidavit under section 1058(a) or (b) of this title and for filing a petition for the revival of an abandoned application; empowered the Commissioner to establish charges for copies of records, publications or services furnished by the Patent Office; and made the provisions relating to refunds of sums paid by mistake permissive.

**1958**—Pub. L. 85–609 struck out "to the Commissioner" after "on appeal from an examiner in charge of the registration of marks", and provisions which required payment of a \$25 fee on appeals from an examiner in charge of interferences to the Commissioner.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by Pub. L. 97–247 effective Oct. 1, 1982, see section 17(a) of Pub. L. 97–247, set out as a note under section 41 of Title 35, Patents.

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–517 effective Dec. 12, 1980, with provision for continuation of fees in effect as of such date until corresponding fees are established under this section, see section 8(a), (d) of Pub. L. 96–517, set out as a note under section 41 of Title 35, Patents.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

### **EFFECTIVE DATE OF 1965 AMENDMENT**

For effective date and applicability of amendment by Pub. L. 89–83, see section 7(a), (d) of Pub. L. 89–83, set out as a note under section 41 of Title 35, Patents.

### **EFFECTIVE DATE OF 1958 AMENDMENT**

For effective date and applicability of amendment by Pub. L. 85–609, see section 3 of Pub. L. 85–609, set out as a note under section 1067 of this title.

## **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **APPROPRIATIONS AND FEES AUTHORIZED TO BE CARRIED OVER**

For provisions authorizing fees collected under this chapter, and certain appropriations, to remain available until expended, see section 2 of Pub. L. 99–607, set out as a note under section 42 of Title 35, Patents.

## TRADEMARK FEES

Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4203], Nov. 29, 1999, 113 Stat. 1536, 1501A–554, as amended by Pub. L. 107–273, div. C, title III, §13208, Nov. 2, 2002, 116 Stat. 1908, provided that: "Notwithstanding the second sentence of section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)), the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office is authorized in fiscal year 2000 to adjust trademark fees without regard to fluctuations in the Consumer Price Index during the preceding 12 months."

Pub. L. 103–179, §4, Dec. 3, 1993, 107 Stat. 2040, provided that: "Effective on the date of the enactment of this Act [Dec. 3, 1993], the fee under section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)) for filing an application for the registration of a trademark shall be \$245. Any adjustment of such fee under the second sentence of such section may not be effective before October 1, 1994."

Pub. L. 102–204, §5(f)(2), Dec. 10, 1991, 105 Stat. 1640, provided that fees established by Commissioner of Patents and Trademarks under 15 U.S.C. 1113(a) during fiscal year 1992 could reflect fluctuations during the preceding 3 years in the Consumer Price Index and could take effect on or after 1 day after such fees are published in the Federal Register and that the last sentence of 31 U.S.C. 31(a) and 5 U.S.C. 553 did not apply to the establishment of such fees.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100–703, title I, §103(a), Nov. 19, 1988, 102 Stat. 4674.

Pub. L. 99–607, §3(a), Nov. 6, 1986, 100 Stat. 3470.

## REORGANIZATION PLAN NO. 5 OF 1950

Amendment by Pub. L. 85–609 as subject to Reorganization Plan No. 5 of 1950, see note set out under section 1067 of this title.

## EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

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

## §1114. Remedies; infringement; innocent infringement by printers and publishers

(1) Any person who shall, without the consent of the registrant—

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

(b) reproduce, counterfeit, copy, or colorably imitate a registered mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive,

shall be liable in a civil action by the registrant for the remedies hereinafter provided. Under subsection (b) hereof, the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion, or to cause mistake, or to deceive.

As used in this paragraph, the term "any person" includes the United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, or other persons acting for the United States and with the authorization and consent of the United States, and any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. The United States, all agencies and instrumentalities thereof, and all

individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, and any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

(2) Notwithstanding any other provision of this chapter, the remedies given to the owner of a right infringed under this chapter or to a person bringing an action under section 1125(a) or (d) of this title shall be limited as follows:

(A) Where an infringer or violator is engaged solely in the business of printing the mark or violating matter for others and establishes that he or she was an innocent infringer or innocent violator, the owner of the right infringed or person bringing the action under section 1125(a) of this title shall be entitled as against such infringer or violator only to an injunction against future printing.

(B) Where the infringement or violation complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical or in an electronic communication as defined in section 2510(12) of title 18, the remedies of the owner of the right infringed or person bringing the action under section 1125(a) of this title as against the publisher or distributor of such newspaper, magazine, or other similar periodical or electronic communication shall be limited to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodicals or in future transmissions of such electronic communications. The limitations of this subparagraph shall apply only to innocent infringers and innocent violators.

(C) Injunctive relief shall not be available to the owner of the right infringed or person bringing the action under section 1125(a) of this title with respect to an issue of a newspaper, magazine, or other similar periodical or an electronic communication containing infringing matter or violating matter where restraining the dissemination of such infringing matter or violating matter in any particular issue of such periodical or in an electronic communication would delay the delivery of such issue or transmission of such electronic communication after the regular time for such delivery or transmission, and such delay would be due to the method by which publication and distribution of such periodical or transmission of such electronic communication is customarily conducted in accordance with sound business practice, and not due to any method or device adopted to evade this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter or violating matter.

(D)(i)(I) A domain name registrar, a domain name registry, or other domain name registration authority that takes any action described under clause (ii) affecting a domain name shall not be liable for monetary relief or, except as provided in subclause (II), for injunctive relief, to any person for such action, regardless of whether the domain name is finally determined to infringe or dilute the mark.

(II) A domain name registrar, domain name registry, or other domain name registration authority described in subclause (I) may be subject to injunctive relief only if such registrar, registry, or other registration authority has—

(aa) not expeditiously deposited with a court, in which an action has been filed regarding the disposition of the domain name, documents sufficient for the court to establish the court's control and authority regarding the disposition of the registration and use of the domain name;

(bb) transferred, suspended, or otherwise modified the domain name during the pendency of the action, except upon order of the court; or

(cc) willfully failed to comply with any such court order.

(ii) An action referred to under clause (i)(I) is any action of refusing to register, removing from registration, transferring, temporarily disabling, or permanently canceling a domain name—

(I) in compliance with a court order under section 1125(d) of this title; or

(II) in the implementation of a reasonable policy by such registrar, registry, or authority prohibiting the registration of a domain name that is identical to, confusingly similar to, or dilutive of another's mark.

(iii) A domain name registrar, a domain name registry, or other domain name registration authority shall not be liable for damages under this section for the registration or maintenance of a domain name for another absent a showing of bad faith intent to profit from such registration or maintenance of the domain name.

(iv) If a registrar, registry, or other registration authority takes an action described under clause (ii) based on a knowing and material misrepresentation by any other person that a domain name is identical to, confusingly similar to, or dilutive of a mark, the person making the knowing and material misrepresentation shall be liable for any damages, including costs and attorney's fees, incurred by the domain name registrant as a result of such action. The court may also grant injunctive relief to the domain name registrant, including the reactivation of the domain name or the transfer of the domain name to the domain name registrant.

(v) A domain name registrant whose domain name has been suspended, disabled, or transferred under a policy described under clause (ii)(II) may, upon notice to the mark owner, file a civil action to establish that the registration or use of the domain name by such registrant is not unlawful under this chapter. The court may grant injunctive relief to the domain name registrant, including the reactivation of the domain name or transfer of the domain name to the domain name registrant.

(E) As used in this paragraph—

(i) the term "violator" means a person who violates section 1125(a) of this title; and

(ii) the term "violating matter" means matter that is the subject of a violation under section 1125(a) of this title.

(3)(A) Any person who engages in the conduct described in paragraph (11) of section 110 of title 17 and who complies with the requirements set forth in that paragraph is not liable on account of such conduct for a violation of any right under this chapter. This subparagraph does not preclude liability, nor shall it be construed to restrict the defenses or limitations on rights granted under this chapter, of a person for conduct not described in paragraph (11) of section 110 of title 17, even if that person also engages in conduct described in paragraph (11) of section 110 of such title.

(B) A manufacturer, licensee, or licensor of technology that enables the making of limited portions of audio or video content of a motion picture imperceptible as described in subparagraph (A) is not liable on account of such manufacture or license for a violation of any right under this chapter, if such manufacturer, licensee, or licensor ensures that the technology provides a clear and conspicuous notice at the beginning of each performance that the performance of the motion picture is altered from the performance intended by the director or copyright holder of the motion picture. The limitations on liability in subparagraph (A) and this subparagraph shall not apply to a manufacturer, licensee, or licensor of technology that fails to comply with this paragraph.

(C) The requirement under subparagraph (B) to provide notice shall apply only with respect to technology manufactured after the end of the 180-day period beginning on April 27, 2005.

(D) Any failure by a manufacturer, licensee, or licensor of technology to qualify for the exemption under subparagraphs (A) and (B) shall not be construed to create an inference that any such party that engages in conduct described in paragraph (11) of section 110 of title 17 is liable for trademark infringement by reason of such conduct.

(July 5, 1946, ch. 540, title VI, §32, 60 Stat. 437; Pub. L. 87-772, §17, Oct. 9, 1962, 76 Stat. 773; Pub. L. 100-667, title I, §127, Nov. 16, 1988, 102 Stat. 3943; Pub. L. 102-542, §3(a), Oct. 27, 1992, 106 Stat. 3567; Pub. L. 105-330, title II, §201(a)(8), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106-43, §4(a), Aug. 5, 1999, 113 Stat. 219; Pub. L. 106-113, div. B, §1000(a)(9) [title III, §3004], Nov. 29, 1999, 113 Stat. 1536, 1501A-549; Pub. L. 109-9, title II, §202(b), Apr. 27, 2005, 119 Stat. 223.)

## **EDITORIAL NOTES**

## **PRIOR PROVISIONS**

Acts Feb. 20, 1905, ch. 592, §16, 33 Stat. 728; Mar. 19, 1920, ch. 104, §4, 41 Stat. 534.

## AMENDMENTS

**2005**—Par. (3). Pub. L. 109–9 added par. (3).

**1999**—Par. (1). Pub. L. 106–43, in undesignated par., inserted after "includes" in first sentence "the United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, or other persons acting for the United States and with the authorization and consent of the United States, and" and, in second sentence, substituted "The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, and any" for "Any".

Par. (2). Pub. L. 106–113, §1000(a)(9) [title III, §3004(1)], in introductory provisions, substituted "under section 1125(a) or (d) of this title" for "under section 1125(a) of this title".

Par. (2)(D), (E). Pub. L. 106–113, §1000(a)(9) [title III, §3004(2)], added subpar. (D) and redesignated former subpar. (D) as (E).

**1998**—Par. (1). Pub. L. 105–330 substituted "As used in this paragraph" for "As used in this subsection" in last paragraph.

**1992**—Par. (1). Pub. L. 102–542 inserted at end "As used in this subsection, the term 'any person' includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity."

**1988**—Par. (2). Pub. L. 100–667 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Notwithstanding any other provision of this chapter, the remedies given to the owner of the right infringed shall be limited as follows: (a) Where an infringer is engaged solely in the business of printing the mark for others and establishes that he was an innocent infringer the owner of the right infringed shall be entitled as against such infringer only to an injunction against future printing; (b) where the infringement complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical the remedies of the owner of the right infringed as against the publisher or distributor of such newspaper, magazine, or other similar periodical shall be confined to an injunction against the presentation of such advertising matter in future issues of such newspapers, magazines, or other similar periodical: *Provided*, That these limitations shall apply only to innocent infringers; (c) injunction relief shall not be available to the owner of the right infringed in respect of an issue of a newspaper, magazine, or other similar periodical containing infringing matter when restraining the dissemination of such infringing matter in any particular issue of such periodical would delay the delivery of such issue after the regular time therefor, and such delay would be due to the method by which publication and distribution of such periodical is customarily conducted in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter."

**1962**—Par. (1). Pub. L. 87–772 amended provisions generally, and among other changes, inserted "distribution", and struck out "purchasers as to the source of origin of such goods or services" after "or to deceive" in subsec. (a), inserted provisions regarding the likelihood of such use causing confusion, mistake, or deception, in subsec. (b), and struck out the limitation on recovery under subsec. (b) to acts committed with knowledge that such acts would deceive purchasers.

Par. (2)(b). Pub. L. 87–772 substituted "publisher" for "published".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 applicable to all domain names registered before, on, or after Nov. 29, 1999, see section 1000(a)(9) [title III, §3010] of Pub. L. 106–113, set out as a note under section 1117 of this title.

### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

### EFFECTIVE DATE OF 1992 AMENDMENT



Pub. L. 102-542, §4, Oct. 27, 1992, 106 Stat. 3568, provided that: "The amendments made by this Act [enacting section 1122 of this title and amending this section and sections 1125 and 1127 of this title] shall take effect with respect to violations that occur on or after the date of the enactment of this Act [Oct. 27, 1992]."

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100-667, set out as a note under section 1051 of this title.

#### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

### **§1115. Registration on principal register as evidence of exclusive right to use mark; defenses**

#### **(a) Evidentiary value; defenses**

Any registration issued under the Act of March 3, 1881, or the Act of February 20, 1905, or of a mark registered on the principal register provided by this chapter and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the registration subject to any conditions or limitations stated therein, but shall not preclude another person from proving any legal or equitable defense or defect, including those set forth in subsection (b), which might have been asserted if such mark had not been registered.

#### **(b) Incontestability; defenses**

To the extent that the right to use the registered mark has become incontestable under section 1065 of this title, the registration shall be conclusive evidence of the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the registered mark in commerce. Such conclusive evidence shall relate to the exclusive right to use the mark on or in connection with the goods or services specified in the affidavit filed under the provisions of section 1065 of this title, or in the renewal application filed under the provisions of section 1059 of this title if the goods or services specified in the renewal are fewer in number, subject to any conditions or limitations in the registration or in such affidavit or renewal application. Such conclusive evidence of the right to use the registered mark shall be subject to proof of infringement as defined in section 1114 of this title, and shall be subject to the following defenses or defects:

- (1) That the registration or the incontestable right to use the mark was obtained fraudulently; or
- (2) That the mark has been abandoned by the registrant; or
- (3) That the registered mark is being used by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services on or in connection with which the mark is used; or
- (4) That the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, of the party's individual name in his own business, or of the individual name of anyone in privity with such party, or of a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of such party, or their geographic origin; or
- (5) That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by such party or those in privity with him from a date prior to (A) the date of constructive use of the mark established pursuant to section 1057(c) of this title, (B) the registration of the mark under this chapter if the application for registration is filed before the effective date of the Trademark Law Revision Act of

1988, or (C) publication of the registered mark under subsection (c) of section 1062 of this title: *Provided, however*, That this defense or defect shall apply only for the area in which such continuous prior use is proved; or

(6) That the mark whose use is charged as an infringement was registered and used prior to the registration under this chapter or publication under subsection (c) of section 1062 of this title of the registered mark of the registrant, and not abandoned: *Provided, however*, That this defense or defect shall apply only for the area in which the mark was used prior to such registration or such publication of the registrant's mark; or

(7) That the mark has been or is being used to violate the antitrust laws of the United States; or

(8) That the mark is functional; or

(9) That equitable principles, including laches, estoppel, and acquiescence, are applicable.

(July 5, 1946, ch. 540, title VI, §33, 60 Stat. 438; Pub. L. 87-772, §18, Oct. 9, 1962, 76 Stat. 774; Pub. L. 100-667, title I, §128(a), (b), Nov. 16, 1988, 102 Stat. 3944; Pub. L. 105-330, title II, §201(a)(9), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 107-273, div. C, title III, §13207(b)(7), Nov. 2, 2002, 116 Stat. 1908.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to in subsec. (a), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502 and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

The effective date of the Trademark Law Revision Act of 1988, referred to in subsec. (b)(5), is one year after Nov. 16, 1988. See section 136 of Pub. L. 100-667, set out as an Effective Date of 1988 Amendment note under section 1051 of this title.

### PRIOR PROVISIONS

Act Feb. 20, 1905, ch. 592, §§16, 21, 33 Stat. 728, 729.

### AMENDMENTS

**2002**—Subsec. (b)(8). Pub. L. 107-273 realigned margins.

**1998**—Subsec. (b)(8), (9). Pub. L. 105-330 added par. (8) and redesignated former par. (8) as (9).

**1988**—Subsec. (a). Pub. L. 100-667, §128(a), inserted "the validity of the registered mark and of the registration of the mark, of the registrant's ownership of the mark, and of the" after "facie evidence of", inserted "or in connection with" after "in commerce on", substituted "another person" for "an opposing party", and inserted ", including those set forth in subsection (b)," after "or defect".

Subsec. (b). Pub. L. 100-667, §128(b)(1), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: "If the right to use the registered mark has become incontestable under section 1065 of this title, the registration shall be conclusive evidence of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the affidavit filed under the provisions of said section 1065 subject to any conditions or limitations stated therein except when one of the following defenses or defects is established:".

Subsec. (b)(3). Pub. L. 100-667, §128(b)(2), inserted "on or" after "goods or services".

Subsec. (b)(4). Pub. L. 100-667, §128(b)(3), struck out "trade or service" after "than as a" and "to users" after "only to describe".

Subsec. (b)(5). Pub. L. 100-667, §128(b)(4), substituted "(A) the date of constructive use of the mark established pursuant to section 1057(c) of this title, (B) the registration of the mark under this chapter if the application for registration is filed before the effective date of the Trademark Law Revision Act of 1988, or (C)" for "registration of the mark under this chapter or".

Subsec. (b)(8). Pub. L. 100-667, §128(b)(5), (6), added par. (8).

**1962**—Subsec. (a). Pub. L. 87-772 substituted "registration subject to" for "certificate subject to", and struck out "certificate of" before "registration issued".

Subsec. (b). Pub. L. 87-772 substituted "registration shall" for "certificate shall", and "affidavit filed under the provisions of said section 1065" for "certificate" in text preceding par. (1), substituted "registrant or a person in privity with the registrant," for "assignee", and struck out "has been assigned and" after "registered

mark" in par. (3), substituted "registration of the mark under this chapter or" for "the", and struck out "(a) or" before "(c) of section 1062" in par. (5), inserted "registration under this chapter", substituted "such registration or such" for "the date of", and struck out "(a) or" before "(c) of section 1062", "only where the said mark has been published pursuant to subsections (c) of section 1062 of this title and shall apply" after "defect shall apply", and "under subsection (a) or (c) of section 1062 of this title" after "registrant's mark", in par. (6).

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **§1116. Injunctive relief**

### **(a) Jurisdiction; service**

The several courts vested with jurisdiction of civil actions arising under this chapter shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office or to prevent a violation under subsection (a), (c), or (d) of section 1125 of this title. A plaintiff seeking any such injunction shall be entitled to a rebuttable presumption of irreparable harm upon a finding of a violation identified in this subsection in the case of a motion for a permanent injunction or upon a finding of likelihood of success on the merits for a violation identified in this subsection in the case of a motion for a preliminary injunction or temporary restraining order. Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction. Any such injunction granted upon hearing, after notice to the defendant, by any district court of the United States, may be served on the parties against whom such injunction is granted anywhere in the United States where they may be found, and shall be operative and may be enforced by proceedings to punish for contempt, or otherwise, by the court by which such injunction was granted, or by any other United States district court in whose jurisdiction the defendant may be found.

### **(b) Transfer of certified copies of court papers**

The said courts shall have jurisdiction to enforce said injunction, as provided in this chapter, as fully as if the injunction had been granted by the district court in which it is sought to be enforced. The clerk of the court or judge granting the injunction shall, when required to do so by the court before which application to enforce said injunction is made, transfer without delay to said court a certified copy of all papers on file in his office upon which said injunction was granted.

### **(c) Notice to Director**

It shall be the duty of the clerks of such courts within one month after the filing of any action, suit, or proceeding involving a mark registered under the provisions of this chapter to give notice thereof in writing to the Director setting forth in order so far as known the names and addresses of the litigants and the designating number or numbers of the registration or registrations upon which the

action, suit, or proceeding has been brought, and in the event any other registration be subsequently included in the action, suit, or proceeding by amendment, answer, or other pleading, the clerk shall give like notice thereof to the Director, and within one month after the judgment is entered or an appeal is taken the clerk of the court shall give notice thereof to the Director, and it shall be the duty of the Director on receipt of such notice forthwith to endorse the same upon the file wrapper of the said registration or registrations and to incorporate the same as a part of the contents of said file wrapper.

**(d) Civil actions arising out of use of counterfeit marks**

(1)(A) In the case of a civil action arising under section 1114(1)(a) of this title or section 220506 of title 36 with respect to a violation that consists of using a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services, the court may, upon ex parte application, grant an order under subsection (a) of this section pursuant to this subsection providing for the seizure of goods and counterfeit marks involved in such violation and the means of making such marks, and records documenting the manufacture, sale, or receipt of things involved in such violation.

(B) As used in this subsection the term "counterfeit mark" means—

(i) a counterfeit of a mark that is registered on the principal register in the United States Patent and Trademark Office for such goods or services sold, offered for sale, or distributed and that is in use, whether or not the person against whom relief is sought knew such mark was so registered; or

(ii) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of this chapter are made available by reason of section 220506 of title 36;

but such term does not include any mark or designation used on or in connection with goods or services of which the manufacture <sup>1</sup> or producer was, at the time of the manufacture or production in question authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation.

(2) The court shall not receive an application under this subsection unless the applicant has given such notice of the application as is reasonable under the circumstances to the United States attorney for the judicial district in which such order is sought. Such attorney may participate in the proceedings arising under such application if such proceedings may affect evidence of an offense against the United States. The court may deny such application if the court determines that the public interest in a potential prosecution so requires.

(3) The application for an order under this subsection shall—

(A) be based on an affidavit or the verified complaint establishing facts sufficient to support the findings of fact and conclusions of law required for such order; and

(B) contain the additional information required by paragraph (5) of this subsection to be set forth in such order.

(4) The court shall not grant such an application unless—

(A) the person obtaining an order under this subsection provides the security determined adequate by the court for the payment of such damages as any person may be entitled to recover as a result of a wrongful seizure or wrongful attempted seizure under this subsection; and

(B) the court finds that it clearly appears from specific facts that—

(i) an order other than an ex parte seizure order is not adequate to achieve the purposes of section 1114 of this title;

(ii) the applicant has not publicized the requested seizure;

(iii) the applicant is likely to succeed in showing that the person against whom seizure would be ordered used a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services;

(iv) an immediate and irreparable injury will occur if such seizure is not ordered;

(v) the matter to be seized will be located at the place identified in the application;

(vi) the harm to the applicant of denying the application outweighs the harm to the legitimate interests of the person against whom seizure would be ordered of granting the application; and  
(vii) the person against whom seizure would be ordered, or persons acting in concert with such person, would destroy, move, hide, or otherwise make such matter inaccessible to the court, if the applicant were to proceed on notice to such person.

(5) An order under this subsection shall set forth—

- (A) the findings of fact and conclusions of law required for the order;
- (B) a particular description of the matter to be seized, and a description of each place at which such matter is to be seized;
- (C) the time period, which shall end not later than seven days after the date on which such order is issued, during which the seizure is to be made;
- (D) the amount of security required to be provided under this subsection; and
- (E) a date for the hearing required under paragraph (10) of this subsection.

(6) The court shall take appropriate action to protect the person against whom an order under this subsection is directed from publicity, by or at the behest of the plaintiff, about such order and any seizure under such order.

(7) Any materials seized under this subsection shall be taken into the custody of the court. For seizures made under this section, the court shall enter an appropriate protective order with respect to discovery and use of any records or information that has been seized. The protective order shall provide for appropriate procedures to ensure that confidential, private, proprietary, or privileged information contained in such records is not improperly disclosed or used.

(8) An order under this subsection, together with the supporting documents, shall be sealed until the person against whom the order is directed has an opportunity to contest such order, except that any person against whom such order is issued shall have access to such order and supporting documents after the seizure has been carried out.

(9) The court shall order that service of a copy of the order under this subsection shall be made by a Federal law enforcement officer (such as a United States marshal or an officer or agent of the United States Customs Service, Secret Service, Federal Bureau of Investigation, or Post Office) or may be made by a State or local law enforcement officer, who, upon making service, shall carry out the seizure under the order. The court shall issue orders, when appropriate, to protect the defendant from undue damage from the disclosure of trade secrets or other confidential information during the course of the seizure, including, when appropriate, orders restricting the access of the applicant (or any agent or employee of the applicant) to such secrets or information.

(10)(A) The court shall hold a hearing, unless waived by all the parties, on the date set by the court in the order of seizure. That date shall be not sooner than ten days after the order is issued and not later than fifteen days after the order is issued, unless the applicant for the order shows good cause for another date or unless the party against whom such order is directed consents to another date for such hearing. At such hearing the party obtaining the order shall have the burden to prove that the facts supporting findings of fact and conclusions of law necessary to support such order are still in effect. If that party fails to meet that burden, the seizure order shall be dissolved or modified appropriately.

(B) In connection with a hearing under this paragraph, the court may make such orders modifying the time limits for discovery under the Rules of Civil Procedure as may be necessary to prevent the frustration of the purposes of such hearing.

(11) A person who suffers damage by reason of a wrongful seizure under this subsection has a cause of action against the applicant for the order under which such seizure was made, and shall be entitled to recover such relief as may be appropriate, including damages for lost profits, cost of materials, loss of good will, and punitive damages in instances where the seizure was sought in bad faith, and, unless the court finds extenuating circumstances, to recover a reasonable attorney's fee. The court in its discretion may award prejudgment interest on relief recovered under this paragraph, at an annual interest rate established under section 6621(a)(2) of title 26, commencing on the date of

service of the claimant's pleading setting forth the claim under this paragraph and ending on the date such recovery is granted, or for such shorter time as the court deems appropriate.

(July 5, 1946, ch. 540, title VI, §34, 60 Stat. 439; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 98–473, title II, §1503(1), Oct. 12, 1984, 98 Stat. 2179; Pub. L. 100–667, title I, §128(c)–(e), Nov. 16, 1988, 102 Stat. 3945; Pub. L. 104–153, §6, July 2, 1996, 110 Stat. 1388; Pub. L. 106–43, §3(a)(1), Aug. 5, 1999, 113 Stat. 218; Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3003(a)(1), title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–548, 1501A–583; Pub. L. 107–273, div. C, title III, §13207(b)(8)–(10), Nov. 2, 2002, 116 Stat. 1908; Pub. L. 110–403, title I, §102(b), Oct. 13, 2008, 122 Stat. 4258; Pub. L. 116–260, div. Q, title II, §226(a), Dec. 27, 2020, 134 Stat. 2208.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Rules of Civil Procedure, referred to in subsec. (d)(10)(B), probably means the Federal Rules of Civil Procedure, which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

### PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§19, 20, 33 Stat. 729; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921.

### AMENDMENTS

**2020**—Subsec. (a). Pub. L. 116–260 inserted after first sentence "A plaintiff seeking any such injunction shall be entitled to a rebuttable presumption of irreparable harm upon a finding of a violation identified in this subsection in the case of a motion for a permanent injunction or upon a finding of likelihood of success on the merits for a violation identified in this subsection in the case of a motion for a preliminary injunction or temporary restraining order."

**2008**—Subsec. (d)(7). Pub. L. 110–403 amended par. (7) generally. Prior to amendment, par. (7) read as follows: "Any materials seized under this subsection shall be taken into the custody of the court. The court shall enter an appropriate protective order with respect to discovery by the applicant of any records that have been seized. The protective order shall provide for appropriate procedures to assure that confidential information contained in such records is not improperly disclosed to the applicant."

**2002**—Subsec. (d)(1)(A), (B)(ii). Pub. L. 107–273, §13207(b)(8), (9), substituted "section 220506 of title 36" for "section 110 of the Act entitled 'An Act to incorporate the United States Olympic Association', approved September 21, 1950 (36 U.S.C. 380)".

Subsec. (d)(11). Pub. L. 107–273, §13207(b)(10), substituted "6621(a)(2) of title 26" for "6621 of title 26".

**1999**—Subsec. (a). Pub. L. 106–113, §1000(a)(9) [title III, §3003(a)(1)], substituted "(a), (c), or (d)" for "(a) or (c)" in first sentence.

Pub. L. 106–43 substituted "subsection (a) or (c) of section 1125 of this title" for "section 1125(a) of this title" in first sentence.

Subsec. (c). Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(B)], substituted "Director" for "Commissioner" wherever appearing.

**1996**—Subsec. (d)(9). Pub. L. 104–153 inserted first sentence and struck out former first sentence which read as follows: "The court shall order that a United States marshal or other law enforcement officer is to serve a copy of the order under this subsection and then is to carry out the seizure under such order."

**1988**—Subsec. (a). Pub. L. 100–667, §128(c), inserted "or to prevent a violation under section 1125(a) of this title" after "Office" in first sentence.

Subsec. (c). Pub. L. 100–667, §128(d), substituted "proceeding involving a mark registered" for "proceeding arising" and "judgment is entered or an appeal is taken" for "decision is rendered, appeal taken or a decree issued".

Subsec. (d)(1)(B). Pub. L. 100–667, §128(e), inserted "on or" after "or designation used" in concluding provisions.

**1984**—Pub. L. 98–473 designated first, second, and third undesignated pars. as subsecs. (a), (b), and (c), respectively and added subsec. (d).

**1975**—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title III, §3003(a)(1)] of Pub. L. 106–113 applicable to all domain names registered before, on, or after Nov. 29, 1999, see section 1000(a)(9) [title III, §3010] of Pub. L. 106–113, set out as a note under section 1117 of this title.

Amendment by section 1000(a)(9) [title IV, §4732(b)(1)(B)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

### REPEAL AND EFFECT ON EXISTING RIGHTS

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

### CONSTRUCTION OF 2020 AMENDMENT

Pub. L. 116–260, div. Q, title II, §226(b), Dec. 27, 2020, 134 Stat. 2208, provided that: "The amendment made by subsection (a) [amending this section] shall not be construed to mean that a plaintiff seeking an injunction was not entitled to a presumption of irreparable harm before the date of enactment of this Act [Dec. 27, 2020]."

### TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107–296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114–125, and section 802(b) of Pub. L. 114–125, set out as a note under section 211 of Title 6.

For transfer of the functions, personnel, assets, and obligations of the United States Secret Service, including the functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 381, 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

### EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

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

*<sup>1</sup> So in original. Probably should be "manufacturer".*

## §1117. Recovery for violation of rights

### (a) Profits; damages and costs; attorney fees

When a violation of any right of the registrant of a mark registered in the Patent and Trademark

Office, a violation under section 1125(a) or (d) of this title, or a willful violation under section 1125(c) of this title, shall have been established in any civil action arising under this chapter, the plaintiff shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court in exceptional cases may award reasonable attorney fees to the prevailing party.

**(b) Treble damages for use of counterfeit mark**

In assessing damages under subsection (a) for any violation of section 1114(1)(a) of this title or section 220506 of title 36, in a case involving use of a counterfeit mark or designation (as defined in section 1116(d) of this title), the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever amount is greater, together with a reasonable attorney's fee, if the violation consists of—

(1) intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 1116(d) of this title), in connection with the sale, offering for sale, or distribution of goods or services; or

(2) providing goods or services necessary to the commission of a violation specified in paragraph (1), with the intent that the recipient of the goods or services would put the goods or services to use in committing the violation.

In such a case, the court may award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of title 26, beginning on the date of the service of the claimant's pleadings setting forth the claim for such entry of judgment and ending on the date such entry is made, or for such shorter time as the court considers appropriate.

**(c) Statutory damages for use of counterfeit marks**

In a case involving the use of a counterfeit mark (as defined in section 1116(d) of this title) in connection with the sale, offering for sale, or distribution of goods or services, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits under subsection (a), an award of statutory damages for any such use in connection with the sale, offering for sale, or distribution of goods or services in the amount of—

(1) not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or

(2) if the court finds that the use of the counterfeit mark was willful, not more than \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.

**(d) Statutory damages for violation of section 1125(d)(1)**

In a case involving a violation of section 1125(d)(1) of this title, the plaintiff may elect, at any time before final judgment is rendered by the trial court, to recover, instead of actual damages and profits, an award of statutory damages in the amount of not less than \$1,000 and not more than \$100,000 per domain name, as the court considers just.

**(e) Rebuttable presumption of willful violation**

In the case of a violation referred to in this section, it shall be a rebuttable presumption that the violation is willful for purposes of determining relief if the violator, or a person acting in concert with the violator, knowingly provided or knowingly caused to be provided materially false contact



information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation. Nothing in this subsection limits what may be considered a willful violation under this section.

(July 5, 1946, ch. 540, title VI, §35, 60 Stat. 439; Pub. L. 87-772, §19, Oct. 9, 1962, 76 Stat. 774; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 93-600, §3, Jan. 2, 1975, 88 Stat. 1955; Pub. L. 98-473, title II, §1503(2), Oct. 12, 1984, 98 Stat. 2182; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-667, title I, §129, Nov. 16, 1988, 102 Stat. 3945; Pub. L. 104-153, §7, July 2, 1996, 110 Stat. 1388; Pub. L. 106-43, §3(b), Aug. 5, 1999, 113 Stat. 219; Pub. L. 106-113, div. B, §1000(a)(9) [title III, §3003(a)(2), (b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-549; Pub. L. 107-273, div. C, title III, §13207(a), (b)(11), Nov. 2, 2002, 116 Stat. 1906, 1908; Pub. L. 108-482, title II, §202, Dec. 23, 2004, 118 Stat. 3916; Pub. L. 110-403, title I, §§103, 104, Oct. 13, 2008, 122 Stat. 4259.)

## EDITORIAL NOTES

### PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§16, 19, 33 Stat. 728, 729; Mar. 19, 1920, ch. 104, §4, 41 Stat. 534.

### AMENDMENTS

**2008**—Subsec. (b). Pub. L. 110-403, §103, amended subsec. (b) generally. Prior to amendment, text read as follows: "In assessing damages under subsection (a) of this section, the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever is greater, together with a reasonable attorney's fee, in the case of any violation of section 1114(1)(a) of this title or section 220506 of title 36 that consists of intentionally using a mark or designation, knowing such mark or designation is a counterfeit mark (as defined in section 1116(d) of this title), in connection with the sale, offering for sale, or distribution of goods or services. In such cases, the court may in its discretion award prejudgment interest on such amount at an annual interest rate established under section 6621(a)(2) of title 26, commencing on the date of the service of the claimant's pleadings setting forth the claim for such entry and ending on the date such entry is made, or for such shorter time as the court deems appropriate."

Subsec. (c)(1). Pub. L. 110-403, §104(1), substituted "\$1,000" for "\$500" and "\$200,000" for "\$100,000".

Subsec. (c)(2). Pub. L. 110-403, §104(2), substituted "\$2,000,000" for "\$1,000,000".

**2004**—Subsec. (e). Pub. L. 108-482 added subsec. (e).

**2002**—Subsec. (a). Pub. L. 107-273, §13207(a), substituted "a violation under section 1125(a) or (d) of this title," for "a violation under section 1125(a), (c), or (d) of this title,".

Subsec. (b). Pub. L. 107-273, §13207(b)(11), substituted "section 220506 of title 36" for "section 110 of the Act entitled 'An Act to incorporate the United States Olympic Association', approved September 21, 1950 (36 U.S.C. 380)" and "6621(a)(2) of title 26" for "6621 of title 26".

**1999**—Subsec. (a). Pub. L. 106-113, §1000(a)(9) [title III, §3003(a)(2)], inserted ", (c), or (d)" after "section 1125(a)" in first sentence.

Pub. L. 106-43 substituted "a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title," for "or a violation under section 1125(a) of this title," in first sentence.

Subsec. (d). Pub. L. 106-113, §1000(a)(9) [title III, §3003(b)], added subsec. (d).

**1996**—Subsec. (c). Pub. L. 104-153 added subsec. (c).

**1988**—Subsec. (a). Pub. L. 100-667 inserted ", or a violation under section 1125(a) of this title," after "Office" in first sentence.

**1986**—Subsec. (b). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

**1984**—Pub. L. 98-473 designated existing provisions as subsec. (a) and added subsec. (b).

**1975**—Pub. L. 93-600 inserted provisions relating to awarding of attorney fees in exceptional cases.

Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office".

**1962**—Pub. L. 87-772 substituted "1114" for "1113(1)(b)".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3010], Nov. 29, 1999, 113 Stat. 1536, 1501A–552, provided that: "Sections 3002(a), 3003, 3004, 3005, and 3008 of this title [amending this section and sections 1114, 1116, 1125, and 1127 of this title, and enacting provisions set out as a note under section 1051 of this title] shall apply to all domain names registered before, on, or after the date of the enactment of this Act [Nov. 29, 1999], except that damages under subsection (a) or (d) of section 35 of the Trademark Act of 1946 (15 U.S.C. 1117), as amended by section 3003 of this title, shall not be available with respect to the registration, trafficking, or use of a domain name that occurs before the date of the enactment of this Act."

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

#### **EFFECTIVE DATE OF 1975 AMENDMENTS**

Amendment by Pub. L. 93–600 effective Jan. 2, 1975, but not to affect any suit, proceeding, or appeal then pending, see section 4 of Pub. L. 93–600, set out as a note under section 1063 of this title.

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

#### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

#### **CONSTRUCTION OF 2004 AMENDMENT**

Pub. L. 108–482, title II, §205, Dec. 23, 2004, 118 Stat. 3917, provided that:

"(a) **FREE SPEECH AND PRESS.**—Nothing in this title [see Short Title of 2004 Amendment note set out under section 1051 of this title] shall enlarge or diminish any rights of free speech or of the press for activities related to the registration or use of domain names.

"(b) **DISCRETION OF COURTS IN DETERMINING RELIEF.**—Nothing in this title shall restrict the discretion of a court in determining damages or other relief to be assessed against a person found liable for the infringement of intellectual property rights.

"(c) **DISCRETION OF COURTS IN DETERMINING TERMS OF IMPRISONMENT.**—Nothing in this title shall be construed to limit the discretion of a court to determine the appropriate term of imprisonment for an offense under applicable law."

#### **EXECUTIVE DOCUMENTS**

#### **TRANSFER OF FUNCTIONS**

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

### **§1118. Destruction of infringing articles**

In any action arising under this chapter, in which a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title, shall have been established, the court may order that all labels, signs, prints, packages, wrappers, receptacles, and advertisements in the possession of the defendant, bearing the registered mark or, in the case of a violation of section 1125(a) of this title or a willful violation under section 1125(c) of this title, the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation, or any reproduction, counterfeit, copy, or colorable imitation thereof, and all plates, molds, matrices, and other means of making the same, shall be delivered up and destroyed. The party seeking an order under this section for destruction of articles seized under section 1116(d) of this title shall give ten days' notice to the United States attorney for the judicial district in which such order is sought (unless good cause is shown for lesser notice) and such United States attorney may, if such destruction may

affect evidence of an offense against the United States, seek a hearing on such destruction or participate in any hearing otherwise to be held with respect to such destruction.

(July 5, 1946, ch. 540, title VI, §36, 60 Stat. 440; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 98–473, title II, §1503(3), Oct. 12, 1984, 98 Stat. 2182; Pub. L. 100–667, title I, §130, Nov. 16, 1988, 102 Stat. 3945; Pub. L. 106–43, §3(c), Aug. 5, 1999, 113 Stat. 219.)

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

Acts Feb. 20, 1905, ch. 592, §20, 33 Stat. 729; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 25, 1936, ch. 804, 49 Stat. 1921.

### **AMENDMENTS**

**1999**—Pub. L. 106–43, in first sentence, substituted "a violation under section 1125(a) of this title, or a willful violation under section 1125(c) of this title," for "or a violation under section 1125(a) of this title," and inserted "or a willful violation under section 1125(c) of this title" before ", the word,".

**1988**—Pub. L. 100–667 inserted in first sentence ", or a violation under section 1125(a) of this title," after "Office" and "or, in the case of a violation of section 1125(a) of this title, the word, term, name, symbol, device, combination thereof, designation, description, or representation that is the subject of the violation," after "registered mark".

**1984**—Pub. L. 98–473 inserted "The party seeking an order under this section for destruction of articles seized under section 1116(d) of this title shall give ten days' notice to the United States attorney for the judicial district in which such order is sought (unless good cause is shown for lesser notice) and such United States attorney may, if such destruction may affect evidence of an offense against the United States, seek a hearing on such destruction or participate in any hearing otherwise to be held with respect to such destruction."

**1975**—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1119. Power of court over registration**

In any action involving a registered mark the court may determine the right to registration, order the cancelation of registrations, in whole or in part, restore canceled registrations, and otherwise rectify the register with respect to the registrations of any party to the action. Decrees and orders

shall be certified by the court to the Director, who shall make appropriate entry upon the records of the Patent and Trademark Office, and shall be controlled thereby.

(July 5, 1946, ch. 540, title VI, §37, 60 Stat. 440; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583.)

#### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

Act Feb. 20, 1905, ch. 592, §22, 33 Stat. 729.

#### **AMENDMENTS**

**1999**—Pub. L. 106–113 substituted "Director" for "Commissioner".

**1975**—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

##### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

##### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

##### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

#### **EXECUTIVE DOCUMENTS**

#### **TRANSFER OF FUNCTIONS**

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

### **§1120. Civil liability for false or fraudulent registration**

Any person who shall procure registration in the Patent and Trademark Office of a mark by a false or fraudulent declaration or representation, oral or in writing, or by any false means, shall be liable in a civil action by any person injured thereby for any damages sustained in consequence thereof.

(July 5, 1946, ch. 540, title VI, §38, 60 Stat. 440; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949.)

#### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

Act Feb. 20, 1905, ch. 592, §25, 33 Stat. 730.

#### **AMENDMENTS**

**1975**—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

## **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

## **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

## **TRANSFER OF FUNCTIONS**

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

## **§1121. Jurisdiction of Federal courts; State and local requirements that registered trademarks be altered or displayed differently; prohibition**

(a) The district and territorial courts of the United States shall have original jurisdiction and the courts of appeal of the United States (other than the United States Court of Appeals for the Federal Circuit) shall have appellate jurisdiction, of all actions arising under this chapter, without regard to the amount in controversy or to diversity or lack of diversity of the citizenship of the parties.

(b) No State or other jurisdiction of the United States or any political subdivision or any agency thereof may require alteration of a registered mark, or require that additional trademarks, service marks, trade names, or corporate names that may be associated with or incorporated into the registered mark be displayed in the mark in a manner differing from the display of such additional trademarks, service marks, trade names, or corporate names contemplated by the registered mark as exhibited in the certificate of registration issued by the United States Patent and Trademark Office.

(July 5, 1946, ch. 540, title VI, §39, formerly §§39 and 39a, 60 Stat. 440; Pub. L. 97–164, title I, §148, Apr. 2, 1982, 96 Stat. 46; Pub. L. 97–296, Oct. 12, 1982, 96 Stat. 1316; Pub. L. 100–667, title I, §131, Nov. 16, 1988, 102 Stat. 3946; Pub. L. 105–330, title II, §201(a)(10), Oct. 30, 1998, 112 Stat. 3070.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Pub. L. 100–667, §131(b)(1), transferred section 39a of act July 5, 1946, which was classified to section 1121a of this title, to subsec. (b) of this section.

In subsec. (a), the words "and the United States Court of Appeals for the District of Columbia" following "the Courts of Appeal of the United States" have been deleted as superfluous in view of section 41 of Title 28, Judiciary and Judicial Procedure, which includes the District of Columbia within the eleven judicial circuits of the United States. The word "and" has been inserted preceding "the courts of appeal of the United States" to preserve the conjunctive sense of the sentence.

### **PRIOR PROVISIONS**

Acts Feb. 20, 1905, ch. 592, §17, 33 Stat. 728; Mar. 3, 1911, ch. 231, §291, 36 Stat. 1167; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1936, ch. 804, 49 Stat. 1921.

### **AMENDMENTS**

**1998**—Subsec. (a). Pub. L. 105–330 substituted "courts" for "circuit courts" before "of appeal of the United States".

**1988**—Subsec. (a). Pub. L. 100–667, §131(a), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 100–667, §131(b), redesignated section 1121a of this title as subsec. (b) of this section and substituted "service marks" for "servicemarks" in two places.

1982—Pub. L. 97–164 inserted "(other than the United States Court of Appeals for the Federal Circuit)".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1982 AMENDMENT**

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **§1121a. Transferred**

## **EDITORIAL NOTES**

### **CODIFICATION**

Section, act July 5, 1946, ch. 540, title VI, §39a, as added Oct. 12, 1982, Pub. L. 97–296, 96 Stat. 1316, which prohibited State and local requirements that registered trademarks be altered or displayed differently, was transferred to subsec. (b) of section 39 of act July 5, 1946, by section 131(b)(1) of Pub. L. 100–667 and is classified to section 1121(b) of this title.

## **§1122. Liability of United States and States, and instrumentalities and officials thereof**

### **(a) Waiver of sovereign immunity by the United States**

The United States, all agencies and instrumentalities thereof, and all individuals, firms, corporations, other persons acting for the United States and with the authorization and consent of the United States, shall not be immune from suit in Federal or State court by any person, including any governmental or nongovernmental entity, for any violation under this chapter.

### **(b) Waiver of sovereign immunity by States**

Any State, instrumentality of a State or any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person, including any governmental or nongovernmental entity for any violation under this chapter.

### **(c) Remedies**

In a suit described in subsection (a) or (b) for a violation described therein, remedies (including remedies both at law and in equity) are available for the violation to the same extent as such remedies are available for such a violation in a suit against any person other than the United States or any agency or instrumentality thereof, or any individual, firm, corporation, or other person acting for

the United States and with authorization and consent of the United States, or a State, instrumentality of a State, or officer or employee of a State or instrumentality of a State acting in his or her official capacity. Such remedies include injunctive relief under section 1116 of this title, actual damages, profits, costs and attorney's fees under section 1117 of this title, destruction of infringing articles under section 1118 of this title, the remedies provided for under sections 1114, 1119, 1120, 1124 and 1125 of this title, and for any other remedies provided under this chapter.

(July 5, 1946, ch. 540, title VI, §40, as added Pub. L. 102–542, §3(b), Oct. 27, 1992, 106 Stat. 3567; amended Pub. L. 106–43, §4(b), Aug. 5, 1999, 113 Stat. 219.)

#### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

A prior section 1122, act July 5, 1946, ch. 540, title VI, §40, 60 Stat. 440, related to review of cases by the Supreme Court, prior to repeal by act May 24, 1949, ch. 139, §142, 63 Stat. 109. See section 1254 of Title 28, Judiciary and Judicial Procedure.

#### **AMENDMENTS**

**1999**—Subsec. (a). Pub. L. 106–43, §4(b)(2), added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 106–43, §4(b)(1), (2), redesignated subsec. (a) as (b) and inserted heading. Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 106–43, §4(b)(1), (3), redesignated subsec. (b) as (c) and in first sentence substituted "subsection (a) or (b) for a violation described therein" for "subsection (a) of this section for a violation described in that subsection" and inserted "the United States or any agency or instrumentality thereof, or any individual, firm, corporation, or other person acting for the United States and with authorization and consent of the United States, or" after "other than".

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE**

Section effective with respect to violations that occur on or after Oct. 27, 1992, see section 4 of Pub. L. 102–542, set out as an Effective Date of 1992 Amendment note under section 1114 of this title.

### **§1123. Rules and regulations for conduct of proceedings in Patent and Trademark Office**

The Director shall make rules and regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office under this chapter.

(July 5, 1946, ch. 540, title VI, §41, 60 Stat. 440; Pub. L. 93–596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583.)

#### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

Act Feb. 20, 1905, ch. 592, §26, 33 Stat. 730.

#### **AMENDMENTS**

**1999**—Pub. L. 106–113 substituted "Director" for "Commissioner".

**1975**—Pub. L. 93–596 substituted "Patent and Trademark Office" for "Patent Office".

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

#### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

#### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

#### **EXECUTIVE DOCUMENTS**

#### **TRANSFER OF FUNCTIONS**

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

### **§1124. Importation of goods bearing infringing marks or names forbidden**

Except as provided in subsection (d) of section 1526 of title 19, no article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trademark registered in accordance with the provisions of this chapter or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trademarks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trademark, issued in accordance with the provisions of this chapter, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trademark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

(July 5, 1946, ch. 540, title VII, §42, 60 Stat. 440; Pub. L. 95–410, title II, §211(b), Oct. 3, 1978, 92 Stat. 903; Pub. L. 105–330, title II, §201(a)(11), (12), Oct. 30, 1998, 112 Stat. 3070; Pub. L. 106–43, §6(b), Aug. 5, 1999, 113 Stat. 220.)

#### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

Act Feb. 20, 1905, ch. 592, §27, 33 Stat. 730.

#### **AMENDMENTS**

**1999**—Pub. L. 106–43 substituted "trademarks" for "trade-marks".

**1998**—Pub. L. 105–330, §201(a)(11), substituted "name of any domestic" for "name of the any domestic". Pub. L. 105–330, §201(a)(12), substituted "trademark" for "trade-mark" wherever appearing.



**1978**—Pub. L. 95–410 substituted "Except as provided in subsection (d) of section 1526 of title 19, no article" for "No article".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–330 effective Oct. 30, 1998, and applicable only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark, see section 201(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

Offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished, with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. Functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

## **§1125. False designations of origin, false descriptions, and dilution forbidden**

### **(a) Civil action**

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

(2) As used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

(3) In a civil action for trade dress infringement under this chapter for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that the matter sought to be protected is not functional.

### **(b) Importation**

Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States. The

owner, importer, or consignee of goods refused entry at any customhouse under this section may have any recourse by protest or appeal that is given under the customs revenue laws or may have the remedy given by this chapter in cases involving goods refused entry or seized.

**(c) Dilution by blurring; dilution by tarnishment**

**(1) Injunctive relief**

Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

**(2) Definitions**

(A) For purposes of paragraph (1), a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark's owner. In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following:

- (i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.
- (ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.
- (iii) The extent of actual recognition of the mark.
- (iv) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

(B) For purposes of paragraph (1), "dilution by blurring" is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark. In determining whether a mark or trade name is likely to cause dilution by blurring, the court may consider all relevant factors, including the following:

- (i) The degree of similarity between the mark or trade name and the famous mark.
- (ii) The degree of inherent or acquired distinctiveness of the famous mark.
- (iii) The extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark.
- (iv) The degree of recognition of the famous mark.
- (v) Whether the user of the mark or trade name intended to create an association with the famous mark.
- (vi) Any actual association between the mark or trade name and the famous mark.

(C) For purposes of paragraph (1), "dilution by tarnishment" is association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.

**(3) Exclusions**

The following shall not be actionable as dilution by blurring or dilution by tarnishment under this subsection:

- (A) Any fair use, including a nominative or descriptive fair use, or facilitation of such fair use, of a famous mark by another person other than as a designation of source for the person's own goods or services, including use in connection with—
  - (i) advertising or promotion that permits consumers to compare goods or services; or
  - (ii) identifying and parodying, criticizing, or commenting upon the famous mark owner or the goods or services of the famous mark owner.
- (B) All forms of news reporting and news commentary.

(C) Any noncommercial use of a mark.

**(4) Burden of proof**

In a civil action for trade dress dilution under this chapter for trade dress not registered on the principal register, the person who asserts trade dress protection has the burden of proving that—

(A) the claimed trade dress, taken as a whole, is not functional and is famous; and

(B) if the claimed trade dress includes any mark or marks registered on the principal register, the unregistered matter, taken as a whole, is famous separate and apart from any fame of such registered marks.

**(5) Additional remedies**

In an action brought under this subsection, the owner of the famous mark shall be entitled to injunctive relief as set forth in section 1116 of this title. The owner of the famous mark shall also be entitled to the remedies set forth in sections 1117(a) and 1118 of this title, subject to the discretion of the court and the principles of equity if—

(A) the mark or trade name that is likely to cause dilution by blurring or dilution by tarnishment was first used in commerce by the person against whom the injunction is sought after October 6, 2006; and

(B) in a claim arising under this subsection—

(i) by reason of dilution by blurring, the person against whom the injunction is sought willfully intended to trade on the recognition of the famous mark; or

(ii) by reason of dilution by tarnishment, the person against whom the injunction is sought willfully intended to harm the reputation of the famous mark.

**(6) Ownership of valid registration a complete bar to action**

The ownership by a person of a valid registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register under this chapter shall be a complete bar to an action against that person, with respect to that mark, that—

(A) is brought by another person under the common law or a statute of a State; and

(B)(i) seeks to prevent dilution by blurring or dilution by tarnishment; or

(ii) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement.

**(7) Savings clause**

Nothing in this subsection shall be construed to impair, modify, or supersede the applicability of the patent laws of the United States.

**(d) Cyberpiracy prevention**

(1)(A) A person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person—

(i) has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and

(ii) registers, traffics in, or uses a domain name that—

(I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark;

(II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or

(III) is a trademark, word, or name protected by reason of section 706 of title 18 or section 220506 of title 36.

(B)(i) In determining whether a person has a bad faith intent described under subparagraph (A), a court may consider factors such as, but not limited to—

(I) the trademark or other intellectual property rights of the person, if any, in the domain name;

(II) the extent to which the domain name consists of the legal name of the person or a name that

is otherwise commonly used to identify that person;

(III) the person's prior use, if any, of the domain name in connection with the bona fide offering of any goods or services;

(IV) the person's bona fide noncommercial or fair use of the mark in a site accessible under the domain name;

(V) the person's intent to divert consumers from the mark owner's online location to a site accessible under the domain name that could harm the goodwill represented by the mark, either for commercial gain or with the intent to tarnish or disparage the mark, by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

(VI) the person's offer to transfer, sell, or otherwise assign the domain name to the mark owner or any third party for financial gain without having used, or having an intent to use, the domain name in the bona fide offering of any goods or services, or the person's prior conduct indicating a pattern of such conduct;

(VII) the person's provision of material and misleading false contact information when applying for the registration of the domain name, the person's intentional failure to maintain accurate contact information, or the person's prior conduct indicating a pattern of such conduct;

(VIII) the person's registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others that are distinctive at the time of registration of such domain names, or dilutive of famous marks of others that are famous at the time of registration of such domain names, without regard to the goods or services of the parties; and

(IX) the extent to which the mark incorporated in the person's domain name registration is or is not distinctive and famous within the meaning of subsection (c).

(ii) Bad faith intent described under subparagraph (A) shall not be found in any case in which the court determines that the person believed and had reasonable grounds to believe that the use of the domain name was a fair use or otherwise lawful.

(C) In any civil action involving the registration, trafficking, or use of a domain name under this paragraph, a court may order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark.

(D) A person shall be liable for using a domain name under subparagraph (A) only if that person is the domain name registrant or that registrant's authorized licensee.

(E) As used in this paragraph, the term "traffics in" refers to transactions that include, but are not limited to, sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for consideration or receipt in exchange for consideration.

(2)(A) The owner of a mark may file an in rem civil action against a domain name in the judicial district in which the domain name registrar, domain name registry, or other domain name authority that registered or assigned the domain name is located if—

(i) the domain name violates any right of the owner of a mark registered in the Patent and Trademark Office, or protected under subsection (a) or (c); and

(ii) the court finds that the owner—

(I) is not able to obtain in personam jurisdiction over a person who would have been a defendant in a civil action under paragraph (1); or

(II) through due diligence was not able to find a person who would have been a defendant in a civil action under paragraph (1) by—

(aa) sending a notice of the alleged violation and intent to proceed under this paragraph to the registrant of the domain name at the postal and e-mail address provided by the registrant to the registrar; and

(bb) publishing notice of the action as the court may direct promptly after filing the action.

(B) The actions under subparagraph (A)(ii) shall constitute service of process.

(C) In an in rem action under this paragraph, a domain name shall be deemed to have its situs in the judicial district in which—

(i) the domain name registrar, registry, or other domain name authority that registered or

assigned the domain name is located; or

(ii) documents sufficient to establish control and authority regarding the disposition of the registration and use of the domain name are deposited with the court.

(D)(i) The remedies in an in rem action under this paragraph shall be limited to a court order for the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark. Upon receipt of written notification of a filed, stamped copy of a complaint filed by the owner of a mark in a United States district court under this paragraph, the domain name registrar, domain name registry, or other domain name authority shall—

(I) expeditiously deposit with the court documents sufficient to establish the court's control and authority regarding the disposition of the registration and use of the domain name to the court; and

(II) not transfer, suspend, or otherwise modify the domain name during the pendency of the action, except upon order of the court.

(ii) The domain name registrar or registry or other domain name authority shall not be liable for injunctive or monetary relief under this paragraph except in the case of bad faith or reckless disregard, which includes a willful failure to comply with any such court order.

(3) The civil action established under paragraph (1) and the in rem action established under paragraph (2), and any remedy available under either such action, shall be in addition to any other civil action or remedy otherwise applicable.

(4) The in rem jurisdiction established under paragraph (2) shall be in addition to any other jurisdiction that otherwise exists, whether in rem or in personam.

(July 5, 1946, ch. 540, title VIII, §43, 60 Stat. 441; Pub. L. 100–667, title I, §132, Nov. 16, 1988, 102 Stat. 3946; Pub. L. 102–542, §3(c), Oct. 27, 1992, 106 Stat. 3568; Pub. L. 104–98, §3(a), Jan. 16, 1996, 109 Stat. 985; Pub. L. 106–43, §§3(a)(2), 5, Aug. 5, 1999, 113 Stat. 219, 220; Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3002(a)], Nov. 29, 1999, 113 Stat. 1536, 1501A–545; Pub. L. 109–312, §2, Oct. 6, 2006, 120 Stat. 1730; Pub. L. 112–190, §1(a), Oct. 5, 2012, 126 Stat. 1436.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Acts March 3, 1881, and February 20, 1905, referred to in subsec. (c)(2)(A)(iv), (6), are acts Mar. 3, 1881, ch. 138, 21 Stat. 502, and Feb. 20, 1905, ch. 592, 33 Stat. 724, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title.

### CONSTITUTIONALITY

For information regarding the constitutionality 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](http://constitution.congress.gov).

### PRIOR PROVISIONS

Act Mar. 19, 1920, ch. 104, §3, 41 Stat. 534.

### AMENDMENTS

**2012**—Subsec. (c)(6). Pub. L. 112–190 added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

"(A)(i) is brought by another person under the common law or a statute of a State; and

"(ii) seeks to prevent dilution by blurring or dilution by tarnishment; or

"(B) asserts any claim of actual or likely damage or harm to the distinctiveness or reputation of a mark, label, or form of advertisement."

**2006**—Subsec. (c). Pub. L. 109–312, §2(1), added subsec. (c) and struck out former subsec. (c) which related to remedies for dilution of famous marks.

Subsec. (d)(1)(B)(i)(IX). Pub. L. 109–312, §2(2), substituted "subsection (c)" for "subsection (c)(1)".

**1999**—Subsec. (a)(3). Pub. L. 106–43, §5, added par. (3).

Subsec. (c)(2). Pub. L. 106–43, §3(a)(2), inserted "as set forth in section 1116 of this title" after "relief" in

first sentence.

Subsec. (d). Pub. L. 106–113 added subsec. (d).

**1996**—Subsec. (c). Pub. L. 104–98 added subsec. (c).

**1992**—Subsec. (a). Pub. L. 102–542 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

**1988**—Subsec. (a). Pub. L. 100–667 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: "Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same, and shall cause such goods or services to enter into commerce, and any person who shall with knowledge of the falsity of such designation of origin or description or representation cause or procure the same to be transported or used in commerce or deliver the same to any carrier to be transported or used, shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation."

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2012 AMENDMENT**

Pub. L. 112–190, §1(b), Oct. 5, 2012, 126 Stat. 1436, provided that: "The amendment made by subsection (a) [amending this section] shall apply to any action commenced on or after the date of the enactment of this Act [Oct. 5, 2012]."

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 applicable to all domain names registered before, on, or after Nov. 29, 1999, see section 1000(a)(9) [title III, §3010] of Pub. L. 106–113, set out as a note under section 1117 of this title.

### **EFFECTIVE DATE OF 1996 AMENDMENT**

Pub. L. 104–98, §5, Jan. 16, 1996, 109 Stat. 987, provided that: "This Act [amending this section and section 1127 of this title and enacting provisions set out as a note under section 1051 of this title] and the amendments made by this Act shall take effect on the date of the enactment of this Act [Jan. 16, 1996]."

### **EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102–542 effective with respect to violations that occur on or after Oct. 27, 1992, see section 4 of Pub. L. 102–542, set out as a note under section 1114 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

## **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **STUDY ON ABUSIVE DOMAIN NAME REGISTRATIONS INVOLVING PERSONAL NAMES**

Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3006], Nov. 29, 1999, 113 Stat. 1536, 1501A–550, provided that:

"(a) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this Act [Nov. 29, 1999], the Secretary of Commerce, in consultation with the Patent and Trademark Office and the Federal Election Commission, shall conduct a study and report to Congress with recommendations on guidelines and procedures for resolving disputes involving the registration or use by a person of a domain name that includes the personal name of another person, in whole or in part, or a name confusingly similar thereto, including consideration of and recommendations for—

"(1) protecting personal names from registration by another person as a second level domain name for purposes of selling or otherwise transferring such domain name to such other person or any third party for financial gain;

"(2) protecting individuals from bad faith uses of their personal names as second level domain names by others with malicious intent to harm the reputation of the individual or the goodwill associated with that

individual's name;

"(3) protecting consumers from the registration and use of domain names that include personal names in the second level domain in manners which are intended or are likely to confuse or deceive the public as to the affiliation, connection, or association of the domain name registrant, or a site accessible under the domain name, with such other person, or as to the origin, sponsorship, or approval of the goods, services, or commercial activities of the domain name registrant;

"(4) protecting the public from registration of domain names that include the personal names of government officials, official candidates, and potential official candidates for Federal, State, or local political office in the United States, and the use of such domain names in a manner that disrupts the electoral process or the public's ability to access accurate and reliable information regarding such individuals;

"(5) existing remedies, whether under State law or otherwise, and the extent to which such remedies are sufficient to address the considerations described in paragraphs (1) through (4); and

"(6) the guidelines, procedures, and policies of the Internet Corporation for Assigned Names and Numbers and the extent to which they address the considerations described in paragraphs (1) through (4).

"(b) GUIDELINES AND PROCEDURES.—The Secretary of Commerce shall, under its Memorandum of Understanding with the Internet Corporation for Assigned Names and Numbers, collaborate to develop guidelines and procedures for resolving disputes involving the registration or use by a person of a domain name that includes the personal name of another person, in whole or in part, or a name confusingly similar thereto."

## **§1126. International conventions**

### **(a) Register of marks communicated by international bureaus**

The Director shall keep a register of all marks communicated to him by the international bureaus provided for by the conventions for the protection of industrial property, trademarks, trade and commercial names, and the repression of unfair competition to which the United States is or may become a party, and upon the payment of the fees required by such conventions and the fees required in this chapter may place the marks so communicated upon such register. This register shall show a facsimile of the mark or trade or commercial name; the name, citizenship, and address of the registrant; the number, date, and place of the first registration of the mark, including the dates on which application for such registration was filed and granted and the term of such registration; a list of goods or services to which the mark is applied as shown by the registration in the country of origin, and such other data as may be useful concerning the mark. This register shall be a continuation of the register provided in section 1(a) of the Act of March 19, 1920.

### **(b) Benefits of section to persons whose country of origin is party to convention or treaty**

Any person whose country of origin is a party to any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition, to which the United States is also a party, or extends reciprocal rights to nationals of the United States by law, shall be entitled to the benefits of this section under the conditions expressed herein to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of a mark is otherwise entitled by this chapter.

### **(c) Prior registration in country of origin; country of origin defined**

No registration of a mark in the United States by a person described in subsection (b) of this section shall be granted until such mark has been registered in the country of origin of the applicant, unless the applicant alleges use in commerce.

For the purposes of this section, the country of origin of the applicant is the country in which he has a bona fide and effective industrial or commercial establishment, or if he has not such an establishment the country in which he is domiciled, or if he has not a domicile in any of the countries described in subsection (b) of this section, the country of which he is a national.

### **(d) Right of priority**

An application for registration of a mark under section 1051, 1053, 1054, or 1091 of this title or

under subsection (e) of this section, filed by a person described in subsection (b) of this section who has previously duly filed an application for registration of the same mark in one of the countries described in subsection (b) shall be accorded the same force and effect as would be accorded to the same application if filed in the United States on the same date on which the application was first filed in such foreign country: *Provided, That—*

(1) the application in the United States is filed within six months from the date on which the application was first filed in the foreign country;

(2) the application conforms as nearly as practicable to the requirements of this chapter, including a statement that the applicant has a bona fide intention to use the mark in commerce;

(3) the rights acquired by third parties before the date of the filing of the first application in the foreign country shall in no way be affected by a registration obtained on an application filed under this subsection;

(4) nothing in this subsection shall entitle the owner of a registration granted under this section to sue for acts committed prior to the date on which his mark was registered in this country unless the registration is based on use in commerce.

In like manner and subject to the same conditions and requirements, the right provided in this section may be based upon a subsequent regularly filed application in the same foreign country, instead of the first filed foreign application: *Provided, That* any foreign application filed prior to such subsequent application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without leaving any rights outstanding, and has not served, nor thereafter shall serve, as a basis for claiming a right of priority.

**(e) Registration on principal or supplemental register; copy of foreign registration**

A mark duly registered in the country of origin of the foreign applicant may be registered on the principal register if eligible, otherwise on the supplemental register in this chapter provided. Such applicant shall submit, within such time period as may be prescribed by the Director, a true copy, a photocopy, a certification, or a certified copy of the registration in the country of origin of the applicant. The application must state the applicant's bona fide intention to use the mark in commerce, but use in commerce shall not be required prior to registration.

**(f) Domestic registration independent of foreign registration**

The registration of a mark under the provisions of subsections (c), (d), and (e) of this section by a person described in subsection (b) shall be independent of the registration in the country of origin and the duration, validity, or transfer in the United States of such registration shall be governed by the provisions of this chapter.

**(g) Trade or commercial names of foreign nationals protected without registration**

Trade names or commercial names of persons described in subsection (b) of this section shall be protected without the obligation of filing or registration whether or not they form parts of marks.

**(h) Protection of foreign nationals against unfair competition**

Any person designated in subsection (b) of this section as entitled to the benefits and subject to the provisions of this chapter shall be entitled to effective protection against unfair competition, and the remedies provided in this chapter for infringement of marks shall be available so far as they may be appropriate in repressing acts of unfair competition.

**(i) Citizens or residents of United States entitled to benefits of section**

Citizens or residents of the United States shall have the same benefits as are granted by this section to persons described in subsection (b) of this section.

(July 5, 1946, ch. 540, title IX, §44, 60 Stat. 441; Pub. L. 87–333, §2, Oct. 3, 1961, 75 Stat. 748; Pub. L. 87–772, §20, Oct. 9, 1962, 76 Stat. 774; Pub. L. 100–667, title I, §133, Nov. 16, 1988, 102 Stat. 3946; Pub. L. 105–330, title I, §108, Oct. 30, 1998, 112 Stat. 3068; Pub. L. 106–43, §6(b), Aug.



5, 1999, 113 Stat. 220; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(1)(B)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 107–273, div. C, title III, §13207(b)(12), Nov. 2, 2002, 116 Stat. 1908.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Section 1(a) of the Act of March 19, 1920, referred to in subsec. (a), is section 1(a) of act Mar. 19, 1920, ch. 104, 41 Stat. 533, which was classified to section 121(a) of this title, and repealed by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444, insofar as inconsistent with this chapter.

### PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §§1, 2, 4, 33 Stat. 724, 725; May 4, 1906, ch. 2081, §§1, 3, 34 Stat. 168, 169; Feb. 18, 1909, ch. 144, 35 Stat. 628; Mar. 19, 1920, ch. 104, §§1, 6, 41 Stat. 533, 535; Apr. 11, 1930, ch. 132, §4, 46 Stat. 155; June 20, 1936, ch. 617, 49 Stat. 1539; June 10, 1938, ch. 332, §§1, 2, 3, 52 Stat. 638, 639.

### AMENDMENTS

**2002**—Subsec. (e). Pub. L. 107–273 substituted "a true copy, a photocopy, a certification," for "a certification".

**1999**—Subsec. (a). Pub. L. 106–113 substituted "Director" for "Commissioner".

Pub. L. 106–43 substituted "trademarks" for "trade-marks".

Subsec. (e). Pub. L. 106–113 substituted "Director" for "Commissioner".

**1998**—Subsec. (d). Pub. L. 105–330, §108(1)(A), in introductory provisions, substituted "or 1091 of this title or under subsection (e) of this section" for "1091 of this title, or subsection (e) of this section".

Subsec. (d)(3), (4). Pub. L. 105–330, §108(1)(B), made technical amendment to reference in original act which appears in text as reference to this subsection.

Subsec. (e). Pub. L. 105–330, §108(2), substituted "Such applicant shall submit, within such time period as may be prescribed by the Commissioner, a certification or a certified copy of the registration in the country of origin of the applicant" for "The application therefor shall be accompanied by a certification or a certified copy of the registration in the country of origin of the applicant".

**1988**—Subsec. (a). Pub. L. 100–667, §133(2), substituted "required in this chapter" for "herein prescribed".

Subsec. (c). Pub. L. 100–667, §133(1), made technical amendment in two places to references in the original act to subsection (b) of this section, resulting in no change in text.

Subsec. (d). Pub. L. 100–667, §133(1), (3), (4), (5), in introductory provisions, made technical amendment in two places to references in the original act to subsection (b) of this section, resulting in no change in text, and substituted "section 1051, 1053, 1054, or 1091 of this title, or subsection (e) of this section" for "sections 1051, 1052, 1053, 1054, or 1091 of this title", in par. (2), substituted "including a statement that the applicant has a bona fide intention to use the mark in commerce" for "but use in commerce need not be alleged", and in par. (3), substituted "foreign" for "foreing".

Subsec. (e). Pub. L. 100–667, §133(6), inserted at end "The application must state the applicant's bona fide intention to use the mark in commerce, but use in commerce shall not be required prior to registration."

Subsec. (f). Pub. L. 100–667, §133(1), (7), made technical amendment to references in the original act to subsections (c), (d), and (e) of this section and to subsection (b) of this section, resulting in no change in text.

Subsecs. (g) to (i). Pub. L. 100–667, §133(1), (8), made technical amendment to references in the original act to subsection (b) of this section, resulting in no change in text.

**1962**—Subsec. (b). Pub. L. 87–772 inserted "or extends reciprocal rights to nationals of the United States by law," and substituted provisions requiring the person's country of origin to be a party to any convention or treaty, for provisions which required such persons to be nationals of, domiciled in, or have a bona fide and effective business or commercial establishment in a foreign country which was a party to the International Convention for the Protection of Industrial Property, or the General Inter-American Convention for Trade Mark and Commercial Protection, or any other convention or treaty relating to trademarks, trade, or commercial names.

Subsec. (e). Pub. L. 87–772 inserted "certification or a" after "accompanied by a" and struck out "application for or" before "registration".

**1961**—Subsec. (d). Pub. L. 87–333 inserted par. at end authorizing the right provided by this section to be based upon a subsequent application in the same foreign country, instead of the first application, provided that

any foreign application filed prior to such subsequent one was withdrawn, or otherwise disposed of, without having been open to public inspection and without leaving any rights outstanding, nor any basis for claiming priority.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1999 AMENDMENT**

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105–330 effective on the date that is 1 year after Oct. 30, 1998, see section 110 of Pub. L. 105–330, set out as a note under section 1051 of this title.

For provisions relating to applicability of amendment by Pub. L. 105–330 to applications for registration of trademarks, see section 109(b) of Pub. L. 105–330, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

### **EFFECTIVE DATE OF 1961 AMENDMENT**

Pub. L. 87–333, §3, Oct. 3, 1961, 75 Stat. 748, provided that: "This Act [amending this section and section 119 of Title 35, Patents] shall take effect on the date when the Convention of Paris for the Protection of Industrial Property of March 20, 1883, as revised at Lisbon, October 31, 1958, comes into force with respect to the United States and shall apply only to applications thereafter filed in the United States by persons entitled to the benefit of said convention, as revised at the time of such filing."

### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

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

## **§1127. Construction and definitions; intent of chapter**

In the construction of this chapter, unless the contrary is plainly apparent from the context—

The United States includes and embraces all territory which is under its jurisdiction and control.

The word "commerce" means all commerce which may lawfully be regulated by Congress.

The term "principal register" refers to the register provided for by sections 1051 to 1072 of this title, and the term "supplemental register" refers to the register provided for by sections 1091 to 1096 of this title.

The term "person" and any other word or term used to designate the applicant or other entitled to a benefit or privilege or rendered liable under the provisions of this chapter includes a juristic person as well as a natural person. The term "juristic person" includes a firm, corporation, union, association, or other organization capable of suing and being sued in a court of law.

The term "person" also includes the United States, any agency or instrumentality thereof, or any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States. The United States, any agency or instrumentality thereof, and any individual, firm,

or corporation acting for the United States and with the authorization and consent of the United States, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

The term "person" also includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity.

The terms "applicant" and "registrant" embrace the legal representatives, predecessors, successors and assigns of such applicant or registrant.

The term "Director" means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

The term "related company" means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.

The terms "trade name" and "commercial name" mean any name used by a person to identify his or her business or vocation.

The term "trademark" includes any word, name, symbol, or device, or any combination thereof—

(1) used by a person, or

(2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter,

to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown.

The term "service mark" means any word, name, symbol, or device, or any combination thereof—

(1) used by a person, or

(2) which a person has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter,

to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

The term "certification mark" means any word, name, symbol, or device, or any combination thereof—

(1) used by a person other than its owner, or

(2) which its owner has a bona fide intention to permit a person other than the owner to use in commerce and files an application to register on the principal register established by this chapter,

to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of such person's goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

The term "collective mark" means a trademark or service mark—

(1) used by the members of a cooperative, an association, or other collective group or organization, or

(2) which such cooperative, association, or other collective group or organization has a bona fide intention to use in commerce and applies to register on the principal register established by this chapter,

and includes marks indicating membership in a union, an association, or other organization.

The term "mark" includes any trademark, service mark, collective mark, or certification mark.

The term "use in commerce" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For purposes of this chapter, a mark shall be deemed to be in use in commerce—

(1) on goods when—

(A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and

(B) the goods are sold or transported in commerce, and

(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services.

A mark shall be deemed to be "abandoned" if either of the following occurs:

(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be prima facie evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph.

The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive.

The term "registered mark" means a mark registered in the United States Patent and Trademark Office under this chapter or under the Act of March 3, 1881, or the Act of February 20, 1905, or the Act of March 19, 1920. The phrase "marks registered in the Patent and Trademark Office" means registered marks.

The term "Act of March 3, 1881", "Act of February 20, 1905", or "Act of March 19, 1920", means the respective Act as amended.

A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.

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.

The term "Internet" has the meaning given that term in section 230(f)(1) of title 47.

Words used in the singular include the plural and vice versa.

The intent of this chapter is to regulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such commerce from interference by State, or territorial legislation; to protect persons engaged in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits, or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations.

(July 5, 1946, ch. 540, title X, §45, 60 Stat. 443; Pub. L. 87-772, §21, Oct. 9, 1962, 76 Stat. 774; Pub. L. 93-596, §1, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 98-620, title I, §103, Nov. 8, 1984, 98 Stat. 3335; Pub. L. 100-667, title I, §134, Nov. 16, 1988, 102 Stat. 3946; Pub. L. 102-542, §3(d), Oct. 27, 1992, 106 Stat. 3568; Pub. L. 103-465, title V, §521, Dec. 8, 1994, 108 Stat. 4981; Pub. L. 104-98, §4, Jan. 16, 1996, 109 Stat. 986; Pub. L. 106-43, §§4(c), 6(b), Aug. 5, 1999, 113 Stat. 219, 220; Pub. L. 106-113, div. B, §1000(a)(9) [title III, §3005, title IV, §4732(b)(1)(A)], Nov. 29, 1999, 113 Stat. 1536, 1501A-550, 1501A-583; Pub. L. 109-312, §3(e), Oct. 6, 2006, 120 Stat. 1733.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Acts March 3, 1881, February 20, 1905, and March 19, 1920, referred to in text, are acts Mar. 3, 1881, ch. 138, 21 Stat. 502; Feb. 20, 1905, ch. 592, 33 Stat. 724; and Mar. 19, 1920, ch. 104, 41 Stat. 533, which were repealed insofar as inconsistent with this chapter by act July 5, 1946, ch. 540, §46(a), 60 Stat. 444. Act Feb. 20, 1905, was classified to sections 81 to 109 of this title. Act Mar. 19, 1920, had been generally classified to sections 121 to 128 of this title.

### PRIOR PROVISIONS

Acts Feb. 20, 1905, ch. 592, §29, 33 Stat. 731; June 10, 1938, ch. 332, §5, 52 Stat. 639.

### AMENDMENTS

**2006**—Pub. L. 109–312 struck out par. defining "dilution" after par. defining "abandoned".

**1999**—Pub. L. 106–113, §1000(a)(9) [title IV, §4732(b)(1)(A)], substituted par. defining "Director" for par. which read as follows: "The term 'Commissioner' means the Commissioner of Patents and Trademarks."

Pub. L. 106–113, §1000(a)(9) [title III, §3005], inserted pars. defining "domain name" and "Internet" after par. defining "counterfeit".

Pub. L. 106–43, §6(b), substituted "trademarks" for "trade-marks" in last undesignated par.

Pub. L. 106–43, §4(c), between pars. defining "person" inserted: "The term 'person' also includes the United States, any agency or instrumentality thereof, or any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States. The United States, any agency or instrumentality thereof, and any individual, firm, or corporation acting for the United States and with the authorization and consent of the United States, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity."

**1996**—Pub. L. 104–98 inserted par. defining "dilution" after par. defining "abandoned".

**1994**—Pub. L. 103–465 amended par. defining "abandoned" generally. Prior to amendment, par. read as follows: "A mark shall be deemed to be 'abandoned' when either of the following occurs:

"(1) When its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie evidence of abandonment. 'Use' of a mark means the bona fide use of that mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.

"(2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark. Purchaser motivation shall not be a test for determining abandonment under this paragraph."

**1992**—Pub. L. 102–542 inserted after fourth undesignated par. "The term 'person' also includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same manner and to the same extent as any nongovernmental entity."

**1988**—Pub. L. 100–667, §134(1), amended par. defining "related company" generally. Prior to amendment, par. read as follows: "The term 'related company' means any person who legitimately controls or is controlled by the registrant or applicant for registration in respect to the nature and quality of the goods or services in connection with which the mark is used."

Pub. L. 100–667, §134(2), amended par. defining "trade name" and "commercial name" generally. Prior to amendment, par. read as follows: "The terms 'trade name' and 'commercial name' include individual names and surnames, firm names and trade names used by manufacturers, industrialists, merchants, agriculturists, and others to identify their businesses, vocations, or occupations; the names or titles lawfully adopted and used by persons, firms, associations, corporations, companies, unions, and any manufacturing, industrial, commercial, agricultural, or other organizations engaged in trade or commerce and capable of suing and being sued in a court of law."

Pub. L. 100–667, §134(3), amended par. defining "trademark" generally. Prior to amendment, par. read as follows: "The term 'trademark' includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown."

Pub. L. 100–667, §134(4), amended par. defining "service mark" generally. Prior to amendment, par. read as follows: "The term 'service mark' means a mark used in the sale or advertising of services to identify and

distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor."

Pub. L. 100-667, §134(5), amended par. defining "certification mark" generally. Prior to amendment, par. read as follows: "The term 'certification mark' means a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods or services was performed by members of a union or other organization."

Pub. L. 100-667, §134(6), amended par. defining "collective mark" generally. Prior to amendment, par. read as follows: "The term 'collective mark' means a trade-mark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization."

Pub. L. 100-667, §134(7), amended par. defining "mark" generally. Prior to amendment, par. read as follows: "The term 'mark' includes any trade-mark, service mark, collective mark, or certification mark entitled to registration under this chapter whether registered or not."

Pub. L. 100-667, §134(8), substituted par. defining "use in commerce" for former par. which read as follows: "For the purposes of this chapter a mark shall be deemed to be used in commerce (a) on goods when it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto and the goods are sold or transported in commerce and (b) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith." and par. providing when a mark is deemed abandoned for former par. which read as follows: "A mark shall be deemed to be 'abandoned'—

"(a) When its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie abandonment.

"(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to lose its significance as an indication of origin. Purchaser motivation shall not be a test for determining abandonment under this subparagraph."

**1984**—Pub. L. 98-620, §103(1), in definition of "trademark" substituted "trademark" for "trade-mark", and substituted "identify and distinguish his goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown" for "identify his goods and distinguish them from those manufactured or sold by others".

Pub. L. 98-620, §103(2), in definition of "service mark" substituted "The term 'service mark' means a mark used in the sale or advertising of services to identify and distinguish the services of one person, including a unique service, from the services of others and to indicate the source of the services, even if that source is unknown" for "The term 'service mark' means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others".

Pub. L. 98-620, §103(3), in subpar. (b) of par. relating to when a mark shall be deemed to be "abandoned", inserted "Purchaser motivation shall not be a test for determining abandonment under this subparagraph."

**1975**—Pub. L. 93-596 substituted "Patent and Trademark Office" for "Patent Office" in two places and "Commissioner of Patents and Trademarks" for "Commissioner of Patents" in definition of "Commissioner".

**1962**—Pub. L. 87-772 substituted, "predecessors," for "and" in definition of "applicant" and "registrant", "Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor" for "and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce", in definition of "service mark", inserted "or the services are rendered in more than one State or in this and a foreign country and the person rendering the services is engaged in commerce in connection therewith" in fifteenth paragraph relating to use in commerce, struck out "purchasers" after "deceive" in definition of "colorable imitation", and substituted "commerce" for "commence" in last par. relating to the intent of the chapter.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 1000(a)(9) [title III, §3005] of Pub. L. 106-113 applicable to all domain names registered before, on, or after Nov. 29, 1999, see section 1000(a)(9) [title III, §3010] of Pub. L. 106-113, set out as a note under section 1117 of this title.

Amendment by section 1000(a)(9) [title IV, §4732(b)(1)(A)] of Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

#### **EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–465 effective one year after the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995], see section 523 of Pub. L. 103–465, set out as a note under section 1052 of this title.

#### **EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102–542 effective with respect to violations that occur on or after Oct. 27, 1992, see section 4 of Pub. L. 102–542, set out as a note under section 1114 of this title.

#### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100–667 effective one year after Nov. 16, 1988, see section 136 of Pub. L. 100–667, set out as a note under section 1051 of this title.

#### **EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 93–596 effective Jan. 2, 1975, see section 4 of Pub. L. 93–596, set out as a note under section 1111 of this title.

#### **REPEAL AND EFFECT ON EXISTING RIGHTS**

Repeal of inconsistent provisions, effect of this chapter on pending proceedings and existing registrations and rights under prior acts, see notes set out under section 1051 of this title.

#### **EXECUTIVE DOCUMENTS**

#### **TRANSFER OF FUNCTIONS**

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

### **§1128. Repealed. Pub. L. 110–403, title III, §305(a)(1), Oct. 13, 2008, 122 Stat. 4270**

Section, Pub. L. 106–58, title VI, §653, Sept. 29, 1999, 113 Stat. 480; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4741(b)(1)], Nov. 29, 1999, 113 Stat. 1536, 1501A–586; Pub. L. 108–447, div. B, title II, §210, Dec. 8, 2004, 118 Stat. 2884, established the National Intellectual Property Law Enforcement Coordination Council.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE OF REPEAL**

Pub. L. 110–403, title III, §305(a)(1), Oct. 13, 2008, 122 Stat. 4270, provided that the repeal of this section is effective upon confirmation of the Intellectual Property Enforcement Coordinator by the Senate and publication of such appointment in the Congressional Record. The Senate confirmed the first Intellectual Property Enforcement Coordinator on Dec. 3, 2009, as reflected in that day's Congressional Record. See 155 Cong. Rec. 29389 (2009).

### **§1129. Transferred**

#### **EDITORIAL NOTES**

#### **CODIFICATION**

Section, Pub. L. 106–113, div. B, §1000(a)(9) [title III, §3002(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A–548, which related to cyberpiracy protections for individuals, was transferred to section 8131 of this title.

## **SUBCHAPTER IV—THE MADRID PROTOCOL**

### **§1141. Definitions**

In this subchapter:

#### **(1) Basic application**

The term "basic application" means the application for the registration of a mark that has been filed with an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

#### **(2) Basic registration**

The term "basic registration" means the registration of a mark that has been granted by an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

#### **(3) Contracting Party**

The term "Contracting Party" means any country or inter-governmental organization that is a party to the Madrid Protocol.

#### **(4) Date of recordal**

The term "date of recordal" means the date on which a request for extension of protection, filed after an international registration is granted, is recorded on the International Register.

#### **(5) Declaration of bona fide intention to use the mark in commerce**

The term "declaration of bona fide intention to use the mark in commerce" means a declaration that is signed by the applicant for, or holder of, an international registration who is seeking extension of protection of a mark to the United States and that contains a statement that—

(A) the applicant or holder has a bona fide intention to use the mark in commerce;

(B) the person making the declaration believes himself or herself, or the firm, corporation, or association in whose behalf he or she makes the declaration, to be entitled to use the mark in commerce; and

(C) no other person, firm, corporation, or association, to the best of his or her knowledge and belief, has the right to use such mark in commerce either in the identical form of the mark or in such near resemblance to the mark as to be likely, when used on or in connection with the goods of such other person, firm, corporation, or association, to cause confusion, mistake, or deception.

#### **(6) Extension of protection**

The term "extension of protection" means the protection resulting from an international registration that extends to the United States at the request of the holder of the international registration, in accordance with the Madrid Protocol.

#### **(7) Holder of an international registration**

A "holder" of an international registration is the natural or juristic person in whose name the international registration is recorded on the International Register.

#### **(8) International application**

The term "international application" means an application for international registration that is filed under the Madrid Protocol.



**(9) International Bureau**

The term "International Bureau" means the International Bureau of the World Intellectual Property Organization.

**(10) International Register**

The term "International Register" means the official collection of data concerning international registrations maintained by the International Bureau that the Madrid Protocol or its implementing regulations require or permit to be recorded.

**(11) International registration**

The term "international registration" means the registration of a mark granted under the Madrid Protocol.

**(12) International registration date**

The term "international registration date" means the date assigned to the international registration by the International Bureau.

**(13) Madrid Protocol**

The term "Madrid Protocol" means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid, Spain, on June 27, 1989.

**(14) Notification of refusal**

The term "notification of refusal" means the notice sent by the United States Patent and Trademark Office to the International Bureau declaring that an extension of protection cannot be granted.

**(15) Office of a Contracting Party**

The term "Office of a Contracting Party" means—

(A) the office, or governmental entity, of a Contracting Party that is responsible for the registration of marks; or

(B) the common office, or governmental entity, of more than 1 Contracting Party that is responsible for the registration of marks and is so recognized by the International Bureau.

**(16) Office of origin**

The term "office of origin" means the Office of a Contracting Party with which a basic application was filed or by which a basic registration was granted.

**(17) Opposition period**

The term "opposition period" means the time allowed for filing an opposition in the United States Patent and Trademark Office, including any extension of time granted under section 1063 of this title.

(July 5, 1946, ch. 540, title XII, §60, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1913.)

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Pub. L. 107–273, div. C, title III, §13403, Nov. 2, 2002, 116 Stat. 1920, provided that: "This subtitle [subtitle D (§§13401–13403) of title III of div. C of Pub. L. 107–273, enacting this subchapter and provisions set out as a note under section 1051 of this title] and the amendments made by this subtitle shall take effect on the later of—

"(1) the date on which the Madrid Protocol (as defined in section 60 of the Trademark Act of 1946 [this section]) enters into force with respect to the United States [Nov. 2, 2003]; or

"(2) the date occurring 1 year after the date of enactment of this Act [Nov. 2, 2002]."

## **§1141a. International applications based on United States applications or registrations**

### **(a) In general**

The owner of a basic application pending before the United States Patent and Trademark Office, or the owner of a basic registration granted by the United States Patent and Trademark Office may file an international application by submitting to the United States Patent and Trademark Office a written application in such form, together with such fees, as may be prescribed by the Director.

### **(b) Qualified owners**

A qualified owner, under subsection (a), shall—

- (1) be a national of the United States;
- (2) be domiciled in the United States; or
- (3) have a real and effective industrial or commercial establishment in the United States.

(July 5, 1946, ch. 540, title XII, §61, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1915.)

## **§1141b. Certification of the international application**

### **(a) Certification procedure**

Upon the filing of an application for international registration and payment of the prescribed fees, the Director shall examine the international application for the purpose of certifying that the information contained in the international application corresponds to the information contained in the basic application or basic registration at the time of the certification.

### **(b) Transmittal**

Upon examination and certification of the international application, the Director shall transmit the international application to the International Bureau.

(July 5, 1946, ch. 540, title XII, §62, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1915.)

## **§1141c. Restriction, abandonment, cancellation, or expiration of a basic application or basic registration**

With respect to an international application transmitted to the International Bureau under section 1141b of this title, the Director shall notify the International Bureau whenever the basic application or basic registration which is the basis for the international application has been restricted, abandoned, or canceled, or has expired, with respect to some or all of the goods and services listed in the international registration—

- (1) within 5 years after the international registration date; or
- (2) more than 5 years after the international registration date if the restriction, abandonment, or cancellation of the basic application or basic registration resulted from an action that began before the end of that 5-year period.

(July 5, 1946, ch. 540, title XII, §63, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1915.)

## **§1141d. Request for extension of protection subsequent to international registration**

The holder of an international registration that is based upon a basic application filed with the United States Patent and Trademark Office or a basic registration granted by the Patent and

Trademark Office may request an extension of protection of its international registration by filing such a request—

- (1) directly with the International Bureau; or
- (2) with the United States Patent and Trademark Office for transmittal to the International Bureau, if the request is in such form, and contains such transmittal fee, as may be prescribed by the Director.

(July 5, 1946, ch. 540, title XII, §64, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1916.)

### **§1141e. Extension of protection of an international registration to the United States under the Madrid Protocol**

#### **(a) In general**

Subject to the provisions of section 1141h of this title, the holder of an international registration shall be entitled to the benefits of extension of protection of that international registration to the United States to the extent necessary to give effect to any provision of the Madrid Protocol.

#### **(b) If the United States is office of origin**

Where the United States Patent and Trademark Office is the office of origin for a trademark application or registration, any international registration based on such application or registration cannot be used to obtain the benefits of the Madrid Protocol in the United States.

(July 5, 1946, ch. 540, title XII, §65, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1916.)

### **§1141f. Effect of filing a request for extension of protection of an international registration to the United States**

#### **(a) Requirement for request for extension of protection**

A request for extension of protection of an international registration to the United States that the International Bureau transmits to the United States Patent and Trademark Office shall be deemed to be properly filed in the United States if such request, when received by the International Bureau, has attached to it a declaration of bona fide intention to use the mark in commerce that is verified by the applicant for, or holder of, the international registration.

#### **(b) Effect of proper filing**

Unless extension of protection is refused under section 1141h of this title, the proper filing of the request for extension of protection under subsection (a) shall constitute constructive use of the mark, conferring the same rights as those specified in section 1057(c) of this title, as of the earliest of the following:

- (1) The international registration date, if the request for extension of protection was filed in the international application.
- (2) The date of recordal of the request for extension of protection, if the request for extension of protection was made after the international registration date.
- (3) The date of priority claimed pursuant to section 1141g of this title.

(July 5, 1946, ch. 540, title XII, §66, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1916.)

### **§1141g. Right of priority for request for extension of protection to the United States**

The holder of an international registration with a request for an extension of protection to the United States shall be entitled to claim a date of priority based on a right of priority within the meaning of Article 4 of the Paris Convention for the Protection of Industrial Property if—

- (1) the request for extension of protection contains a claim of priority; and
- (2) the date of international registration or the date of the recordal of the request for extension of protection to the United States is not later than 6 months after the date of the first regular national filing (within the meaning of Article 4(A)(3) of the Paris Convention for the Protection of Industrial Property) or a subsequent application (within the meaning of Article 4(C)(4) of the Paris Convention for the Protection of Industrial Property).

(July 5, 1946, ch. 540, title XII, §67, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1917.)

## **§1141h. Examination of and opposition to request for extension of protection; notification of refusal**

### **(a) Examination and opposition**

(1) A request for extension of protection described in section 1141f(a) of this title shall be examined as an application for registration on the Principal Register under this chapter, and if on such examination it appears that the applicant is entitled to extension of protection under this subchapter, the Director shall cause the mark to be published in the Official Gazette of the United States Patent and Trademark Office.

(2) Subject to the provisions of subsection (c), a request for extension of protection under this subchapter shall be subject to opposition under section 1063 of this title.

(3) Extension of protection shall not be refused on the ground that the mark has not been used in commerce.

(4) Extension of protection shall be refused to any mark not registrable on the Principal Register.

### **(b) Notification of refusal**

If, <sup>1</sup> a request for extension of protection is refused under subsection (a), the Director shall declare in a notification of refusal (as provided in subsection (c)) that the extension of protection cannot be granted, together with a statement of all grounds on which the refusal was based.

### **(c) Notice to International Bureau**

(1) Within 18 months after the date on which the International Bureau transmits to the Patent and Trademark Office a notification of a request for extension of protection, the Director shall transmit to the International Bureau any of the following that applies to such request:

- (A) A notification of refusal based on an examination of the request for extension of protection.
- (B) A notification of refusal based on the filing of an opposition to the request.
- (C) A notification of the possibility that an opposition to the request may be filed after the end of that 18-month period.

(2) If the Director has sent a notification of the possibility of opposition under paragraph (1)(C), the Director shall, if applicable, transmit to the International Bureau a notification of refusal on the basis of the opposition, together with a statement of all the grounds for the opposition, within 7 months after the beginning of the opposition period or within 1 month after the end of the opposition period, whichever is earlier.

(3) If a notification of refusal of a request for extension of protection is transmitted under paragraph (1) or (2), no grounds for refusal of such request other than those set forth in such notification may be transmitted to the International Bureau by the Director after the expiration of the time periods set forth in paragraph (1) or (2), as the case may be.

(4) If a notification specified in paragraph (1) or (2) is not sent to the International Bureau within the time period set forth in such paragraph, with respect to a request for extension of protection, the

request for extension of protection shall not be refused and the Director shall issue a certificate of extension of protection pursuant to the request.

**(d) Designation of agent for service of process**

In responding to a notification of refusal with respect to a mark, the holder of the international registration of the mark may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person residing in the United States on whom notices or process in proceedings affecting the mark may be served. Such notices or process may be served upon the person designated by leaving with that person, or mailing to that person, a copy thereof at the address specified in the last designation filed. If the person designated cannot be found at the address given in the last designation, or if the holder does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person residing in the United States for service of notices or process in proceedings affecting the mark, the notice or process may be served on the Director.

(July 5, 1946, ch. 540, title XII, §68, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1917.)

*<sup>1</sup> So in original. The comma probably should not appear.*

**§1141i. Effect of extension of protection**

**(a) Issuance of extension of protection**

Unless a request for extension of protection is refused under section 1141h of this title, the Director shall issue a certificate of extension of protection pursuant to the request and shall cause notice of such certificate of extension of protection to be published in the Official Gazette of the United States Patent and Trademark Office.

**(b) Effect of extension of protection**

From the date on which a certificate of extension of protection is issued under subsection (a)—

(1) such extension of protection shall have the same effect and validity as a registration on the Principal Register; and

(2) the holder of the international registration shall have the same rights and remedies as the owner of a registration on the Principal Register.

(July 5, 1946, ch. 540, title XII, §69, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1918.)

**§1141j. Dependence of extension of protection to the United States on the underlying international registration**

**(a) Effect of cancellation of international registration**

If the International Bureau notifies the United States Patent and Trademark Office of the cancellation of an international registration with respect to some or all of the goods and services listed in the international registration, the Director shall cancel any extension of protection to the United States with respect to such goods and services as of the date on which the international registration was canceled.

**(b) Effect of failure to renew international registration**

If the International Bureau does not renew an international registration, the corresponding extension of protection to the United States shall cease to be valid as of the date of the expiration of the international registration.

**(c) Transformation of an extension of protection into a United States application**

The holder of an international registration canceled in whole or in part by the International Bureau at the request of the office of origin, under article 6(4) of the Madrid Protocol, may file an application, under section 1051 or 1126 of this title, for the registration of the same mark for any of the goods and services to which the cancellation applies that were covered by an extension of protection to the United States based on that international registration. Such an application shall be treated as if it had been filed on the international registration date or the date of recordal of the request for extension of protection with the International Bureau, whichever date applies, and, if the extension of protection enjoyed priority under section 1141g of this title, shall enjoy the same priority. Such an application shall be entitled to the benefits conferred by this subsection only if the application is filed not later than 3 months after the date on which the international registration was canceled, in whole or in part, and only if the application complies with all the requirements of this chapter which apply to any application filed pursuant to section 1051 or 1126 of this title.

(July 5, 1946, ch. 540, title XII, §70, as added Pub. L. 107-273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1918.)

## **§1141k. Duration, affidavits and fees**

### **(a) Time periods for required affidavits**

Each extension of protection for which a certificate has been issued under section 1141i of this title shall remain in force for the term of the international registration upon which it is based, except that the extension of protection of any mark shall be canceled by the Director unless the holder of the international registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the following time periods:

(1) Within the 1-year period immediately preceding the expiration of 6 years following the date of issuance of the certificate of extension of protection.

(2) Within the 1-year period immediately preceding the expiration of 10 years following the date of issuance of the certificate of extension of protection, and each successive 10-year period following the date of issuance of the certificate of extension of protection.

(3) The holder may file the affidavit required under this section within a grace period of 6 months after the end of the applicable time period established in paragraph (1) or (2), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director.

### **(b) Requirements for affidavit**

The affidavit referred to in subsection (a) shall—

(1)(A) state that the mark is in use in commerce;

(B) set forth the goods and services recited in the extension of protection on or in connection with which the mark is in use in commerce;

(C) be accompanied by such number of specimens or facsimiles showing current use of the mark in commerce as may be required by the Director; and

(D) be accompanied by the fee prescribed by the Director; or

(2)(A) set forth the goods and services recited in the extension of protection on or in connection with which the mark is not in use in commerce;

(B) include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

(C) be accompanied by the fee prescribed by the Director.

### **(c) Deficient affidavit**

If any submission filed within the period set forth in subsection (a) is deficient, including that the affidavit was not filed in the name of the holder of the international registration, the deficiency may be corrected after the statutory time period, within the time prescribed after notification of the deficiency. Such submission shall be accompanied by the additional deficiency surcharge prescribed by the Director.

**(d) Notice of requirement**

Special notice of the requirement for such affidavit shall be attached to each certificate of extension of protection.

**(e) Notification of acceptance or refusal**

The Director shall notify the holder of the international registration who files any affidavit required by this section of the Director's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

**(f) Designation of resident for service of process and notices**

If the holder of the international registration of the mark is not domiciled in the United States, the holder may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the last designated address, or if the holder does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.

(July 5, 1946, ch. 540, title XII, §71, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1919; amended Pub. L. 111–146, §3(d)(2), Mar. 17, 2010, 124 Stat. 68.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2010**—Pub. L. 111–146 amended section generally. Prior to amendment, section related to required affidavits and fees, contents of affidavit, notification of Director's acceptance or refusal, and service of notice or process.

**§1141l. Assignment of an extension of protection**

An extension of protection may be assigned, together with the goodwill associated with the mark, only to a person who is a national of, is domiciled in, or has a bona fide and effective industrial or commercial establishment either in a country that is a Contracting Party or in a country that is a member of an intergovernmental organization that is a Contracting Party.

(July 5, 1946, ch. 540, title XII, §72, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1920.)

**§1141m. Incontestability**

The period of continuous use prescribed under section 1065 of this title for a mark covered by an extension of protection issued under this subchapter may begin no earlier than the date on which the Director issues the certificate of the extension of protection under section 1141i of this title, except as provided in section 1141n of this title.

(July 5, 1946, ch. 540, title XII, §73, as added Pub. L. 107–273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1920.)

**§1141n. Rights of extension of protection**

When a United States registration and a subsequently issued certificate of extension of protection to the United States are owned by the same person, identify the same mark, and list the same goods

or services, the extension of protection shall have the same rights that accrued to the registration prior to issuance of the certificate of extension of protection.

(July 5, 1946, ch. 540, title XII, §74, as added Pub. L. 107-273, div. C, title III, §13402, Nov. 2, 2002, 116 Stat. 1920.)

## **CHAPTER 23—DISSEMINATION OF TECHNICAL, SCIENTIFIC AND ENGINEERING INFORMATION**

Sec.

- 1151. Purpose of chapter.
- 1152. Clearinghouse for technical information; removal of security classification.
- 1153. Rules, regulations, and fees.
- 1153a. Repealed.
- 1154. Reference of data to armed services and other Government agencies.
- 1155. General standards and limitations; preservation of security classification.
- 1156. Use of existing facilities.
- 1157. Relation to other provisions.

### **§1151. Purpose of chapter**

The purpose of this chapter is to make the results of technological research and development more readily available to industry and business, and to the general public, by clarifying and defining the functions and responsibilities of the Department of Commerce as a central clearinghouse for technical information which is useful to American industry and business.

(Sept. 9, 1950, ch. 936, §1, 64 Stat. 823.)

### **§1152. Clearinghouse for technical information; removal of security classification**

The Secretary of Commerce (hereinafter referred to as the "Secretary") is directed to establish and maintain within the Department of Commerce a clearinghouse for the collection and dissemination of scientific, technical, and engineering information, and to this end to take such steps as he may deem necessary and desirable—

(a) To search for, collect, classify, coordinate, integrate, record, and catalog such information from whatever sources, foreign and domestic, that may be available;

(b) To make such information available to industry and business, to State and local governments, to other agencies of the Federal Government, and to the general public, through the preparation of abstracts, digests, translations, bibliographies, indexes, and microfilm and other reproductions, for distribution either directly or by utilization of business, trade, technical, and scientific publications and services;

(c) To effect, within the limits of his authority as now or hereafter defined by law, and with the consent of competent authority, the removal of restrictions on the dissemination of scientific and technical data in cases where consideration of national security permit the release of such data for the benefit of industry and business.

(Sept. 9, 1950, ch. 936, §2, 64 Stat. 823.)

### **§1153. Rules, regulations, and fees**

The Secretary is authorized to make, amend, and rescind such orders, rules, and regulations as he may deem necessary to carry out the provisions of this chapter, and to establish, from time to time, a schedule or schedules of reasonable fees or charges for services performed or for documents or other



publications furnished under this chapter.

It is the policy of this chapter, to the fullest extent feasible and consistent with the objectives of this chapter, that each of the services and functions provided herein shall be self-sustaining or self-liquidating and that the general public shall not bear the cost of publications and other services which are for the special use and benefit of private groups and individuals; but nothing herein shall be construed to require the levying of fees or charges for services performed or publications furnished to any agency or instrumentality of the Federal Government, or for publications which are distributed pursuant to reciprocal arrangements for the exchange of information or which are otherwise issued primarily for the general benefit of the public.

(Sept. 9, 1950, ch. 936, §3, 64 Stat. 823; Pub. L. 91-412, §3(e), Sept. 25, 1970, 84 Stat. 864.)

## EDITORIAL NOTES

### AMENDMENTS

**1970**—Pub. L. 91-412 struck out provisos of first par. for deposit of moneys received for services and publications after Sept. 9, 1950, in a special account in the Treasury, to be available, subject to appropriation authorizations, for reimbursement of appropriations and for refunds to organizations and individuals entitled thereto, and making appropriations reimbursed by the special account available for original purposes. See section 1526 of this title.

### **§1153a. Repealed. Pub. L. 91-412, §3(f), Sept. 25, 1970, 84 Stat. 865**

Section, act Oct. 22, 1951, ch. 533, title III, §301, 65 Stat. 586, provided for reimbursement of appropriations. See section 1526 of this title.

### **§1154. Reference of data to armed services and other Government agencies**

The Secretary is directed to refer to the armed services all scientific or technical information, coming to his attention, which he deems to have an immediate or potential practical military value or significance, and to refer to the heads of other Government agencies such scientific or technical information as relates to activities within the primary responsibility of such agencies.

(Sept. 9, 1950, ch. 936, §4, 64 Stat. 824.)

### **§1155. General standards and limitations; preservation of security classification**

Notwithstanding any other provision of this chapter, the Secretary shall respect and preserve the security classification of any scientific or technical information, data, patents, inventions, or discoveries in, or coming into, the possession or control of the Department of Commerce, the classified status of which the President or his designee or designees certify as being essential in the interest of national defense, and nothing in this chapter shall be construed as modifying or limiting any other statute relating to the classification of information for reasons of national defense or security.

(Sept. 9, 1950, ch. 936, §5, 64 Stat. 824.)

### **§1156. Use of existing facilities**

#### **(a) Available assistance**

The Secretary may utilize any personnel, facilities, bureaus, agencies, boards, administrations, offices, or other instrumentalities of the Department of Commerce which he may require to carry out the purposes of this chapter.

**(b) Cooperation of other agencies**

The Secretary is authorized to call upon other departments and independent establishments and agencies of the Government to provide, with their consent, such available services, facilities, or other cooperation as he shall deem necessary or helpful in carrying out the provisions of this chapter, and he is directed to utilize existing facilities to the full extent deemed feasible.

(Sept. 9, 1950, ch. 936, §6, 64 Stat. 824.)

**§1157. Relation to other provisions**

Nothing in this chapter shall be construed to repeal or amend any other legislation pertaining to the Department of Commerce or its component offices or bureaus.

(Sept. 9, 1950, ch. 936, §7, 64 Stat. 824.)

**CHAPTER 24—TRANSPORTATION OF GAMBLING DEVICES**

Sec.

- 1171. Definitions.
- 1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission.
- 1173. Registration of manufacturers and dealers.
- 1174. Labeling and marking of shipping packages.
- 1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited; exceptions.
- 1176. Penalties.
- 1177. Confiscation of gambling devices and means of transportation; laws governing.
- 1178. Nonapplicability of chapter to certain machines and devices.

**§1171. Definitions**

As used in this chapter—

(a) The term "gambling device" means—

(1) any so-called "slot machine" or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

(b) The term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term "possession of the United States" means any possession of the United States which is not named in paragraph 1 (b) of this section.

(d) The term "interstate or foreign commerce" means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

(e) The term "intrastate commerce" means commerce wholly within one State or possession of the United States.

(f) The term "boundaries" has the same meaning given that term in section 1301 of title 43.

(Jan. 2, 1951, ch. 1194, §1, 64 Stat. 1134; Pub. L. 87–840, §§2, 3, Oct. 18, 1962, 76 Stat. 1075; Pub. L. 102–251, title II, §202(c), Mar. 9, 1992, 106 Stat. 62.)

## EDITORIAL NOTES

### AMENDMENTS

**1992**—Subsec. (f). Pub. L. 102–251 added subsec. (f).

**1962**—Subsec. (a)(2), (3). Pub. L. 87–840, §2, substituted provisions including machines and mechanical devices designed and manufactured primarily for gambling by the operation of which a person may become entitled to receive, as the result of chance, any money or property, for provisions which included machines or mechanical devices designed and manufactured to operate by inserting a coin, token, or similar object, in par. (2), and inserted ", but which is not attached to any such machine or mechanical device as a constituent part", in par. (3).

Subsec. (b). Pub. L. 87–840, §3, substituted "the District of Columbia" for "Alaska, Hawaii".

Subsecs. (d), (e). Pub. L. 87–840, §3, added subsecs. (d) and (e).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1962 AMENDMENT

Pub. L. 87–840, §7, Oct. 18, 1962, 76 Stat. 1077, provided that: "The amendments made by this Act [enacting section 1178 of this title and amending this section and sections 1172 and 1173 of this title] shall take effect on the sixtieth day after the date of its enactment [Oct. 18, 1962]."

### SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87–840, §1, Oct. 18, 1962, 76 Stat. 1075, provided: "That this Act [enacting section 1178 of this title and amending this section and sections 1172 and 1173 of this title] may be cited as the 'Gambling Devices Act of 1962'."

### SHORT TITLE

Act Jan. 2, 1951, which enacted this chapter and a note set out under this section, is popularly known as the "Gambling Devices Transportation Act".

### SEPARABILITY

Act Jan. 2, 1951, ch. 1194, §8, 64 Stat. 1136, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act [this chapter] which can be given effect without the invalid provision or application, and to this end the provisions of this Act [this chapter] are declared to be severable."

*<sup>1</sup> So in original. Probably should be "subsection".*

## **§1172. Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission**

### **(a) General rule**

It shall be unlawful knowingly to transport any gambling device to any place in a State or a possession of the United States from any place outside of such State or possession: *Provided*, That this section shall not apply to transportation of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed

gambling establishments where betting is legal under applicable State laws: *Provided, further*, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

**(b) Authority of Federal Trade Commission**

Nothing in this chapter shall be construed to interfere with or reduce the authority, or the existing interpretation of the authority, of the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et. seq.].

**(c) Exception**

This section does not prohibit the transport of a gambling device to a place in a State or a possession of the United States on a vessel on a voyage, if—

(1) use of the gambling device on a portion of that voyage is, by reason of subsection (b) of section 1175 of this title, not a violation of that section; and

(2) the gambling device remains on board that vessel while in that State.

(Jan. 2, 1951, ch. 1194, §2, 64 Stat. 1134; Pub. L. 87–840, §4, Oct. 18, 1962, 76 Stat. 1075; Pub. L. 102–251, title II, §202(a), Mar. 9, 1992, 106 Stat. 61.)

**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.

**AMENDMENTS**

**1992**—Pub. L. 102–251, §202(a)(1), (3), (4), designated existing provisions as subsecs. (a) and (b), inserted headings, and added subsec. (c).

Pub. L. 102–251, §202(a)(2), which directed that ", District of Columbia," be struck out in subsec. (a), was executed by striking out ", the District of Columbia," after "place in a State" and "outside of such State" to reflect the probable intent of Congress.

**1962**—Pub. L. 87–840 excepted gambling devices used or designed for use at and transported to licensed gambling establishments where betting is legal under State laws, and provided that it shall not be unlawful to transport such devices into any State in which the device is specifically enumerated as lawful in a State statute.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 1962 AMENDMENT**

Amendment effective on sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87–840, set out as a note under section 1171 of this title.

**§1173. Registration of manufacturers and dealers**

**(a) Activities requiring registration; contents of registration statement**

(1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless, after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any

gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30, of the preceding calendar year and before the date on which he buys or receives such device, such person has registered with the Attorney General under this subsection.

(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his places of business in any State or possession of the United States, (C) the address of a place, in a State or possession of the United States in which such a place of business is located, where he will keep all records required to be kept by him by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

#### **(b) Numbering of devices**

(1) Every manufacturer of a gambling device defined in paragraph (a)(1) or (a)(2) of section 1171 of this title shall number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(2) Every manufacturer of a gambling device defined in paragraph (a)(3) of section 1171 of this title shall, if the size of such device permits it, number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

#### **(c) Records; required information**

(1) Every person required to register under subsection (a) of this section for any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of—

- (A) each gambling device manufactured, purchased, or otherwise acquired by him,
- (B) each gambling device owned or possessed by him or in his custody, and
- (C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

(2) Such record shall show—

(A) in the case of each such gambling device defined in paragraph (a)(1) or (a)(2) of section 1171 of this title, the information which is required to be affixed on such gambling device by subsection (b)(1) of this section; and

(B) in the case of each such gambling device defined in paragraph (a)(3) of section 1171 of this title, the information required to be affixed on such gambling device by subsection (b)(2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location.

Such record shall also show (i) in the case of any such gambling device described in paragraph (1)(A) of this subsection, the name and address of the person from whom such device was purchased

or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1)(C) of this subsection, the name and address of the buyer and consignee thereof and the name and address of the carrier.

**(d) Retention of records**

Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a)(4)(C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

**(e) Dealing in, owning, possessing, or having custody of devices not marked or numbered; false entries in records**

(1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

**(f) Authority of Federal Bureau of Investigation**

Agents of the Federal Bureau of Investigation shall, at any place designated pursuant to subsection (a)(4)(C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and, in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the United States district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

(Jan. 2, 1951, ch. 1194, §3, 64 Stat. 1135; Pub. L. 87-840, §5, Oct. 18, 1962, 76 Stat. 1075.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The effective date of the Gambling Devices Act of 1962, referred to in subsec. (a)(2), (3), is the effective date of Pub. L. 87-840, which is the sixtieth day after Oct. 18, 1962. See Effective Date of 1962 Amendment note set out under section 1171 of this title.

**AMENDMENTS**

**1962**—Pub. L. 87-840 amended section generally. Prior to amendment, section read as follows: "Upon first engaging in business, and thereafter on or before the 1st day of July of each year, every manufacturer of and dealer in gambling devices shall register with the Attorney General his name or trade name, the address of his principal place of business, and the addresses of his places of business in such district. On or before the last day of each month every manufacturer of and dealer in gambling devices shall file with the Attorney General an inventory and record of all sales and deliveries of gambling devices as of the close of the preceding calendar month for the place or places of business in the district. The monthly record of sales and deliveries of such gambling devices shall show the mark and number identifying each article together with the name and address of the buyer or consignee thereof and the name and address of the carrier. Duplicate bills or invoices, if complete in the foregoing respects, may be used in filing the record of sales and deliveries. For the purposes of this chapter, every manufacturer or dealer shall mark and number each gambling device, so that it is individually identifiable. In cases of sale, delivery, or shipment of gambling devices in unassembled form, the manufacturer or dealer shall separately mark and number the components of each gambling device with a common mark and number as if it were an assembled gambling device. It shall be unlawful for any manufacturer or dealer to sell, deliver, or ship any gambling device which is not marked and numbered for

identification as herein provided; and it shall be unlawful for any manufacturer or dealer to manufacture, recondition, repair, sell, deliver, or ship any gambling device without having registered as required by this section, or without filing monthly the required inventories and records of sales and deliveries."

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1962 AMENDMENT**

Amendment effective on sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as a note under section 1171 of this title.

### **§1174. Labeling and marking of shipping packages**

All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article or package.

(Jan. 2, 1951, ch. 1194, §4, 64 Stat. 1135.)

### **§1175. Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited; exceptions**

#### **(a) General rule**

It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of title 18 or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of title 18, including on a vessel documented under chapter 121 of title 46 or documented under the laws of a foreign country.

#### **(b) Exception**

##### **(1) In general**

Except for a voyage or a segment of a voyage that begins and ends in the State of Hawaii, or as provided in paragraph (2), this section does not prohibit—

(A) the repair, transport, possession, or use of a gambling device on a vessel that is not within the boundaries of any State or possession of the United States;

(B) the transport or possession, on a voyage, of a gambling device on a vessel that is within the boundaries of any State or possession of the United States, if—

(i) use of the gambling device on a portion of that voyage is, by reason of subparagraph (A), not a violation of this section; and

(ii) the gambling device remains on board that vessel while the vessel is within the boundaries of that State or possession; or

(C) the repair, transport, possession, or use of a gambling device on a vessel on a voyage that begins in the State of Indiana and that does not leave the territorial jurisdiction of that State, including such a voyage on Lake Michigan.

##### **(2) Application to certain voyages**

###### **(A) General rule**

Paragraph (1)(A) does not apply to the repair or use of a gambling device on a vessel that is on a voyage or segment of a voyage described in subparagraph (B) of this paragraph if the State or possession of the United States in which the voyage or segment begins and ends has enacted a statute the terms of which prohibit that repair or use on that voyage or segment.

**(B) Voyage and segment described**

A voyage or segment of a voyage referred to in subparagraph (A) is a voyage or segment, respectively—

- (i) that begins and ends in the same State or possession of the United States, and
- (ii) during which the vessel does not make an intervening stop within the boundaries of another State or possession of the United States or a foreign country.

**(C) Exclusion of certain voyages and segments**

Except for a voyage or segment of a voyage that occurs within the boundaries of the State of Hawaii, a voyage or segment of a voyage is not described in subparagraph (B) if it includes or consists of a segment—

- (i) that begins and ends in the same State;
- (ii) that is part of a voyage to another State or to a foreign country; and
- (iii) in which the vessel reaches the other State or foreign country within 3 days after leaving the State in which it begins.

**(c) Exception for Alaska**

(1) With respect to a vessel operating in Alaska, this section does not prohibit, nor may the State of Alaska make it a violation of law for there to occur, the repair, transport, possession, or use of any gambling device on board a vessel which provides sleeping accommodations for all of its passengers and that is on a voyage or segment of a voyage described in paragraph (2), except that such State may, within its boundaries—

- (A) prohibit the use of a gambling device on a vessel while it is docked or anchored or while it is operating within 3 nautical miles of a port at which it is scheduled to call; and
- (B) require the gambling devices to remain on board the vessel.

(2) A voyage referred to in paragraph (1) is a voyage that—

- (A) includes a stop in Canada or in a State other than the State of Alaska;
- (B) includes stops in at least 2 different ports situated in the State of Alaska; and
- (C) is of at least 60 hours duration.

(Jan. 2, 1951, ch. 1194, §5, 64 Stat. 1135; Pub. L. 102–251, title II, §202(b), Mar. 9, 1992, 106 Stat. 61; Pub. L. 104–264, title XII, §1222, Oct. 9, 1996, 110 Stat. 3286; Pub. L. 104–324, title XI, §1106, Oct. 19, 1996, 110 Stat. 3967; Pub. L. 106–554, §1(a)(4) [div. B, title I, §147], Dec. 21, 2000, 114 Stat. 2763, 2763A–251.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2000**—Subsec. (b)(1). Pub. L. 106–554 inserted "for a voyage or a segment of a voyage that begins and ends in the State of Hawaii, or" after "Except" in introductory provisions.

**1996**—Subsec. (b)(1)(C). Pub. L. 104–324, §1106(b), added subpar. (C).

Subsec. (b)(2)(C). Pub. L. 104–264, §1222, and Pub. L. 104–324, §1106(a), made substantially identical amendments, adding subpar. (C). The text of subpar. (C) is based on amendment by Pub. L. 104–324.

Subsec. (c). Pub. L. 104–324, §1106(c), added subsec. (c).

**1992**—Subsec. (a). Pub. L. 102–251, §202(b)(1), (2), designated existing provisions as subsec. (a), inserted heading, and inserted before period at end ", including on a vessel documented under chapter 121 of title 46 or documented under the laws of a foreign country".

Subsec. (b). Pub. L. 102–251, §202(b)(3), added subsec. (b).

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 1996 AMENDMENT**

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year



ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of Title 49, Transportation.

## **§1176. Penalties**

Whoever violates any of the provisions of sections 1172, 1173, 1174, or 1175 of this title shall be fined not more than \$5,000 or imprisoned not more than two years, or both.

(Jan. 2, 1951, ch. 1194, §6, 64 Stat. 1135.)

## **§1177. Confiscation of gambling devices and means of transportation; laws governing**

Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this chapter shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof: *Provided*, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this chapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

(Jan. 2, 1951, ch. 1194, §7, 64 Stat. 1135.)

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

Offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise in Bureau of Customs of Department of the Treasury to which appointments were required to be made by President with advice and consent of Senate ordered abolished with such offices to be terminated not later than Dec. 31, 1966, by Reorg. Plan No. 1 of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. Functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

## **§1178. Nonapplicability of chapter to certain machines and devices**

None of the provisions of this chapter shall be construed to apply—

(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with parimutuel betting,

(2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or

(3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or State fairs.

(Jan. 2, 1951, ch. 1194, §9, as added Pub. L. 87-840, §6, Oct. 18, 1962, 76 Stat. 1077.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective on sixtieth day after Oct. 18, 1962, see section 7 of Pub. L. 87-840, set out as an Effective Date of 1962 Amendment note under section 1171 of this title.

## CHAPTER 25—FLAMMABLE FABRICS

Sec.

- 1191. Definitions.
- 1192. Prohibited transactions.
- 1193. Flammability standards or regulations.
- 1194. Administration and enforcement.
- 1195. Injunction and condemnation proceedings.
- 1196. Penalties.
- 1197. Guaranties.
- 1198. Shipments from foreign countries; demand for redelivery; claim for liquidated damages.
- 1199. Chapter as additional legislation.
- 1200. Persons excluded from operation of chapter.
- 1201. Study and investigation; research, development and training.
- 1202. Exemptions.
- 1203. Preemption of Federal standards.
- 1204. Congressional veto of flammability regulations.

### §1191. Definitions

As used in this chapter—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise.

(b) The term "commerce" means commerce among the several States or with foreign nations or in any territory of the United States or in the District of Columbia or between any such territory and another, or between any such territory and any State or foreign nation, or between the District of Columbia or the Commonwealth of Puerto Rico and any State or territory or foreign nation, or between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.

(c) The term "territory" includes the insular possessions of the United States and also any territory of the United States.

(d) The term "article of wearing apparel" means any costume or article of clothing worn or intended to be worn by individuals.

(e) The term "interior furnishing" means any type of furnishing made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used, in homes, offices, or other places of assembly or accommodation.

(f) The term "fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any natural or synthetic fiber, film, or substitute therefor which is intended for use or which may reasonably be expected to be used, in any product as defined in subsection (h).

(g) The term "related material" means paper, plastic, rubber, synthetic film, or synthetic foam which is intended for use or which may reasonably be expected to be used in any product as defined in subsection (h).

(h) The term "product" means any article of wearing apparel or interior furnishing.

(i) The term "Commission" means the Consumer Product Safety Commission.

(j) The term "Federal Trade Commission Act" means the Act of Congress entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, §2, 67 Stat. 111; Pub. L. 90–189, §1, Dec. 14, 1967, 81 Stat. 568; Pub. L. 110–314, title II, §204(c)(2)(A), Aug. 14, 2008, 122 Stat. 3042.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in par. (j), 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**

**2008**—Par. (i). Pub. L. 110–314 added par. (i) and struck out former par. (i) which read as follows: "The term 'Commission' means the Federal Trade Commission."

**1967**—Par. (b). Pub. L. 90–189, §1(1), reduced from capital to lower-case the first letter of "territory" wherever appearing and redefined "commerce" to include commerce between the Commonwealth of Puerto Rico and any State or territory or foreign nation or the District of Columbia.

Par. (c). Pub. L. 90–189, §1(2), reduced from capital to lower-case the first letter of "territory" wherever appearing.

Par. (d). Pub. L. 90–189, §1(3), struck out provisions which excepted hats, gloves, and footwear from definition of "article of wearing apparel" provided that: such hats did not constitute or form part of a covering for the neck, face, or shoulders when worn by individuals; such gloves were not more than fourteen inches in length and were not affixed to or did not form an integral part of another garment; and such footwear did not consist of hosiery in whole or in part and was not affixed to or did not form an integral part of another garment.

Par. (e). Pub. L. 90–189, §1(5), (6), added par. (e) and redesignated former par. (e) as (f).

Par. (f). Pub. L. 90–189, §1(4), (5), (7), redesignated par. (e) as (f), substituted "(except fiber, filament, or yarn for other than retail sale)" for "(other than fiber, filament, or yarn)" and "for use or which may reasonably be expected to be used, in any product as defined in subsection (h)" for "or sold for use in wearing apparel except that interlining fabrics when intended or sold for use in wearing apparel shall not be subject to this chapter", and struck out former par. (f) which defined "interlining".

Pars. (g) to (j). Pub. L. 90–189, §1(5), (8), added pars. (g) and (h) and redesignated former pars. (g) and (h) as (i) and (j), respectively.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE**

Act June 30, 1953, ch. 164, §12, 67 Stat. 115, provided: "This Act [enacting this chapter] shall take effect one year after the date of its passage [June 30, 1953]."

### **SHORT TITLE**

Act June 30, 1953, ch. 164, §1, 67 Stat. 111, provided: "This Act [enacting this chapter] may be cited as the 'Flammable Fabrics Act'."

### **SAVINGS PROVISION**

Pub. L. 90–189, §11, Dec. 14, 1967, 81 Stat. 574, provided that: "Notwithstanding the provisions of this Act [amending this section and sections 1192 to 1195, 1197, 1198, and 1200 of this title and enacting sections 1201 to 1204 of this title], the standards of flammability in effect under the provisions of the Flammable Fabrics Act, as amended [this chapter], on the day preceding the date of enactment of this Act [Dec. 14, 1967], shall continue in effect for the fabrics and articles of wearing apparel to which they are applicable until superseded or modified by the Secretary of Commerce pursuant to the authority conferred by the amendments made by this Act."

### **APPROPRIATIONS**

Act June 30, 1953, ch. 164, §13, 67 Stat. 115, as amended by Pub. L. 90-189, §9, Dec. 14, 1967, 81 Stat. 573; Pub. L. 92-542, Oct. 25, 1972, 86 Stat. 1108, appropriated \$1,500,000 for the fiscal year ending June 30, 1968, \$2,250,000 each for the fiscal year ending June 30, 1969, and the fiscal year ending June 30, 1970, and \$4,000,000 for the fiscal year ending June 30, 1973, to carry out the provisions of this chapter.

### **COVID-19 REGULATORY RELIEF AND WORK FROM HOME SAFETY ACT**

Pub. L. 116-260, div. FF, title XXI, §2101, Dec. 27, 2020, 134 Stat. 3303, provided that:

"(a) **SHORT TITLE.**—This title may be cited as the 'COVID-19 Regulatory Relief and Work From Home Safety Act'.

"(b) **DEFINITIONS.**—In this Act [probably means "this title"]—

"(1) the term 'bedding product' means—

"(A) an item that is used for sleeping or sleep-related purposes; or

"(B) any component or accessory with respect to an item described in subparagraph (A), without regard to whether the component or accessory, as applicable, is used—

"(i) alone; or

"(ii) along with, or contained within, that item;

"(2) the term 'California standard' means the standard set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117-2013, entitled 'Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture', originally published June 2013, as in effect on the date of enactment of this Act [Dec. 27, 2020];

"(3) the terms 'foundation' and 'mattress' have the meanings given those terms in section 1633.2 of title 16, Code of Federal Regulations, as in effect on the date of enactment of this Act [Dec. 27, 2020]; and

"(4) the term 'upholstered furniture'—

"(A) means an article of seating furniture that—

"(i) is intended for indoor use;

"(ii) is movable or stationary;

"(iii) is constructed with an upholstered seat, back, or arm;

"(iv) is—

"(I) made or sold with a cushion or pillow, without regard to whether that cushion or pillow, as applicable, is attached or detached with respect to the article of furniture; or

"(II) stuffed or filled, or able to be stuffed or filled, in whole or in part, with any material, including a substance or material that is hidden or concealed by fabric or another covering, including a cushion or pillow belonging to, or forming a part of, the article of furniture; and

"(v) together with the structural units of the article of furniture, any filling material, and the container and covering with respect to those structural units and that filling material, can be used as a support for the body of an individual, or the limbs and feet of an individual, when the individual sits in an upright or reclining position;

"(B) includes an article of furniture that is intended for use by a child; and

"(C) does not include—

"(i) a mattress;

"(ii) a foundation;

"(iii) any bedding product; or

"(iv) furniture that is used exclusively for the purpose of physical fitness and exercise.

"(c) **ADOPTION OF STANDARD.**—

"(1) **IN GENERAL.**—Beginning on the date that is 180 days after the date of enactment of this Act [Dec. 27, 2020], and except as provided in paragraph (2), the California standard shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).

"(2) **TESTING AND CERTIFICATION.**—A fabric, related material, or product to which the California standard applies as a result of paragraph (1) shall not be subject to section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)) with respect to that standard.

"(3) **CERTIFICATION LABEL.**—Each manufacturer of a product that is subject to the California standard as a result of paragraph (1) shall include the statement 'Complies with U.S. CPSC requirements for upholstered furniture flammability' on a permanent label located on the product, which shall be considered to be a certification that the product complies with that standard.

"(d) **PREEMPTION.**—

"(1) **IN GENERAL.**—Notwithstanding section 16 of the Flammable Fabrics Act (15 U.S.C. 1203) and

section 231 of the Consumer Product Safety Improvement Act of 2008 [Pub. L. 110–314] (15 U.S.C. 2051 note), and except as provided in subparagraphs (B) and (C) of paragraph (2), no State or any political subdivision of a State may establish or continue in effect any provision of a flammability law, regulation, code, standard, or requirement that is designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture.

"(2) PRESERVATION OF CERTAIN STATE LAW.—Nothing in this Act [probably means "this title"] or the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) may be construed to preempt or otherwise affect—

"(A) any State or local law, regulation, code, standard, or requirement that—

"(i) concerns health risks associated with upholstered furniture; and

"(ii) is not designed to protect against the risk of occurrence of fire, or to slow or prevent the spread of fire, with respect to upholstered furniture;

"(B) sections 1374 through 1374.3 of title 4, California Code of Regulations (except for subsections (b) and (c) of section 1374 of that title), as in effect on the date of enactment of this Act [Dec. 27, 2020]; or

"(C) the California standard."

## HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this chapter or regulations promulgated thereunder, see Pub. L. 86–613, §18, (formerly §17), July 12, 1960, 74 Stat. 380, as amended Pub. L. 89–756, §4(a), Nov. 3, 1966, 80 Stat. 1305; renumbered and amended Pub. L. 91–113, §4(a), (b)(1), Nov. 6, 1969, 83 Stat. 190, set out as a note under section 1261 of this title.

## §1192. Prohibited transactions

### (a) Nonconforming products

The manufacture for sale, the sale, or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported, in commerce, or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 1193 of this title, shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

### (b) Nonconforming components

The manufacture for sale, the sale, or the offering for sale, of any product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 1193 of this title, and which has been shipped or received in commerce shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(June 30, 1953, ch. 164, §3, 67 Stat. 111; Pub. L. 90–189, §2, Dec. 14, 1967, 81 Stat. 568.)

## 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.

## AMENDMENTS

**1967**—Subsec. (a). Pub. L. 90–189 substituted "or the sale or delivery after a sale or shipment in commerce, of any product, fabric, or related material which fails to conform to an applicable standard or regulation issued or amended under the provisions of section 1193 of this title" for "or for the purpose of sale or delivery after sale in commerce, of any article of wearing apparel which under the provisions of section 1193 of this title is so highly flammable as to be dangerous when worn by individuals".

Subsecs. (b), (c). Pub. L. 90-189 struck out former subsec. (b) which made the sale or the offering for sale, in commerce, or the importation into the United States, or the introduction, delivery for introduction, transportation or causing to be transported in commerce or for the purpose of sale or delivery after sale in commerce, of any fabric which under the provisions of section 1193 of this title was so highly flammable as to be dangerous when worn by individuals unlawful and an unfair method of competition and an unfair and deceptive act or practice in commerce under the Federal Trade Commission Act, redesignated subsec. (c) as (b) and, in subsec. (b) as so redesignated, substituted "product made of fabric or related material which fails to conform to an applicable standard or regulation issued or amended under section 1193 of this title" for "article of wearing apparel made of fabric which under section 1193 of this title is so highly flammable as to be dangerous when worn by individuals".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TRANSFER OF FUNCTIONS**

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

## **§1193. Flammability standards or regulations**

### **(a) Proceedings by Commission for determination**

Whenever the Commission finds on the basis of the investigations or research conducted pursuant to section 1201 of this title that a new or amended flammability standard or other regulation, including labeling, for a fabric, related material, or product may be needed to protect the public against unreasonable risk of the occurrence of fire leading to death or personal injury, or significant property damage, it shall institute proceedings for the determination of an appropriate flammability standard (including conditions and manner of testing) or other regulation or amendment thereto for such fabric, related material, or product.

### **(b) Necessary findings; effective date; exemptions**

Each standard, regulation, or amendment thereto promulgated pursuant to this section shall be based on findings that such standard, regulation, or amendment thereto is needed to adequately protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, is reasonable, technologically practicable, and appropriate, is limited to such fabrics, related materials, or products which have been determined to present such unreasonable risks, and shall be stated in objective terms. Each such standard, regulation, or amendment thereto, shall become effective twelve months from the date on which such standard, regulation, or amendment is promulgated, unless the Commission finds for good cause shown that an earlier or later effective date is in the public interest and publishes the reason for such finding. Each such standard or regulation or amendment thereto shall exempt fabrics related materials, or products in inventory or with the trade as of the date on which the standard, regulation, or amendment thereto, becomes effective except that, if the Commission finds that any such fabric, related material, or product is so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended, it may under such conditions as the Commission may prescribe, withdraw, or limit the exemption for such fabric, related material, or product.

### **(c) Collection of information by Commission; confidential status of trade secrets and related information; disclosure of confidential information**

The Commission may obtain from any person by regulation or subpoena issued pursuant thereto such information in the form of testimony, books, records, or other writings as is pertinent to the findings or determinations which it is required or authorized to make pursuant to this chapter. All information reported to or otherwise obtained by the Commission or its representative pursuant to this subsection which information contains or relates to a trade secret or other matter referred to in

section 1905 of title 18, shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Commission or any officer or employee under its control, from the duly authorized committees of the Congress.

**(d) Applicability of section 553 of title 5; oral presentation**

Standards, regulations, and amendments to standards and regulations under this section shall be made in accordance with section 553 of title 5, except that interested persons shall be given an opportunity for the oral presentation of data, views, or arguments in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.

**(e) Judicial review; additional information before Commission; applicability of sections 701 to 706 of title 5; finality of judgment; survival of action**

(1) Any person who will be adversely affected by any such standard or regulation or amendment thereto when it is effective may at any time prior to the sixtieth day after such standard or regulation or amendment thereto is issued file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by him <sup>1</sup> for that purpose. The Commission thereupon shall file in the court the record of the proceedings on which the Commission based the standard or regulation, as provided in section 2112 of title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission, and to be adduced upon the hearing, in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendations, if any, for the modification or setting aside of its original standard or regulation or amendment thereto, with the return of such additional evidence.

(3) Upon the filing of the petition referred to in paragraph (1) of this subsection, the court shall have jurisdiction to review the standard or regulation in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. The standard or regulation shall not be affirmed unless the findings required by the first sentence of subsection (b) are supported by substantial evidence on the record taken as a whole. For purposes of this paragraph, the term "record" means the standard or regulation, any notice published with respect to the promulgation of such standard or regulation, the transcript required by subsection (d) of any oral presentation, any written submission of interested parties, and any other information which the Commission considers relevant to such standard or regulation.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such standard or regulation of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(5) The remedies provided for in this subsection shall be in addition to and not in substitution for any other remedies provided by law.

**(f) Transcript of proceedings**

A certified copy of the transcript of the record and proceedings under subsection (e) shall be furnished by the Commission to any interested party at his request, and payment of the costs thereof, and shall be admissible in any criminal, exclusion of imports, or other proceeding arising under or in respect of this chapter, irrespective of whether proceedings with respect to the standard or regulation or amendment thereto have previously been initiated or become final under subsection (e).

**(g) Promulgation of regulation; commencement of proceeding; publication of prescribed notice of proposed rulemaking**

A proceeding for the promulgation of a regulation under this section for a fabric, related material, or product may be commenced by a notice of proposed rulemaking or by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

(1) identify the fabric, related material, or product and the nature of the risk of injury associated with the fabric, related material, or product;

(2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary standards);

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);

(4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;

(5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed regulation.<sup>2</sup>

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

**(h) Voluntary standard; publication as proposed regulation; prerequisites for reliance by Commission**

(1) If the Commission determines that any standard submitted to it in response to an invitation in a notice published under subsection (g)(5) if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission or any part of such a standard) as a regulation, would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (g)(1), the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed regulation under this section.

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (g)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a regulation respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a



reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

- (A) upon which the Commission has relied under paragraph (2) of this subsection;
- (B) which were developed with the participation of the Commission; or
- (C) whose development the Commission has monitored.

**(i) Publication of proposed rule by Commission; preliminary regulatory analysis; contents; transmission of notice by Commission to Committees**

No regulation may be proposed by the Commission under this section unless the Commission publishes in the Federal Register the text of the proposed rule, including any alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (g)(5) was not published by the Commission as the proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (g)(6) and assisted by the Commission as required by section 2054(a)(3) of this title would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (g)(1); and

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

The Commission shall transmit such notice within 10 calendar days to the appropriate Congressional committees. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed regulation.

**(j) Final regulatory analysis; contents; publication; judicial review of regulation**

(1) The Commission shall not promulgate a regulation under this section unless it has prepared a final regulatory analysis of the regulation containing the following information:

(A) A description of the potential benefits and potential costs of the regulation, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission shall publish its final regulatory analysis with the regulation.

(2) The Commission shall not promulgate a regulation under this section unless it finds (and includes such finding in the regulation)—

(A) in the case of a regulation which relates to a risk of injury with respect to which persons who would be subject to such regulation have adopted and implemented a voluntary standard, that—

- (i) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary standard;

(B) that the benefits expected from the regulation bear a reasonable relationship to its costs; and

(C) that the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the regulation is being promulgated.

(3)(A) Any regulatory analysis prepared under subsection (i) or paragraph (1) shall not be subject to independent judicial review, except that when an action for judicial review of a regulation is instituted, the contents of any such regulatory analysis shall constitute part of the whole rulemaking record of agency action in connection with such review.

(B) The provisions of subparagraph (A) shall not be construed to alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

#### **(k) Petition to initiate rulemaking**

The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5 requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

(June 30, 1953, ch. 164, §4, 67 Stat. 112; Aug. 23, 1954, ch. 833, 68 Stat. 770; Pub. L. 90-189, §3, Dec. 14, 1967, 81 Stat. 569; Pub. L. 94-284, §20(a), May 11, 1976, 90 Stat. 515; Pub. L. 97-35, title XII, §1203(b)(2), Aug. 13, 1981, 95 Stat. 711; Pub. L. 101-608, title I, §§107(c), 108(c), 110(c), Nov. 16, 1990, 104 Stat. 3112-3114; Pub. L. 110-314, title II, §204(c)(1), (2)(B)-(E), Aug. 14, 2008, 122 Stat. 3042.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2008**—Subsec. (a). Pub. L. 110-314, §204(c)(2)(B), (D), substituted "Commission" for "Secretary of Commerce" and "it" for "he".

Subsec. (b). Pub. L. 110-314, §204(c)(2)(B)-(D), substituted "Commission finds for" for "Secretary of Commerce finds for", "Commission finds that" for "Secretary finds that", "Commission may" for "Secretary may", and "it may" for "he may".

Subsec. (c). Pub. L. 110-314, §204(c)(2)(B)-(D), substituted "Commission may" for "Secretary of Commerce may", "it is required" for "he is required", "Commission or its" for "Secretary or his", "Commission or any" for "Secretary or any", and "its control" for "his control".

Subsec. (e)(1). Pub. L. 110-314, §204(c)(2)(C), substituted "Commission" for "Secretary" wherever appearing.

Subsec. (e)(2). Pub. L. 110-314, §204(c)(2)(C), (D), substituted "Commission" for "Secretary" and "its" for "his" wherever appearing and substituted "it" for "he".

Subsec. (e)(4). Pub. L. 110-314, §204(c)(2)(C), substituted "Commission" for "Secretary".

Subsec. (e)(5), (6). Pub. L. 110-314, §204(c)(2)(E), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: "Any action instituted under this subsection shall survive, notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office."

Subsec. (f). Pub. L. 110-314, §204(c)(2)(C), substituted "Commission" for "Secretary".

Subsec. (g). Pub. L. 110-314, §204(c)(1)(A), substituted "may be commenced by a notice of proposed rulemaking or" for "shall be commenced" in introductory provisions.

Subsec. (i). Pub. L. 110-314, §204(c)(1)(B), (C), in introductory provisions, substituted "unless the" for "unless, not less than 60 days after publication of the notice required in subsection (g) of this section, the" and in concluding provisions, substituted "appropriate Congressional committees. Nothing in this subsection shall

preclude any person from submitting an existing standard or portion of a standard as a proposed regulation." for "Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives."

**1990**—Subsec. (h)(2). Pub. L. 101–608, §108(c), struck out period at end and inserted ", except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection."

Subsec. (h)(3). Pub. L. 101–608, §107(c), added par. (3).

Subsec. (k). Pub. L. 101–608, §110(c), added subsec. (k).

**1981**—Subsecs. (g) to (j). Pub. L. 97–35 added subsecs. (g) to (j).

**1976**—Subsec. (d). Pub. L. 94–284, §20(a)(1), provided that standards, regulations, and amendments made thereto, be made in accordance with section 553 of title 5, except that oral presentation be available with a transcript of such oral presentation kept.

Subsec. (e)(3). Pub. L. 94–284, §20(a)(2), provided that the court not affirm a standard or regulation unless the findings of the Secretary are supported by substantial evidence on the record.

**1967**—Pub. L. 90–189 revised section generally to achieve greater flexibility in the promulgation of flammability standards by substituting provisions authorizing the Secretary of Commerce to issue standards of flammability or regulations (including labeling) for fabrics, related materials or products after observing certain specified procedural requirements for provisions which prescribed certain fixed standards of flammability which could be updated only by legislation.

**1954**—Subsec. (c). Act Aug. 23, 1954, added subsec. (c).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to regulations under this chapter and chapters 30 and 47 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97–35, set out a note under section 2052 of this title.

### EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94–284, §20(b), May 11, 1976, 90 Stat. 515, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to standards, regulations, and amendments to standards and regulations, under section 4 of the Flammable Fabrics Act [this section] the proceedings for the promulgation of which were begun after the date of the enactment of this Act [May 11, 1976]."

<sup>1</sup> *So in original. Probably should be "it".*

<sup>2</sup> *So in original. Probably should be "regulation; and".*

## §1194. Administration and enforcement

(a) **Enforcement under Federal Trade Commission Act provisions; civil action to enforce standard or regulation**

Except as otherwise specifically provided herein, sections 1192, 1194, 1195, and 1197(b) of this title shall be enforced by the Commission under rules, regulations and procedures provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.]. In the case of an attorney general of a State alleging a violation of a standard or regulation under section 1193 of this title that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce the requirement of such standard or regulation. The procedural requirements of section 2073 of this title shall apply to any such action.

**(b) Application of Federal Trade Commission Act provisions**

The Commission is authorized and directed to prevent any person from violating the provisions of section 1192 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; and any such person violating any provision of section 1192 of this title shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this chapter.

**(c) Rules and regulations**

The Commission is authorized and directed to prescribe such rules and regulations, including provisions for maintenance of records relating to fabrics, related materials, and products, as may be necessary and proper for administration and enforcement of this chapter. The violation of such rules and regulations shall be unlawful and shall be an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

**(d) Inspection and analysis of products; cooperation with other governmental entities**

The Commission is authorized to—

- (1) cause inspections, analyses, tests, and examinations to be made of any product, fabric or related material which it has reason to believe falls within the prohibitions of this chapter; and
- (2) cooperate on matters related to the purposes of this chapter with any department or agency of the Government; with any State or territory or with the District of Columbia or the Commonwealth of Puerto Rico; or with any department, agency, or political subdivision thereof; or with any person.

**(e) Penalties**

(1) Any person who knowingly violates a regulation or standard under section 1193 of this title shall be subject to a civil penalty not to exceed \$100,000 for each such violation, except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations.

(2) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of a regulation or standard under section 1193 of this title, the Commission shall consider the nature, circumstances, extent, and gravity of the violations, the severity of the risk of injury, the occurrence or absence of injury, the appropriateness of such penalty in relation to the size of the business of the person charged, and such other factors as appropriate.

(3) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the nature, circumstances, extent, and gravity of the violations, the appropriateness of such penalty to the size of the business of the persons charged, the severity of the risk of injury, and <sup>1</sup> the occurrence or absence of injury, and such other factors as appropriate. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(4) As used in paragraph (1), the term "knowingly" means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(5)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 2011, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than \$1,000 but less than or equal to \$10,000, the nearest multiple of \$1,000;

(ii) in the case of penalties greater than \$10,000 but less than or equal to \$100,000, the nearest multiple of \$5,000;

(iii) in the case of penalties greater than \$100,000 but less than or equal to \$200,000, the nearest multiple of \$10,000; and

(iv) in the case of penalties greater than \$200,000, the nearest multiple of \$25,000.

(D) For purposes of this subsection:

(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

(June 30, 1953, ch. 164, §5, 67 Stat. 112; Pub. L. 90–189, §4, Dec. 14, 1967, 81 Stat. 570; Pub. L. 101–608, title I, §§115(c), 118(b), Nov. 16, 1990, 104 Stat. 3120, 3122; Pub. L. 110–314, title II, §217(a)(3), (b)(1)(C), Aug. 14, 2008, 122 Stat. 3058, 3059.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a), (b), and (c), 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

**2008**—Subsec. (e)(1). Pub. L. 110–314, §217(a)(3)(A), (B), substituted "\$100,000" for "\$5,000" and "\$15,000,000" for "\$1,250,000".

Subsec. (e)(2). Pub. L. 110–314, §217(b)(1)(C)(i), substituted "nature, circumstances, extent, and gravity" for "nature and number" and "absence of injury," for "absence of injury, and" and inserted ", and such other factors as appropriate" before period at end.

Subsec. (e)(3). Pub. L. 110–314, §217(b)(1)(C)(ii)(III), which directed insertion of ", and such other factors as appropriate" before the period, was executed by making the insertion before period at end of second sentence, to reflect the probable intent of Congress.

Pub. L. 110–314, §217(b)(1)(C)(ii)(II), which directed the substitution of "absence of injury," for "absence of injury, and", could not be executed because "absence of injury, and" did not appear in par. (3).

Pub. L. 110–314, §217(b)(1)(C)(ii)(I), substituted "nature, circumstances, extent, and gravity" for "nature and number".

Subsec. (e)(5)(B). Pub. L. 110–314, §217(a)(3)(C), which directed the substitution of "December 1, 2011," for "December 1, 1994," in par. (6)(B) of subsec. (e)(1), was executed by making the substitution in par.

(5)(B) of subsec. (e) to reflect the probable intent of Congress because subsec. (e) does not contain a par. (6).

**1990**—Subsec. (a). Pub. L. 101–608, §118(b), inserted at end "In the case of an attorney general of a State alleging a violation of a standard or regulation under section 1193 of this title that affects or may affect such

State or its residents, such attorney general may bring a civil action for an injunction to enforce the requirement of such standard or regulation. The procedural requirements of section 2073 of this title shall apply to any such action."

Subsec. (e). Pub. L. 101-608, §115(c), added subsec. (e).

**1967**—Subsec. (c). Pub. L. 90-189, §4(a), inserted ", including provisions for maintenance of records relating to fabrics, related materials, and products," after "rules and regulations" and inserted sentence making violations of such rules and regulations unlawful and an unfair method of competition and an unfair and deceptive act or practice, in commerce, under the Federal Trade Commission Act.

Subsec. (d)(1). Pub. L. 90-189, §4(b), substituted "product, fabric or related material" for "article of wearing apparel or fabric".

Subsec. (d)(2). Pub. L. 90-189, §4(b), substituted "or territory or with the District of Columbia or the Commonwealth of Puerto Rico" for ", Territory, or possession or with the District of Columbia".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2008 AMENDMENT**

Pub. L. 110-314, title II, §217(a)(4), Aug. 14, 2008, 122 Stat. 3058, provided that: "The amendments made by this subsection [amending this section and sections 1264 and 2069 of this title] shall take effect on the date that is the earlier of the date on which final regulations are issued under subsection (b)(2) [set out as a note under section 2069 of this title] or 1 year after the date of enactment of this Act [Aug. 14, 2008]."

### **TRANSFER OF FUNCTIONS**

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

### **CIVIL PENALTY CRITERIA**

The Consumer Product Safety Commission to issue a final regulation providing its interpretation of penalty factors described in subsec. (e)(2) of this section no later than 1 year after Aug. 14, 2008, see section 217(b)(2) of Pub. L. 110-314, set out as a note under section 2069 of this title.

*<sup>1</sup> So in original. The word "and" probably should not appear.*

## **§1195. Injunction and condemnation proceedings**

### **(a) Temporary injunction; venue**

Whenever the Commission has reason to believe that any person is violating or is about to violate section 1192 of this title, or a rule or regulation prescribed under section 1194(c) of this title, and that it would be in the public interest to enjoin such violation until complaint under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] is issued and dismissed by the Commission or until order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act or is set aside by the court on review, the Commission may bring suit in the district court of the United States for the district in which such person resides or transacts business, or, if such person resides or transacts business in Guam or the Virgin Islands, then in the District Court of Guam or in the District Court of the Virgin Islands (as the case may be), to enjoin such violation and upon proper showing a temporary injunction or restraining order shall be granted without bond.

### **(b) Process of libel for seizure and confiscation; manner of procedure; consolidation of trials**

Whenever the Commission has reason to believe that any product has been manufactured or introduced into commerce or any fabric or related material has been introduced in commerce in violation of section 1192 of this title, it may institute proceedings by process of libel for the seizure and confiscation of such product, fabric, or related material in any district court of the United States within the jurisdiction of which such product, fabric, or related material is found. Proceedings in

cases instituted under the authority of this section shall conform as nearly as may be to proceedings in rem in admiralty, except that on demand of either party and in the discretion of the court, any issue of fact shall be tried by jury. Whenever such proceedings involving identical products, fabrics, or related materials are pending in two or more jurisdictions, they may be consolidated for trial by order of any such court upon application seasonably made by any party in interest upon notice to all other parties in interest. Any court granting an order of consolidation shall cause prompt notification thereof to be given to other courts having jurisdiction in the cases covered thereby and the clerks of such other courts shall transmit all pertinent records and papers to the court designated for the trial of such consolidated proceedings.

**(c) Application by defendant for representative sample of seized materials**

In any such action the court, upon application seasonably made before trial, shall by order allow any party in interest, his attorney or agent, to obtain a representative sample of the product, fabric, or related material seized.

**(d) Disposal of condemned materials**

If such products, fabrics, or related materials are condemned by the court they shall be disposed of by destruction, by delivery to the owner or claimant thereof upon payment of court costs and fees and storage and other proper expenses and upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce, or by sale upon execution of good and sufficient bond to the effect that such products, fabrics, or related materials will not be disposed of until properly and adequately treated or processed so as to render them lawful for introduction into commerce. If such products, fabrics, or related materials are disposed of by sale the proceeds, less costs and charges, shall be paid into the Treasury of the United States.

(June 30, 1953, ch. 164, §6, 67 Stat. 113; Pub. L. 90–189, §5, Dec. 14, 1967, 81 Stat. 571.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Trade Commission Act, referred to in subsec. (a), 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**

**1967**—Subsec. (a). Pub. L. 90–189, §5(a), inserted ", or a rule or regulation prescribed under section 1194 (c) of this title," after "section 1192 of this title" and substituted "for the district in which such person resides or transacts business, or, if such person resides or transacts business in Guam or the Virgin Islands, then in the District Court of Guam or in the District Court of the Virgin Islands (as the case may be)" for "or in the United States court of any Territory for the district or Territory in which such person resides or transacts business".

Subsec. (b). Pub. L. 90–189, §5(b), substituted "product" for "article of wearing apparel", "product, fabric, or related material" for "article of wearing apparel or fabric" in two places and "products, fabrics, or related materials" for "articles of wearing apparel or fabrics", and inserted "or related material" before "has been introduced in commerce".

Subsec. (c). Pub. L. 90–189, §5(b), substituted "product, fabric, or related material" for "article of wearing apparel or fabric".

Subsec. (d). Pub. L. 90–189, §5(b), substituted "products, fabrics, or related materials" for "articles of wearing apparel or fabrics" wherever appearing and struck out "for wearing apparel purposes" before "until properly and adequately treated or processed" in two places.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**TRANSFER OF FUNCTIONS**

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of

Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

## **§1196. Penalties**

Violation of section 1192 or 1197(b) of this title, or failure to comply with section 1202(c) of this title, is punishable by—

- (1) imprisonment for not more than 5 years for a knowing and willful violation of that section;
- (2) a fine determined under section 3571 of title 18; or
- (3) both.

(June 30, 1953, ch. 164, §7, 67 Stat. 114; Pub. L. 95–631, §8(b), Nov. 10, 1978, 92 Stat. 3747; Pub. L. 110–314, title II, §217(c)(4), Aug. 14, 2008, 122 Stat. 3060.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2008**—Pub. L. 110–314 amended section generally. Prior to amendment, text read as follows: "Any person who willfully violates section 1192 or 1197(b) of this title, or who fails to comply with section 1202(c) of this title, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not more than \$5,000 or be imprisoned not more than one year or both in the discretion of the court: *Provided*, That nothing herein shall limit other provisions of this chapter."

**1978**—Pub. L. 95–631 authorized penalties for noncompliance with section 1202(c) of this title.

## **§1197. Guaranties**

### **(a) Defense to prosecution**

No person shall be subject to prosecution under section 1196 of this title for a violation of section 1192 of this title if such person (1) establishes a guaranty received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title, and (2) has not, by further processing, affected the flammability of the fabric, related material, or product covered by the guaranty which he received. Such guaranty shall be either (1) a separate guaranty specifically designating the product, fabric, or related material guaranteed, in which case it may be on the invoice or other paper relating to such product, fabric, or related material; (2) a continuing guaranty given by seller to buyer applicable to any product, fabric, or related material sold or to be sold to buyer by seller in a form as the Commission by rules and regulations may prescribe; or (3) a continuing guaranty filed with the Commission applicable to any product, fabric, or related material handled by a guarantor, in such form as the Commission by rules or regulations may prescribe.

### **(b) False guaranty**

It shall be unlawful for any person to furnish, with respect to any product, fabric, or related material, a false guaranty (except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person by whom the product, fabric, or related material guaranteed was manufactured or from whom it was received) with reason to believe the product, fabric, or related material falsely guaranteed may be introduced, sold, or transported in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].



(June 30, 1953, ch. 164, §8, 67 Stat. 114; Pub. L. 90–189, §6, Dec. 14, 1967, 81 Stat. 572.)

## 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.

### AMENDMENTS

**1967**—Subsec. (a). Pub. L. 90–189 substituted "product, fabric, or related material" for "wearing apparel or fabric" wherever appearing and "in accordance with standards issued or amended under the provisions of section 1193 of this title show that the fabric or related material covered by the guaranty, or used in the product covered by the guaranty, conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title" for "under the procedures provided in section 1193 of this title show that the fabric covered by the guaranty, or used in the wearing apparel covered by the guaranty, is not, under the provisions of section 1193 of this title, so highly flammable as to be dangerous when worn by individuals", added cl. (2), and redesignated former cl. (2) as (3).

Subsec. (b). Pub. L. 90–189 substituted "product, fabric, or related material" for "wearing apparel or fabric" wherever appearing.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

## **§1198. Shipments from foreign countries; demand for redelivery; claim for liquidated damages**

An imported product, fabric, or related material to which flammability standards under this chapter are applicable shall not be delivered from customs custody except as provided in section 1499 of title 19. In the event an imported product, fabric, or related material is delivered from customs custody under bond, as provided in section 1499 of title 19 and fails to conform with an applicable flammability standard in effect on the date of entry of such merchandise, the Secretary of the Treasury shall demand redelivery and in the absence thereof shall assert a claim for liquidated damages for breach of a condition of the bond arising out of such failure to conform or redeliver in accordance with regulations prescribed by the Secretary of the Treasury or his delegate. When asserting a claim for liquidated damages against an importer for failure to redeliver such nonconforming goods, the liquidated damages shall be not less than 10 per centum of the value of the nonconforming merchandise if, within five years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand from the Secretary of the Treasury as set forth above.

(June 30, 1953, ch. 164, §9, 67 Stat. 114; Pub. L. 90–189, §7, Dec. 14, 1967, 81 Stat. 572.)

## EDITORIAL NOTES

### AMENDMENTS

**1967**—Pub. L. 90–189 substituted provisions prohibiting the delivery from customs of imported products, fabrics, or related materials to which flammability standards are applicable, except as provided in section 1499 of title 19, and requiring the Secretary of the Treasury to demand redelivery in the event any such imported product, fabric, or related material is delivered from customs custody under bond and fails to conform with an

applicable flammability standard, and in the absence of such redelivery to assert a claim for liquidated damages for breach of the bond, which damages shall not be less than 10 per centum of the value of the nonconforming merchandise if, within 5 years prior thereto, the importer has previously been assessed liquidated damages for failure to redeliver nonconforming goods in response to a demand by the Secretary for provisions which authorized the Commission to prohibit any person who had exported or who had attempted to export from any foreign country into the United States any wearing apparel or fabric which was so highly flammable as to be dangerous when worn by individuals from further participation in the exportation from any foreign country into the United States of any wearing apparel or fabric except upon filing bonds with the Secretary of the Treasury in a sum double the value of said products and any duty thereon, conditioned upon compliance with the provisions of this chapter.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TRANSFER OF FUNCTIONS**

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

### **§1199. Chapter as additional legislation**

The provisions of this chapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other law. If any provision of this chapter or the application thereof to any person or circumstances is held invalid the remainder of the chapter and the application of such provisions to any other person or circumstances shall not be affected thereby.

(June 30, 1953, ch. 164, §10, 67 Stat. 115.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TRANSFER OF FUNCTIONS**

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

### **§1200. Persons excluded from operation of chapter**

The provisions of this chapter shall not apply (a) to any common carrier, contract carrier, or freight forwarder in transporting a product, fabric, or related material shipped or delivered for shipment into commerce in the ordinary course of its business; (b) to any converter, processor, or finisher in performing a contract or commission service for the account of a person subject to the provisions of this chapter: *Provided*, That said converter, processor, or finisher does not cause any product, fabric, or related material to become subject to this chapter contrary to the terms of the contract or commission service; or (c) to any product, fabric, or related material shipped or delivered for shipment into commerce for the purpose of finishing or processing such product, fabric, or related material so that it conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title.

(June 30, 1953, ch. 164, §11, 67 Stat. 115; Pub. L. 90–189, §8, Dec. 14, 1967, 81 Stat. 573.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1967**—Pub. L. 90–189 substituted "in transporting a product, fabric, or related material" for "with respect to

an article of wearing apparel or fabric", "product, fabric, or related material" for "article of wearing apparel or fabric" in two places, and "such product, fabric, or related material so that it conforms with applicable flammability standards issued or amended under the provisions of section 1193 of this title" for "to render such article or fabric not so highly flammable, under the provisions of section 1193 of this title, as to be dangerous when worn by individuals".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### TRANSFER OF FUNCTIONS

Functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, along with functions of Federal Trade Commission under Federal Trade Commission Act, to extent such functions relate to administration and enforcement of this chapter, see section 2079 of this title.

### **§1201. Study and investigation; research, development and training**

(a) The Consumer Product Safety Commission shall conduct a continuing study and investigation of the deaths, injuries, and economic losses resulting from accidental burning of products, fabrics, or related materials.

(b) In cooperation with appropriate public and private agencies, the Commission is authorized to—

- (1) conduct research into the flammability of products, fabrics, and materials;
- (2) conduct feasibility studies on reduction of flammability of products, fabrics, and materials;
- (3) develop flammability test methods and testing devices; and
- (4) offer appropriate training in the use of flammability test methods and testing devices.

(June 30, 1953, ch. 164, §14, as added Pub. L. 90–189, §10, Dec. 14, 1967, 81 Stat. 573; amended Pub. L. 92–573, §30(b), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 96–470, title I, §114, Oct. 19, 1980, 94 Stat. 2240; Pub. L. 97–35, title XII, §1211(e), Aug. 13, 1981, 95 Stat. 721; Pub. L. 110–314, title II, §204(c)(2)(B), Aug. 14, 2008, 122 Stat. 3042.)

## EDITORIAL NOTES

### CODIFICATION

In subsec. (a), pursuant to Pub. L. 92–573 and as amended by Pub. L. 110–314, the words "in cooperation with the Commission", meaning the Consumer Product Safety Commission, which followed "Consumer Product Safety Commission", have been omitted from the Code as redundant in that they would provide for the Consumer Product Safety Commission to cooperate with itself.

### AMENDMENTS

**2008**—Pub. L. 110–314 substituted "Commission" for "Secretary of Commerce" in subsecs. (a) and (b).

**1981**—Subsec. (a). Pub. L. 97–35 struck out provisions relating to the submission of an annual report by the Secretary of Health and Human Services to the President and to the Congress containing the results of a study and investigation.

**1980**—Subsec. (b). Pub. L. 96–470 struck out provision requiring the Secretary to report the results of activities under this subsection to Congress.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as a note under section 2052 of this title.

### TRANSFER OF FUNCTIONS

"Consumer Product Safety Commission" substituted for "Secretary of Health, Education, and Welfare" in

subsec. (a) pursuant to section 30(b) of Pub. L. 92-573, which is classified to section 2079(b) of this title and which transferred functions of Secretary of Health, Education, and Welfare, Secretary of Commerce, and Federal Trade Commission under this chapter to Consumer Product Safety Commission.

### **TOXICOLOGIC RISKS OF FLAME-RETARDANT CHEMICALS IN RESIDENTIAL UPHOLSTERED FURNITURE**

Pub. L. 105-276, title IV, §423, Oct. 21, 1998, 112 Stat. 2510, provided that within 90 days of Oct. 21, 1998, the Consumer Product Safety Commission was to make all necessary arrangements for the Committee on Toxicology of the National Academy of Sciences (NAS) to conduct an independent 12-month study of the potential toxicologic risks of all flame-retardant chemicals identified by the NAS and the Commission as likely candidates for use in residential upholstered furniture for the purpose of meeting regulations proposed by the Commission for flame resistance of residential upholstered furniture, and that the Academy would send the report, when complete, to the Commission, which would provide the report to Congress.

## **§1202. Exemptions**

### **(a) Exports; risk of injury to residents of United States**

This chapter shall not apply to any fabric, related material, or product which is to be exported from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export and such fabric, related material, or product is in fact exported from the United States; unless the Commission determines that exportation of such fabric, related material, or product presents an unreasonable risk of injury to persons residing within the United States; except that this chapter shall apply to any fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

### **(b) Imports intended for export; risk of injury to residents of United States**

This chapter shall not apply to any fabric, related material, or product which is imported into the United States for dyeing, finishing, other processing, or storage in bond, and export from the United States, if such fabric, related material, or product, and any container in which it is enclosed, bears a stamp or label stating that such fabric, related material, or product is intended for export, and such fabric, related material, or product is in fact exported from the United States, unless the Commission determines that exportation of such fabric, related material, or product presents an unreasonable risk of injury to persons residing within the United States; except that this chapter shall apply to any such imported fabric, related material, or product manufactured for sale, offered for sale, or intended for shipment to any installation of the United States located outside of the United States.

### **(c) Statement of exportation: filing period, information; notification of foreign country; petition for minimum filing period; good cause**

Not less than thirty days before any person exports to a foreign country any fabric, related material, or product that fails to conform to an applicable flammability standard or regulation in effect under this chapter, such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and of the basis for such flammability standard or regulation. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such fabric, related material, or product, the country and port of destination of such fabric, related material, or product, and the quantity of such fabric, related material, or product that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

**(d) Authority to prohibit exports**

Notwithstanding any other provision of this section, the Consumer Product Safety Commission may prohibit, by order, a person from exporting from the United States for purpose of sale any fabric or related material that the Commission determines is not in conformity with an applicable standard or rule under this chapter, unless the importing country has notified the Commission that such country accepts the importation of such fabric or related material, provided that if the importing country has not so notified the Commission within 30 days after the Commission has provided notice to the importing country of the impending shipment, the Commission may take such action as is appropriate with respect to the disposition of the fabric or related material under the circumstances.

**(e) Export pursuant to section 2066(e)**

Nothing in this section shall apply to any fabric or related material, the export of which is permitted by the Secretary of the Treasury pursuant to section 2066(e) of this title.

(June 30, 1953, ch. 164, §15, as added Pub. L. 90-189, §10, Dec. 14, 1967, 81 Stat. 574; amended Pub. L. 95-631, §8(a), Nov. 10, 1978, 92 Stat. 3746; Pub. L. 110-314, title II, §§204(c)(2)(F), 221(b), Aug. 14, 2008, 122 Stat. 3042, 3066.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2008**—Subsec. (a). Pub. L. 110-314, §204(c)(2)(F), which directed the substitution of "Commission" for "Consumer Product Safety Commission (hereinafter in this section referred to as the 'Commission') in section 15 (15 U.S.C. 1202)", was executed by making the substitution for "Consumer Product Safety Commission (hereinafter in this section referred to as the 'Commission')" to reflect the probable intent of Congress.

Subsecs. (d), (e). Pub. L. 110-314, §221(b), added subsecs. (d) and (e).

**1978**—Subsec. (a). Pub. L. 95-631, §8(a)(1), made chapter applicable to exports when the Commission determines that exportation presents an unreasonable risk of injury to persons residing within the United States.

Subsec. (b). Pub. L. 95-631, §8(a)(2), made chapter applicable to imports intended for export when the Commission determines that exportation presents an unreasonable risk of injury to persons residing within the United States.

Subsec. (c). Pub. L. 95-631, §8(a)(3), added subsec. (c).

**§1203. Preemption of Federal standards**

**(a) Standards or regulations designed to protect against same risk as State standards or regulations; identical State standards**

Except as provided in subsections (b) and (c), whenever a flammability standard or other regulation for a fabric, related material, or product is in effect under this chapter, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material, or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire with respect to which the standard or other regulation under this chapter is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.

**(b) State standards or regulations which afford a higher degree of protection**

The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a flammability standard or other regulation applicable to a fabric, related material, or product for its own use which standard or other regulation is designed to protect against a risk of occurrence of fire with respect to which a flammability standard or other regulation is in effect under this chapter and which is not identical to such standard or other regulation if the

Federal, State, or political subdivision standard or other regulation provides a higher degree of protection from such risk of occurrence of fire than the standard or other regulation in effect under this chapter.

**(c) Exemption for State standards or regulations; requirements; determination of burden on interstate commerce; notice and hearing**

(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, any flammability standard or other regulation of such State or political subdivision applicable to a fabric, related material, or product subject to a standard or other regulation in effect under this chapter, if—

(A) compliance with the State or political subdivision requirement would not cause the fabric, related material, or product to be in violation of the standard or other regulation in effect under this chapter, and

(B) the State or political subdivision standard or other regulation (i) provides a significantly higher degree of protection from the risk of occurrence of fire with respect to which the Federal standard or other regulation is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision flammability standard or other regulation on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such flammability standard or other regulation, the cost of complying with such flammability standard or other regulation, the geographic distribution of the fabric, related material, or product to which the flammability standard or other regulation would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar flammability standard or other regulation, and the need for a national, uniform flammability standard or other regulation under this chapter for such fabric, related material, or product.

(2) A regulation under paragraph (1) granting an exemption for a flammability standard or other regulation of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

**(d) Flammability standards or regulations**

In this section, a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this chapter includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90–189).

(June 30, 1953, ch. 164, §16, as added Pub. L. 90–189, §10, Dec. 14, 1967, 81 Stat. 574; amended Pub. L. 94–284, §17(b), May 11, 1976, 90 Stat. 512; Pub. L. 110–314, title II, §204(c)(2)(G), Aug. 14, 2008, 122 Stat. 3043.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 11 of the Act of December 14, 1967 (Public Law 90–189), referred to in subsec. (d), is set out as a note under section 1191 of this title.

**AMENDMENTS**

**2008**—Subsec. (d). Pub. L. 110–314 amended subsec. (d) generally. Prior to amendment, text read as follows: "For purposes of this section—

"(1) a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this chapter includes a standard of flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90–189); and

"(2) the term 'Commission' means the Consumer Product Safety Commission."

**1976**—Pub. L. 94–284 substituted provisions which permitted the use of flammability standards or regulations not identical with the standards or regulations in effect under this chapter provided that the standards or regulations used afford a higher degree of protection from the risk of the occurrence of fire than the standards or regulation under this chapter, and which permitted the Commission, by regulation promulgated in accordance with section 553 of title 5, to grant an exemption for a flammability standard or other regulation of a State or political subdivision of a State, for the prior supremacy of chapter provision.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **PREEMPTION**

The provisions of this section establishing the extent to which the Flammable Fabrics Act (15 U.S.C. 1191 et seq.) preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Flammable Fabrics Act, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation, see section 231 of Pub. L. 110–314, set out as a note under section 2051 of this title.

## **§1204. Congressional veto of flammability regulations**

### **(a) Transmission to Congress**

The Commission shall transmit to the Secretary of the Senate and the Clerk of the House of Representatives a copy of any flammability regulation promulgated by the Commission under section 1193 of this title.

### **(b) Disapproval by concurrent resolution**

Any regulation specified in subsection (a) shall not take effect if—

(1) within the ninety calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, both Houses of the Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows (with the blank spaces appropriately filled): "That the Congress disapproves the flammability regulation which was promulgated under the Flammable Fabrics Act by the Consumer Product Safety Commission with respect to \_\_\_\_\_ and which was transmitted to the Congress on \_\_\_\_\_ and disapproves the regulation for the following reasons: \_\_\_\_\_."; or

(2) within the sixty calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, one House of the Congress adopts such concurrent resolution and transmits such resolution to the other House and such resolution is not disapproved by such other House within the thirty calendar days of continuous session of the Congress which occur after the date of such transmittal.

### **(c) Presumptions from Congressional action or inaction**

Congressional inaction on, or rejection of, a concurrent resolution of disapproval under this section shall not be construed as an expression of approval of the regulation involved, and shall not be construed to create any presumption of validity with respect to such regulation.

### **(d) Continuous session of Congress**

For purposes of this section—

(1) continuity of session is broken only by an adjournment of the Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the periods of continuous session of the Congress specified in subsection (b).

(June 30, 1953, ch. 164, §17, as added Pub. L. 97–35, title XII, §1207(d), Aug. 13, 1981, 95 Stat. 719; amended Pub. L. 110–314, title II, §204(c)(2)(C), (H), Aug. 14, 2008, 122 Stat. 3042, 3043.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Flammable Fabrics Act, referred to in subsec. (b), is act June 30, 1953, ch. 164, 67 Stat. 111, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1191 of this title and Tables.

### PRIOR PROVISIONS

A prior section 1204, act June 30, 1953, ch. 164, §17, as added Dec. 14, 1967, Pub. L. 90-189, §10, 81 Stat. 574; amended May 11, 1976, Pub. L. 94-284, §19, 90 Stat. 514, related to the National Advisory Committee for Flammable Fabrics Act, prior to repeal by Pub. L. 97-35, title XII, §1205(b), Aug. 13, 1981, 95 Stat. 716, eff. Aug. 13, 1981.

### AMENDMENTS

**2008**—Pub. L. 110-314, §204(c)(2)(H), which directed substitution of "Commission" for "Consumer Product Safety Commission" in this section, was executed by making the substitution in subsec. (a) before "shall transmit", but not in subsec. (b)(1), to reflect the probable intent of Congress.

Subsec. (a). Pub. L. 110-314, §204(c)(2)(C), which directed substitution of "Commission" for "Secretary" wherever appearing in the Flammable Fabrics Act, classified to this chapter, was not executed in subsec. (a) of this section, where "Secretary" precedes "of the Senate", to reflect the probable intent of Congress. Amendment was part of a series of conforming amendments to change references to the "Secretary" of Commerce to "Commission".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section applicable with respect to consumer product safety rules under chapter 47 of this title and regulations under this chapter and chapter 30 of this title promulgated after Aug. 13, 1981, see section 1215 of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

## CHAPTER 26—HOUSEHOLD REFRIGERATORS

Sec.

- 1211. Prohibition against transportation of refrigerators without safety devices.
- 1212. Violations; misdemeanor; penalties.
- 1213. Publication of safety standards in Federal Register.
- 1214. "Interstate commerce" defined.

### **§1211. Prohibition against transportation of refrigerators without safety devices**

It shall be unlawful for any person to introduce or deliver for introduction into interstate commerce any household refrigerator manufactured on or after the date this section takes effect unless it is equipped with a device, enabling the door thereof to be opened from the inside, which conforms with standards prescribed pursuant to section 1213 of this title.

(Aug. 2, 1956, ch. 890, §1, 70 Stat. 953.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

For date this section takes effect, referred to in text, see Effective Date note below.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE



Act Aug. 2, 1956, ch. 890, §5, 70 Stat. 953, provided that: "This Act [this chapter] shall take effect on the date of its enactment [Aug. 2, 1956], except that the first section of this Act [this section] shall take effect one year and 90 days after the date of publication of commercial standards first established under section 3 of this Act [section 1213 of this title]. In the event of a change in said commercial standards first established, a like period shall be allowed for compliance with said change in commercial standards."

#### **TRANSFER OF FUNCTIONS**

Functions of Secretary of Commerce and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

### **§1212. Violations; misdemeanor; penalties**

Any person who violates section 1211 of this title shall be guilty of a misdemeanor and shall, upon conviction thereof, be subject to imprisonment for not more than one year, or a fine of not more than \$1,000, or both.

(Aug. 2, 1956, ch. 890, §2, 70 Stat. 953.)

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

##### **TRANSFER OF FUNCTIONS**

Functions of Secretary of Commerce and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

### **§1213. Publication of safety standards in Federal Register**

The Consumer Product Safety Commission shall prescribe and publish in the Federal Register commercial standards for devices which, when used in or on household refrigerators, will enable the doors thereof to be opened easily from the inside; and the standards first established under this section shall be so prescribed and published not later than one year after August 2, 1956.

(Aug. 2, 1956, ch. 890, §3, 70 Stat. 953; Pub. L. 92-573, §30(c), Oct. 27, 1972, 86 Stat. 1231.)

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

##### **TRANSFER OF FUNCTIONS**

"Consumer Product Safety Commission" substituted for "Secretary of Commerce" pursuant to section 30(c) of Pub. L. 92-573, which is classified to section 2079(c) of this title and which transferred functions of Secretary of Commerce and Federal Trade Commission under this chapter to Consumer Product Safety Commission.

### **§1214. "Interstate commerce" defined**

As used in this chapter, the term "interstate commerce" includes commerce between one State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico and another State, Territory, possession, the District of Columbia, or the Commonwealth of Puerto Rico.

(Aug. 2, 1956, ch. 890, §4, 70 Stat. 953.)

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

##### **TRANSFER OF FUNCTIONS**

Functions of Secretary of Commerce and Federal Trade Commission under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

## CHAPTER 27—AUTOMOBILE DEALER SUITS AGAINST MANUFACTURERS

Sec.

- 1221. Definitions.
- 1222. Authorization of suits against manufacturers; amount of recovery; defenses.
- 1223. Limitations.
- 1224. Antitrust laws as affected.
- 1225. State laws as affected.
- 1226. Motor vehicle franchise contract dispute resolution process.

### §1221. Definitions

As used in this chapter—

(a) The term "automobile manufacturer" shall mean any person, partnership, corporation, association, or other form of business enterprise engaged in the manufacturing or assembling of passenger cars, trucks, or station wagons, including any person, partnership, or corporation which acts for and is under the control of such manufacturer or assembler in connection with the distribution of said automotive vehicles.

(b) The term "franchise" shall mean the written agreement or contract between any automobile manufacturer engaged in commerce and any automobile dealer which purports to fix the legal rights and liabilities of the parties to such agreement or contract.

(c) The term "automobile dealer" shall mean any person, partnership, corporation, association, or other form of business enterprise resident in the United States or in any Territory thereof or in the District of Columbia operating under the terms of a franchise and engaged in the sale or distribution of passenger cars, trucks, or station wagons.

(d) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(e) The term "good faith" shall mean the duty of each party to any franchise, and all officers, employees, or agents thereof to act in a fair and equitable manner toward each other so as to guarantee the one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: *Provided*, That recommendation, endorsement, exposition, persuasion, urging or argument shall not be deemed to constitute a lack of good faith.

(Aug. 8, 1956, ch. 1038, §1, 70 Stat. 1125.)

### §1222. Authorization of suits against manufacturers; amount of recovery; defenses

An automobile dealer may bring suit against any automobile manufacturer engaged in commerce, in any district court of the United States in the district in which said manufacturer resides, or is found, or has an agent, without respect to the amount in controversy, and shall recover the damages by him sustained and the cost of suit by reason of the failure of said automobile manufacturer from and after August 8, 1956, to act in good faith in performing or complying with any of the terms or provisions of the franchise, or in terminating, canceling, or not renewing the franchise with said dealer: *Provided*, That in any such suit the manufacturer shall not be barred from asserting in defense of any such action the failure of the dealer to act in good faith.

(Aug. 8, 1956, ch. 1038, §2, 70 Stat. 1125.)

### **§1223. Limitations**

Any action brought pursuant to this chapter shall be forever barred unless commenced within three years after the cause of action shall have accrued.

(Aug. 8, 1956, ch. 1038, §3, 70 Stat. 1125.)

### **§1224. Antitrust laws as affected**

No provision of this chapter shall repeal, modify, or supersede, directly or indirectly, any provision of the antitrust laws of the United States.

(Aug. 8, 1956, ch. 1038, §4, 70 Stat. 1125.)

### **§1225. State laws as affected**

This chapter shall not invalidate any provision of the laws of any State except insofar as there is a direct conflict between an express provision of this chapter and an express provision of State law which can not <sup>1</sup> be reconciled.

(Aug. 8, 1956, ch. 1038, §5, 70 Stat. 1126.)

<sup>1</sup> So in original. Probably should be "cannot".

### **§1226. Motor vehicle franchise contract dispute resolution process**

#### **(a) Election of arbitration**

##### **(1) Definitions**

For purposes of this subsection—

(A) the term "motor vehicle" has the meaning given such term in section 30102(6) of title 49; <sup>1</sup> and

(B) the term "motor vehicle franchise contract" means a contract under which a motor vehicle manufacturer, importer, or distributor sells motor vehicles to any other person for resale to an ultimate purchaser and authorizes such other person to repair and service the manufacturer's motor vehicles.

##### **(2) Consent required**

Notwithstanding any other provision of law, whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to such contract, arbitration may be used to settle such controversy only if after such controversy arises all parties to such controversy consent in writing to use arbitration to settle such controversy.

##### **(3) Explanation required**

Notwithstanding any other provision of law, whenever arbitration is elected to settle a dispute under a motor vehicle franchise contract, the arbitrator shall provide the parties to such contract with a written explanation of the factual and legal basis for the award.

#### **(b) Application**

Subsection (a) shall apply to contracts entered into, amended, altered, modified, renewed, or extended after November 2, 2002.

(Pub. L. 107–273, div. C, title I, §11028, Nov. 2, 2002, 116 Stat. 1835.)

## REFERENCES IN TEXT

Section 30102(6) of title 49, referred to in subsec. (a)(1)(A), probably should be "section 30102(a)(6) of title 49", which was redesignated section 30102(a)(7) of title 49 by section 24109(b)(2) of Pub. L. 114–94, div. B, title XXIV, Dec. 4, 2015, 129 Stat. 1706.

## CODIFICATION

Section was enacted as part of the 21st Century Department of Justice Appropriations Authorization Act, and not as part of act Aug. 8, 1956, ch. 1038, which comprises this chapter.

<sup>1</sup> See References in Text note below.

## CHAPTER 28—DISCLOSURE OF AUTOMOBILE INFORMATION

Sec.

- 1231. Definitions.
- 1232. Label and entry requirements.
- 1232a. Repealed.
- 1233. Violations and penalties.

### §1231. Definitions

For purposes of this chapter—

(a) The term "manufacturer" shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under the control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles.

(b) The term "person" means an individual, partnership, corporation, business trust, or any organized group of persons.

(c) The term "automobile" includes any passenger car or station wagon.

(d) The term "new automobile" means an automobile the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(e) The term "dealer" shall mean any person resident or located in the United States or any Territory thereof or in the District of Columbia engaged in the sale or the distribution of new automobiles to the ultimate purchaser.

(f) The term "final assembly point" means—

(1) in the case of a new automobile manufactured or assembled in the United States, or in any Territory of the United States, the plant, factory, or other place at which a new automobile is produced or assembled by a manufacturer and from which such automobile is delivered to a dealer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such automobile, whether or not such component parts are permanently installed in or on such automobile; and

(2) in the case of a new automobile imported into the United States, the port of importation.

(g) The term "ultimate purchaser" means, with respect to any new automobile, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale.

(h) The term "commerce" shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. New automobiles delivered to, or for further delivery to, ultimate purchasers within the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, the Trust Territories of the Pacific, the Canal Zone, Wake Island, Midway Island, Kingman Reef, Johnson Island, or within any

other place under the jurisdiction of the United States shall be deemed to have been distributed in commerce.

(Pub. L. 85-506, §2, July 7, 1958, 72 Stat. 325; Pub. L. 92-359, July 28, 1972, 86 Stat. 502.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

For definition of Canal Zone, referred to in subsec. (h), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

### **AMENDMENTS**

**1972**—Subsec. (h). Pub. L. 92-359 inserted provision that new automobiles delivered to ultimate purchasers within the United States and other enumerated areas shall be deemed to have been distributed in commerce.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE**

Pub. L. 85-506, §5, July 7, 1958, 72 Stat. 327, provided that: "This Act [enacting this chapter] shall take effect on the first day of October 1958 or on the first day of the introduction of any new model of automobile in any line of automobile beginning after the date of enactment of this Act [July 7, 1958], whichever date shall last occur."

### **SHORT TITLE**

Pub. L. 85-506, §1, July 7, 1958, 72 Stat. 325, provided: "This Act [enacting this chapter] may be cited as the 'Automobile Information Disclosure Act'."

## **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.

## **§1232. Label and entry requirements**

Every manufacturer of new automobiles distributed in commerce shall, prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, securely affix to the windshield, or side window of such automobile a label on which such manufacturer shall endorse clearly, distinctly and legibly true and correct entries disclosing the following information concerning such automobile—

- (a) the make, model, and serial or identification number or numbers;
- (b) the final assembly point;
- (c) the name, and the location of the place of business, of the dealer to whom it is to be delivered;
- (d) the name of the city or town at which it is to be delivered to such dealer;
- (e) the method of transportation used in making delivery of such automobile, if driven or towed from final assembly point to place of delivery;
- (f) the following information:
  - (1) the retail price of such automobile suggested by the manufacturer;
  - (2) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to such dealer, which is not included within the price of such automobile as stated pursuant to paragraph (1);
  - (3) the amount charged, if any, to such dealer for the transportation of such automobile to the

location at which it is delivered to such dealer; and

(4) the total of the amounts specified pursuant to paragraphs (1), (2), and (3);

(g) if one or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—

(1) includes a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;

(2) refers to safety rating categories that may include frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests);

(3) contains information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including <http://www.safercar.gov>; <sup>1</sup> and

(4) is presented in a legible, visible, and prominent fashion and covers at least—

(A) 8 percent of the total area of the label; or

(B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches; and

(h) if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect.

(Pub. L. 85–506, §3, July 7, 1958, 72 Stat. 326; Pub. L. 109–59, title X, §10307(a), Aug. 10, 2005, 119 Stat. 1941; Pub. L. 112–141, div. C, title I, §31314, July 6, 2012, 126 Stat. 772.)

## EDITORIAL NOTES

### AMENDMENTS

**2012**—Subsec. (g)(2). Pub. L. 112–141 inserted "safety rating categories that may include" after "refers to".

**2005**—Subsec. (f)(3). Pub. L. 109–59, §10307(a)(2), inserted "and" at end.

Subsecs. (g), (h). Pub. L. 109–59, §10307(a)(1), (3), (4), added subsecs. (g) and (h).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–141 effective Oct. 1, 2012, see section 3(a) of Pub. L. 112–141, set out as an Effective and Termination Dates of 2012 Amendment note under section 101 of Title 23, Highways.

### EFFECTIVE DATE

Section effective on the later of Oct. 1, 1958, or the first day of the introduction of any new model of automobile in any line of automobile beginning after July 7, 1958, see section 5 of Pub. L. 85–506, set out as a note under section 1231 of this title.

### REGULATIONS

Pub. L. 109–59, title X, §10307(b), Aug. 10, 2005, 119 Stat. 1942, provided that: "The Secretary of Transportation shall issue regulations to ensure that the labeling requirements under subsections (g) and (h) of section 3 of the Automobile Information Disclosure Act [15 U.S.C. 1232(g), (h)], as added by subsection (a), are implemented by September 1, 2007."

<sup>1</sup> *So in original. Probably should be "<http://www.safercar.gov>."*

Section, Pub. L. 91-614, title III, §304, Dec. 31, 1970, 84 Stat. 1845, related to Federal manufacturers excise tax on labels and provided for violations and penalties. It was not a part of the Automobile Information Disclosure Act, which comprises this chapter generally.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF REPEAL

Pub. L. 92-178, title IV, §401(g)(7)(B), Dec. 10, 1971, 85 Stat. 534, provided that: "Subparagraph (A) [repealing this section] shall apply to acts (or failures to act) after the date of the enactment of this Act [Dec. 10, 1971]."

## §1233. Violations and penalties

### (a) Failure to affix required label

Any manufacturer of automobiles distributed in commerce who willfully fails to affix to any new automobile manufactured or imported by him the label required by section 1232 of this title shall be fined not more than \$1,000. Such failure with respect to each automobile shall constitute a separate offense.

### (b) Failure to endorse required label

Any manufacturer of automobiles distributed in commerce who willfully fails to endorse clearly, distinctly and legibly any label as required by section 1232 of this title, or who makes a false endorsement of any such label, shall be fined not more than \$1,000. Such failure or false endorsement with respect to each automobile shall constitute a separate offense.

### (c) Removal, alteration, or illegibility of required label

Any person who willfully removes, alters, or renders illegible any label affixed to a new automobile pursuant to section 1232 of this title, or any endorsement thereon, prior to the time that such automobile is delivered to the actual custody and possession of the ultimate purchaser of such new automobile, except where the manufacturer relabels the automobile in the event the same is rerouted, repurchased, or reacquired by the manufacturer of such automobile, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. Such removal, alteration, or rendering illegible with respect to each automobile shall constitute a separate offense.

(Pub. L. 85-506, §4, July 7, 1958, 72 Stat. 326.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective on the later of Oct. 1, 1958, or the first day of the introduction of any new model of automobile in any line of automobile beginning after July 7, 1958, see section 5 of Pub. L. 85-506, set out as a note under section 1231 of this title.

## CHAPTER 29—MANUFACTURE, TRANSPORTATION, OR DISTRIBUTION OF SWITCHBLADE KNIVES

Sec.

- |       |   |
|-------|---|
| 1241. | Definitions.  |
| 1242. | Introduction, manufacture for introduction, transportation or distribution in interstate commerce; penalty. |
| 1243. | Manufacture, sale, or possession within specific jurisdictions; penalty.                                    |
| 1244. | Exceptions.   |
| 1245. | Ballistic knives.   |

## **§1241. Definitions**

As used in this chapter—

(a) The term "interstate commerce" means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.

(b) The term "switchblade knife" means any knife having a blade which opens automatically—

(1) by hand pressure applied to a button or other device in the handle of the knife, or

(2) by operation of inertia, gravity, or both.

(Pub. L. 85–623, §1, Aug. 12, 1958, 72 Stat. 562.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 85–623, which enacted sections 1241 to 1244 of this title and amended section 1716 of Title 18, Crimes and Criminal Procedure.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE**

Pub. L. 85–623, §6, Aug. 12, 1958, 72 Stat. 563, provided that: "This Act [enacting this chapter and amending section 1716 of Title 18, Crimes and Criminal Procedure] shall take effect on the sixtieth day after the date of its enactment [Aug. 12, 1958]."

#### **SHORT TITLE OF 1986 AMENDMENT**

Pub. L. 99–570, title X, §10001, Oct. 27, 1986, 100 Stat. 3207–166, provided that: "This title [enacting section 1245 of this title, amending section 1716 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 1245 of this title] may be cited as the 'Ballistic Knife Prohibition Act of 1986'."

#### **SHORT TITLE**

Pub. L. 85–623, Aug. 12, 1958, 72 Stat. 562, which enacted this chapter, is popularly known as the "Federal Switchblade Act".

## **§1242. Introduction, manufacture for introduction, transportation or distribution in interstate commerce; penalty**

Whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined not more than \$2,000 or imprisoned not more than five years, or both.

(Pub. L. 85–623, §2, Aug. 12, 1958, 72 Stat. 562.)

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE**

Section effective on the sixtieth day after Aug. 12, 1958, see section 6 of Pub. L. 85–623, set out as a note under section 1241 of this title.

## **§1243. Manufacture, sale, or possession within specific jurisdictions; penalty**

Whoever, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18), manufactures, sells, or possesses any switchblade



knife, shall be fined not more than \$2,000 or imprisoned not more than five years, or both.  
(Pub. L. 85–623, §3, Aug. 12, 1958, 72 Stat. 562.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective on the sixtieth day after Aug. 12, 1958, see section 6 of Pub. L. 85–623, set out as a note under section 1241 of this title.

## §1244. Exceptions

Sections 1242 and 1243 of this title shall not apply to—

- (1) any common carrier or contract carrier, with respect to any switchblade knife shipped, transported, or delivered for shipment in interstate commerce in the ordinary course of business;
- (2) the manufacture, sale, transportation, distribution, possession, or introduction into interstate commerce, of switchblade knives pursuant to contract with the Armed Forces;
- (3) the Armed Forces or any member or employee thereof acting in the performance of his duty;
- (4) the possession, and transportation upon his person, of any switchblade knife with a blade three inches or less in length by any individual who has only one arm; or
- (5) a knife that contains a spring, detent, or other mechanism designed to create a bias toward closure of the blade and that requires exertion applied to the blade by hand, wrist, or arm to overcome the bias toward closure to assist in opening the knife.

(Pub. L. 85–623, §4, Aug. 12, 1958, 72 Stat. 562; Pub. L. 111–83, title V, §562, Oct. 28, 2009, 123 Stat. 2183.)

## EDITORIAL NOTES

### AMENDMENTS

**2009**—Par. (5). Pub. L. 111–83 added par. (5).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective on the sixtieth day after Aug. 12, 1958, see section 6 of Pub. L. 85–623, set out as a note under section 1241 of this title.

## §1245. Ballistic knives

### (a) Prohibition and penalties for possession, manufacture, sale, or importation

Whoever in or affecting interstate commerce, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18), knowingly possesses, manufactures, sells, or imports a ballistic knife shall be fined as provided in title 18, or imprisoned not more than ten years, or both.

### (b) Prohibition and penalties for possession or use during commission of Federal crime of violence

Whoever possesses or uses a ballistic knife in the commission of a Federal crime of violence shall be fined as provided in title 18, or imprisoned not less than five years and not more than ten years, or both.

### (c) Exceptions

The exceptions provided in paragraphs (1), (2), and (3) of section 1244 of this title with respect to switchblade knives shall apply to ballistic knives under subsection (a) of this section.

**(d) "Ballistic knife" defined**

As used in this section, the term "ballistic knife" means a knife with a detachable blade that is propelled by a spring-operated mechanism.

(Pub. L. 85-623, §7, as added Pub. L. 99-570, title X, §10002, Oct. 27, 1986, 100 Stat. 3207-167; amended Pub. L. 100-690, title VI, §6472, Nov. 18, 1988, 102 Stat. 4379.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1988**—Subsec. (a). Pub. L. 100-690, §6472(1), substituted "in or affecting interstate commerce, within any Territory or possession of the United States, within Indian country (as defined in section 1151 of title 18), or within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of title 18), knowingly possesses, manufactures, sells, or imports" for "knowingly possesses, manufactures, sells, or imports".

Subsec. (b). Pub. L. 100-690, §6472(2), struck out "or State" after "Federal".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Pub. L. 99-570, title X, §10004, Oct. 27, 1986, 100 Stat. 3207-167, provided that: "The amendments made by this title [enacting this section, amending section 1716 of Title 18, Crimes and Criminal Procedure, and enacting provisions set out as a note under section 1241 of this title] shall take effect 30 days after the date of enactment of this title [Oct. 27, 1986]."

**CHAPTER 30—HAZARDOUS SUBSTANCES**

Sec.

- 1261. Definitions.
- 1262. Declaration of hazardous substances.
- 1263. Prohibited acts.
- 1264. Penalties; exceptions.
- 1265. Seizures.
- 1266. Hearing before report of criminal violation.
- 1267. Injunctions; criminal contempt; trial by court or jury.
- 1268. Proceedings in name of United States; subpoenas.
- 1269. Regulations.
- 1270. Examinations and investigations.
- 1271. Records of interstate shipment.
- 1272. Publicity; reports; dissemination of information.
- 1273. Imports.
- 1274. Remedies respecting banned hazardous substances.
- 1275. Toxicological Advisory Board.
- 1276. Congressional veto of hazardous substances regulations.
- 1277. Labeling of art materials.
- 1278. Requirements for labeling certain toys and games.
- 1278a. Children's products containing lead; lead paint rule.

**§1261. Definitions**

For the purposes of this chapter—

(a) The term "territory" means any territory or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico but excluding the Canal Zone.

(b) The term "interstate commerce" means (1) commerce between any State or territory and any place outside thereof, and (2) commerce within the District of Columbia or within any territory not organized with a legislative body.

(c) The term "Commission" means the Consumer Product Safety Commission.

(d) Repealed. Pub. L. 110-314, title II, §204(b)(4)(A), Aug. 14, 2008, 122 Stat. 3041

(e) The term "person" includes an individual, partnership, corporation, and association.

(f) The term "hazardous substance" means:

(1)(A) Any substance or mixture of substances which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(B) Any substances which the Commission by regulation finds, pursuant to the provisions of section 1262(a) of this title, meet the requirements of subparagraph (1)(A) of this paragraph.

(C) Any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the Commission determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health.

(D) Any toy or other article intended for use by children which the Commission by regulation determines, in accordance with section 1262(e) of this title, presents an electrical, mechanical, or thermal hazard.

(E) Any solder which has a lead content in excess of 0.2 percent.

(2) The term "hazardous substance" shall not apply to pesticides subject to the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], nor to foods, drugs and cosmetics subject to the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, nor to tobacco and tobacco products, but such term shall apply to any article which is not itself a pesticide within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph (1) of this paragraph by reason of bearing or containing such a pesticide.

(3) The term "hazardous substance" shall not include any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and regulations issued pursuant thereto by the Atomic Energy Commission.

(g) The term "toxic" shall apply to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(h)(1) The term "highly toxic" means any substance which falls within any of the following categories: (a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or (b) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or (c) produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four hours or less.

(2) If the Commission finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the

human data shall take precedence.

(i) The term "corrosive" means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces.

(j) The term "irritant" means any substance not corrosive within the meaning of subparagraph (i) which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(k) The term "strong sensitizer" means a substance which will cause on normal living tissue through an allergic or photodynamic process a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the Commission. Before designating any substance as a strong sensitizer, the Commission, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

(l)(1) The terms "extremely flammable", "flammable", and "combustible" as applied to any substance, liquid, solid, or the content of a self-pressurized container shall be defined by regulations issued by the Commission.

(2) The test methods found by the Commission to be generally applicable for defining the flammability or combustibility characteristics of any such substance shall also be specified in such regulations.

(3) In establishing definitions and test methods related to flammability and combustibility, the Commission shall consider the existing definitions and test methods of other Federal agencies involved in the regulation of flammable and combustible substances in storage, transportation and use; and to the extent possible, shall establish compatible definitions and test methods.

(4) Until such time as the Commission issues a regulation under paragraph (1) defining the term "combustible" as applied to liquids, such term shall apply to any liquid which has a flash point above eighty degrees Fahrenheit to and including one hundred and fifty degrees, as determined by the Tagliabue Open Cup Tester.

(m) The term "radioactive substance" means a substance which emits ionizing radiation.

(n) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (1) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (2) on all accompanying literature where there are directions for use, written or otherwise.

(o) The term "immediate container" does not include package liners.

(p) The term "misbranded hazardous substance" means a hazardous substance (including a toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended, or packaged in a form suitable, for use in the household or by children, if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title or if such substance, except as otherwise provided by or pursuant to section 1262 of this title, fails to bear a label—

(1) which states conspicuously (A) the name and place of business of the manufacturer, packer, distributor or seller; (B) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the Commission by regulation permits or requires the use of a recognized generic name; (C) the signal word "DANGER" on substances which are extremely flammable, corrosive, or highly toxic; (D) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (E) an affirmative statement of the principal hazard or hazards, such as "Flammable", "Combustible", "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard; (F) precautionary measures describing the action to be

followed or avoided, except when modified by regulation of the Commission pursuant to section 1262 of this title; (G) instruction, when necessary or appropriate, for first-aid treatment; (H) the word "poison" for any hazardous substance which is defined as "highly toxic" by subsection (h); (I) instructions for handling and storage of packages which require special care in handling or storage; and (J) the statement (i) "Keep out of the reach of children" or its practical equivalent, or, (ii) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard, and

(2) on which any statements required under subparagraph (1) of this paragraph are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

The term "misbranded hazardous substance" also includes a household substance as defined in section 1471(2)(D) <sup>1</sup> of this title if it is a substance described in paragraph (1) of subsection (f) of this section and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title.

(q)(1) The term "banned hazardous substance" means (A) any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or (B) any hazardous substance intended, or packaged in a form suitable, for use in the household, which the Commission by regulation classifies as a "banned hazardous substance" on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this chapter for that substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of interstate commerce: *Provided*, That the Commission, by regulation, (i) shall exempt from clause (A) of this paragraph articles, such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings, and (ii) shall exempt from clause (A), and provide for the labeling of, common fireworks (including toy paper caps, cone fountains, cylinder fountains, whistles without report, and sparklers) to the extent that it determines that such articles can be adequately labeled to protect the purchasers and users thereof.

(2) Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of subsections (f) through (i) of section 1262 of this title, except that if the Commission finds that the distribution for household use of the hazardous substance involved presents an imminent hazard to the public health, it may by order published in the Federal Register give notice of such finding, and thereupon such substance when intended or offered for household use, or when so packaged as to be suitable for such use, shall be deemed to be a "banned hazardous substance" pending the completion of proceedings relating to the issuance of such regulations.

(r) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(s) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness (1) from fracture, fragmentation, or disassembly of the article, (2) from propulsion of the article (or any part or accessory thereof), (3) from points or other protrusions, surfaces, edges, openings, or closures, (4) from moving parts, (5) from lack or insufficiency of controls to reduce or stop motion, (6) as a result of self-adhering characteristics of the article, (7) because the article (or any part or accessory thereof) may be aspirated or ingested, (8) because of instability, or (9) because of any other aspect of the article's design or manufacture.

(t) An article may be determined to present a thermal hazard if, in normal use or when subjected to

reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

(Pub. L. 86–613, §2, July 12, 1960, 74 Stat. 372; Pub. L. 89–756, §§2(a)–(c), 3(a), Nov. 3, 1966, 80 Stat. 1303, 1304; Pub. L. 91–113, §§2(a), (c), (d), 3, Nov. 6, 1969, 83 Stat. 187–189; Pub. L. 91–601, §6(a), formerly §7(a), Dec. 30, 1970, 84 Stat. 1673, renumbered Pub. L. 97–35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716; Pub. L. 92–516, §3(1), Oct. 21, 1972, 86 Stat. 998; Pub. L. 94–284, §3(c), May 11, 1976, 90 Stat. 503; Pub. L. 95–631, §9, Nov. 10, 1978, 92 Stat. 3747; Pub. L. 99–339, title I, §109(d)(1), June 19, 1986, 100 Stat. 653; Pub. L. 110–314, title II, §204(b)(2), (4)(A), (B), (D), Aug. 14, 2008, 122 Stat. 3041, 3042.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 86–613. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

For definition of Canal Zone, referred to in subsec. (a), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (f)(2), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (f)(2), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (f)(3), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 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 2011 of Title 42 and Tables.

Section 1471(2)(D) of this title, referred to in subsec. (p), was redesignated section 1471(2)(C) by Pub. L. 94–284, §3(a)(2), May 11, 1976, 90 Stat. 503.

### AMENDMENTS

**2008**—Subsec. (c). Pub. L. 110–314, §204(b)(4)(A), added subsec. (c) and struck out former subsec. (c) which read as follows: "The term 'Department' means the Department of Health, Education, and Welfare."

Subsec. (d). Pub. L. 110–314, §204(b)(4)(A), struck out subsec. (d) which read as follows: "The term 'Secretary' means the Secretary of Health, Education, and Welfare."

Subsecs. (f)(1)(B) to (D), (h)(2), (k), (p)(1). Pub. L. 110–314, §204(b)(4)(B), substituted "Commission" for "Secretary" wherever appearing.

Subsec. (q). Pub. L. 110–314, §204(b)(4)(B), (D), substituted "Commission" for "Secretary" wherever appearing and "it" for "he" in two places.

Subsec. (q)(2). Pub. L. 110–314, §204(b)(2), substituted "Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of subsections (f) through (i) of section 1262 of this title, except that if" for "Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of paragraph (1) of this subsection shall be governed by the provisions of sections 371(e), (f), and (g) of title 21: *Provided*, That if".

**1986**—Subsec. (f)(1)(E). Pub. L. 99–339 added subpar. (E).

**1978**—Subsec. (l). Pub. L. 95–631 transferred the duties hereunder to the Commission from the Secretary; incorporated in provisions designated par. (1) existing text, authorized regulations to be applicable to liquids, and struck out definition of "extremely flammable" as substance with flash point at or below twenty degrees Fahrenheit and "flammable" as substance with a flash point of above twenty degrees to and including eighty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester; incorporated in provisions designated par. (2) existing text extended to liquids covered in term "substance"; added par. (3); and incorporated in provisions designated par. (4) existing text applicable until superseded by regulation.

**1976**—Subsec. (f)(2). Pub. L. 94–284 inserted "nor to tobacco and tobacco products," after "or refrigeration system of a house".

**1972**—Subsec. (f)(2). Pub. L. 92–516 substituted "pesticides" for "economic poisons" and "a pesticide" for "an economic poison" wherever appearing.

**1970**—Subsec. (p). Pub. L. 91–601 substituted in text preceding par. (1) "if the packaging or labeling of such substance is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title or if such substance" for "which substance" and inserted following and below par. (2) provision including in "misbranded hazardous substance" a household substance as defined in section 1471(2)(D) of this title if it is a substance described in par. (1) of subsec. (f) of this section and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 1472 or 1473 of this title.

**1969**—Subsec. (f)(1)(A). Pub. L. 91–113, §3(a), inserted "or combustible" after "is flammable".

Subsec. (f)(1)(D). Pub. L. 91–113, §2(a), added subsec. (f)(1)(D).

Subsec. (l). Pub. L. 91–113, §3(b), inserted definition of term "combustible" and expanded references to "flammability" and "flammable" to include "combustibility" and "combustible", respectively.

Subsec. (p)(1)(E). Pub. L. 91–113, §3(c), inserted "Combustible" to the enumerated affirmative statements of the principal hazard or hazards required to be stated on the label of a hazardous substance.

Subsec. (q)(1). Pub. L. 91–113, §2(c), inserted "or necessarily present an electrical, mechanical, or thermal hazard" after "hazardous substance involved".

Subsecs. (r) to (t). Pub. L. 91–113, §2(d), added subsecs. (r) to (t).

**1966**—Subsec. (f). Pub. L. 89–756, §2(a), provided that "hazardous substances" shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazard substance within the meaning of par. (1) of this subsec. by reason of its bearing or containing an economic poison.

Subsec. (n). Pub. L. 89–756, §2(b), enlarged term "label" to include, where the article is unpackaged or is packaged in an immediate container not intended or suitable for delivery to the ultimate consumer, a display of written, printed or graphic matter directly upon the article involved or upon a tag or other suitable material affixed thereto.

Subsec. (p). Pub. L. 89–756, §2(c), in introductory text preceding par. (1) substituted "misbranded hazardous substance" for "misbranded package" and "misbranded package of a hazardous substance" and as so retermed enlarged applicability to include toys and other articles intended for use by children, which are hazardous substances, or which bear or contain hazardous substances when susceptible of access by children, and in par. (1), clause (J) inserted further category of "misbranded hazardous substance" where the article is intended for use by children and is not a banned hazardous substance and fails to bear a label with adequate directions for the protection of children from the hazard.

Subsec. (q). Pub. L. 89–756, §3(a), added subsec. (q).

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1986 AMENDMENT**

Pub. L. 99–339, title I, §109(d)(3), June 19, 1986, 100 Stat. 653, provided that: "The amendments made by this subsection [amending this section and section 1263 of this title] shall become effective 24 months after the enactment of this Act [June 19, 1986]."

### **EFFECTIVE DATE OF 1972 AMENDMENT**

Amendment by Pub. L. 92–516 effective at close of Oct. 21, 1972, except if regulations are necessary for the implementation of any provision that becomes effective on Oct. 21, 1972, and continuation in effect of subchapter I of chapter 6 of title 7, and regulations thereunder, relating to the control of economic poisons, as in existence prior to Oct. 21, 1972, until superseded by provisions of Pub. L. 92–516 and regulations thereunder, see section 4 of Pub. L. 92–516, set out as a note under section 136 of Title 7, Agriculture.

### **EFFECTIVE DATE OF 1970 AMENDMENT**

Amendment by Pub. L. 91–601 effective Dec. 30, 1970, and regulations establishing special packaging standards effective no sooner than 180 days or later than one year from date regulations are final, or an earlier date published in Federal Register, see section 8 of Pub. L. 91–601, set out as a note under section 1471 of this title.

### **EFFECTIVE DATE OF 1969 AMENDMENT**

Pub. L. 91–113, §5, Nov. 6, 1969, 83 Stat. 190, provided that: "The amendments made by this Act [see Short Title of 1969 Amendment note below] shall take effect on the sixtieth day following the date of the enactment of this Act [Nov. 6, 1969]."

## **EFFECTIVE DATE**

Pub. L. 86-613, §17, formerly §16, July 12, 1960, 74 Stat. 380, renumbered Pub. L. 91-113, §4(a), Nov. 6, 1969, 83 Stat. 189, and amended by Pub. L. 110-314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041, provided that: "This Act [enacting this chapter and repealing sections 401 to 411 of this title] shall take effect upon the date of its enactment [July 12, 1960]; but no penalty or condemnation shall be enforced for any violation of this Act which occurs—

"(a) prior to the expiration of the sixth calendar month after the month in which this Act is enacted [July 1960], or

"(b) prior to the expiration of such additional period or periods, ending not more than eighteen months after the month of enactment of this Act [July 1960], as the Commission may prescribe on the basis of a finding that conditions exist which necessitate the prescribing of such additional period or periods: *Provided*, That the Commission may limit the application of such additional period or periods to violations related to specified provisions of this Act, or to specified kinds of hazardous substances or packages thereof."

#### **SHORT TITLE OF 1994 AMENDMENT**

Pub. L. 103-267, §1, June 16, 1994, 108 Stat. 722, provided that: "This Act [enacting sections 1278 and 6001 to 6006 of this title and provisions set out as notes under this section and sections 1278, 2064, and 6001 of this title] may be cited as the 'Child Safety Protection Act'."

#### **SHORT TITLE OF 1984 AMENDMENT**

Pub. L. 98-491, §1, Oct. 17, 1984, 98 Stat. 2269, provided: "That this Act [amending section 1274 of this title] may be cited as the 'Toy Safety Act of 1984'."

#### **SHORT TITLE OF 1969 AMENDMENT**

Pub. L. 91-113, §1, Nov. 6, 1969, 83 Stat. 187, provided that: "This Act [enacting section 1274 of this title, amending this section and section 1262 of this title, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 401 of this title] may be cited as the 'Child Protection and Toy Safety Act of 1969'."

#### **SHORT TITLE OF 1966 AMENDMENT**

Pub. L. 89-756, §1, Nov. 3, 1966, 80 Stat. 1303, provided that: "This title [probably means this "Act", amending this section, sections 1262, 1263, 1264, 1265, 1273 of this title, and provisions set out as a note under this section] may be cited as the 'Child Protection Act of 1966'."

#### **SHORT TITLE**

Pub. L. 86-613, §1, July 12, 1960, 74 Stat. 372, as amended by Pub. L. 89-756, §5, Nov. 3, 1966, 80 Stat. 1305, provided: "This Act [enacting this chapter, repealing sections 401 to 411 of this title, and enacting notes set out under this section] may be cited as the 'Federal Hazardous Substances Act'."

#### **SEPARABILITY**

Pub. L. 86-613, §16, formerly §15, July 12, 1960, 74 Stat. 380, renumbered Pub. L. 91-113, §4(a), Nov. 6, 1969, 83 Stat. 189, provided that: "If any provision of this Act [enacting this chapter and repealing sections 401 to 411 of this title] is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby."

#### **TRANSFER OF FUNCTIONS**

Atomic Energy Commission abolished and functions transferred by sections 5814 and 5841 of Title 42, The Public Health and Welfare. See, also, Transfer of Functions notes set out under those sections.

#### **EFFECT UPON FEDERAL AND STATE LAW**

Pub. L. 86-613, §18, formerly §17, July 12, 1960, 74 Stat. 380, as amended by Pub. L. 89-756, §4(a), Nov. 3, 1966, 80 Stat. 1305; renumbered and amended by Pub. L. 91-113, §4(a), (b)(1), Nov. 6, 1969, 83 Stat. 189, 190; Pub. L. 94-284, §17(a), May 11, 1976, 90 Stat. 510; Pub. L. 110-314, title II, §204(b)(4)(J), Aug. 14, 2008, 122 Stat. 3042, provided that:

"(a) Nothing in this act [enacting this chapter and repealing sections 401 to 411 of this title] shall be construed to modify or affect the provisions of the Flammable Fabrics Act, as amended (15 U.S.C. 1191 to 1200) [sections 1191 to 1204 of this title], or any regulations promulgated thereunder; or of chapter 39, title 18, United States Code, as amended (18 U.S.C. 831 et seq.), or any regulations promulgated thereunder or under sections 204(a)(2) and 204(a)(3) of the Interstate Commerce Act, as amended [section 31502 of Title



49, Transportation] (relating to the transportation of dangerous substances and explosives by surface carriers); or of section 1716, title 18, United States Code, or any regulations promulgated thereunder (relating to mailing of dangerous substances); or of section 902 [section 1472 of former Title 49] or regulations promulgated under section 601 of the Federal Aviation Act of 1958 [section 1421 of former Title 49] (relating to transportation of dangerous substances and explosives in aircraft); or of the Federal Food, Drug, and Cosmetic Act [chapter 9 of Title 21, Food and Drugs]; or of the Public Health Service Act [chapter 6A of Title 42, The Public Health and Welfare]; or of the Federal Insecticide, Fungicide, and Rodenticide Act [section 136 et seq. of Title 7, Agriculture]; or of the Dangerous Drug Act for the District of Columbia (70 Stat. 612), or the Act entitled 'An Act to regulate the practice of pharmacy and the sale of poisons in the District of Columbia, and for other purposes', approved May 7, 1906 (34 Stat. 175), as amended; or of any other Act of Congress, except as specified in section 19 [set out as a note under sections 401 to 411 of this title].

"(b)(1)(A) Except as provided in paragraphs (2) and (3), if a hazardous substance or its packaging is subject to a cautionary labeling requirement under section 2(p) or 3(b) [subsec. (p) of this section or section 1262(b) of this title] designed to protect against a risk of illness or injury associated with the substance, no State or political subdivision of a State may establish or continue in effect a cautionary labeling requirement applicable to such substance or packaging and designed to protect against the same risk of illness or injury unless such cautionary labeling requirement is identical to the labeling requirement under section 2(p) or 3(b) [subsec. (p) of this section or section 1262(b) of this title].

"(B) Except as provided in paragraphs (2), (3), and (4), if under regulations of the Commission promulgated under or for the enforcement of section 2(q) [subsec. (q) of this section] a requirement is established to protect against a risk of illness or injury associated with a hazardous substance, no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations.

"(2) The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect a requirement applicable to a hazardous substance for its own use (or to the packaging of such a substance) which requirement is designed to protect against a risk of illness or injury associated with such substance and which is not identical to a requirement described in paragraph (1) applicable to such substance (or packaging) and designed to protect against the same risk of illness or injury if the Federal, State, or political subdivision requirement provides a higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1).

"(3)(A) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with subparagraph (B), exempt from paragraph (1), under such conditions as may be prescribed in such regulation, any requirement of such State or political subdivision designed to protect against a risk of illness or injury associated with a hazardous substance if—

"(i) compliance with the requirement would not cause the hazardous substance (or its packaging) to be in violation of the applicable requirement described in paragraph (1), and

"(ii) the State or political subdivision requirement (I) provides a significantly higher degree of protection from such risk of illness or injury than the requirement described in paragraph (1), and (II) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such requirement, the cost of complying with such requirement, the geographic distribution of the substance to which the requirement would apply, the probability of other States or political subdivisions applying for an exemption under this paragraph for a similar requirement, and the need for a national, uniform requirement under this Act [this chapter] for such substance (or its packaging).

"(B) A regulation under subparagraph (A) granting an exemption for a requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5, United States Code, notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

"(4) Paragraph (1)(B) does not prohibit a State or a political subdivision of a State from establishing or continuing in effect a requirement which is designed to protect against a risk of illness or injury associated with fireworks devices or components thereof and which provides a higher degree of protection from such risk of illness or injury than a requirement in effect under a regulation of the Commission described in such paragraph."

[The provisions of section 18 of Pub. L. 86-613, set out above, establishing the extent to which the Federal Hazardous Substances Act [see Short Title note above] preempts, limits, or otherwise affects any other

Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Federal Hazardous Substances Act, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation, see section 231 of Pub. L. 110–314, set out as a note under section 2051 of this title.]

#### **SMALL BALLS AS BANNED HAZARDOUS SUBSTANCES**

Pub. L. 103–267, title I, §101(b), June 16, 1994, 108 Stat. 725, provided that: "A small ball—

"(1) intended for children under the age of 3 years of age, and

"(2) with a diameter of 1.75 inches or less,

shall be considered a banned hazardous substance under section 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q))."

[Section 101(b) of Pub. L. 103–267, set out above, effective Jan. 1, 1995, see section 101(d) of Pub. L. 103–267, set out as an Effective Date note under section 1278 of this title.]

*<sup>1</sup> See References in Text note below.*

### **§1262. Declaration of hazardous substances**

#### **(a) Rulemaking**

##### **(1) In general**

Whenever in the judgment of the Commission such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to its application, the Commission may by regulation declare to be a hazardous substance, for the purposes of this chapter, any substance or mixture of substances, which it finds meets the requirements of section 1261(f)(1)(A) of this title.

##### **(2) Procedure**

Proceedings for the issuance, amendment, or repeal of regulations under this subsection and the admissibility of the record of such proceedings in other proceedings, shall be governed by the provisions of subsections (f) through (i) of this section.

#### **(b) Reasonable variations or additional label requirements**

If the Commission finds that the requirements of section 1261(p)(1) of this title are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, it may by regulation establish such reasonable variations or additional label requirements as it finds necessary for the protection of the public health and safety; and any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance.

#### **(c) Exemption from requirements by regulation**

If the Commission finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the Commission shall promulgate regulations exempting such substance from these requirements to the extent it determines to be consistent with adequate protection of the public health and safety.

#### **(d) Exemption from requirements of this chapter of substances or containers adequately regulated by other provisions of law**

The Commission may exempt from the requirements established by or pursuant to this chapter any hazardous substance or container of a hazardous substance with respect to which it finds that adequate requirements satisfying the purposes of this chapter have been established by or pursuant to any other Act of Congress.

**(e) Regulation of toys or articles intended for use by children**

(1) A determination by the Commission that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by regulation in accordance with the procedures prescribed by section 553 (other than clause (B) of the last sentence of subsection (b) of such section) of title 5 unless the Commission elects the procedures prescribed by subsection (e) of section 371 of title 21, in which event such subsection and subsections (f) and (g) of such section 371 of title 21 shall apply to the making of such determination. If the Commission makes such election, it shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (e).

(2) If, before or during a proceeding pursuant to paragraph (1) of this subsection, the Commission finds that, because of an electrical, mechanical, or thermal hazard, distribution of the toy or other article involved presents an imminent hazard to the public health and it, by order published in the Federal Register, gives notice of such finding, such toy or other article shall be deemed to be a banned hazardous substance for purposes of this chapter until the proceeding has been completed. If not yet initiated when such order is published, such a proceeding shall be initiated as promptly as possible.

(3)(A) In the case of any toy or other article intended for use by children which is determined by the Commission, in accordance with section 553 of title 5, to present an electrical, mechanical, or thermal hazard, any person who will be adversely affected by such a determination may, at any time prior to the 60th day after the regulation making such determination is issued by the Commission, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by him <sup>1</sup> for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based its determination, as provided in section 2112 of title 28.

(B) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original determination, with the return of such additional evidence.

(C) Upon the filing of the petition under this paragraph, the court shall have jurisdiction to review the determination of the Commission in accordance with subparagraphs (A), (B), (C), and (D) of paragraph (2) of the second sentence of section 706 of title 5. If the court ordered additional evidence to be taken under subparagraph (B) of this paragraph, the court shall also review the Secretary's <sup>2</sup> determination to determine if, on the basis of the entire record before the court pursuant to subparagraphs (A) and (B) of this paragraph, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to any determination reviewed under this paragraph, the court may grant appropriate relief pending conclusion of the review proceedings, as provided in section 705 of title 5.

(D) The judgment of the court affirming or setting aside, in whole or in part, any such determination of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

**(f) Commencement of proceeding for promulgation of regulation; notice**

A proceeding for the promulgation of a regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section may be commenced by the publication in the Federal Register of an advance notice of proposed rulemaking which shall—

(1) identify the article or substance and the nature of the risk of injury associated with the article

or substance;

(2) include a summary of each of the regulatory alternatives under consideration by the Commission (including voluntary standards);

(3) include information with respect to any existing standard known to the Commission which may be relevant to the proceedings, together with a summary of the reasons why the Commission believes preliminarily that such standard does not eliminate or adequately reduce the risk of injury identified in paragraph (1);

(4) invite interested persons to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice), comments with respect to the risk of injury identified by the Commission, the regulatory alternatives being considered, and other possible alternatives for addressing the risk;

(5) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), an existing standard or a portion of a standard as a proposed regulation under section 1261(q)(1) of this title or subsection (e) of this section; and

(6) invite any person (other than the Commission) to submit to the Commission, within such period as the Commission shall specify in the notice (which period shall not be less than 30 days after the date of publication of the notice), a statement of intention to modify or develop a voluntary standard to address the risk of injury identified in paragraph (1) together with a description of a plan to modify or develop the standard.

The Commission shall transmit such notice within 10 calendar days to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

**(g) Publication of standard; termination of proceeding for promulgation of regulation; monitoring of compliance**

(1) If the Commission determines that any standard submitted to it in response to an invitation in a notice published under subsection (f)(5) if promulgated (in whole, in part, or in combination with any other standard submitted to the Commission or any part of such a standard) as a regulation under section 1261(q)(1) of this title or subsection (e) of this section, as the case may be, would eliminate or adequately reduce the risk of injury identified in a notice provided under subsection (f)(1), the Commission may publish such standard, in whole, in part, or in such combination and with nonmaterial modifications, as a proposed regulation under such section or subsection.

(2) If the Commission determines that—

(A) compliance with any standard submitted to it in response to an invitation in a notice published under subsection (f)(6) is likely to result in the elimination or adequate reduction of the risk of injury identified in the notice, and

(B) it is likely that there will be substantial compliance with such standard,

the Commission shall terminate any proceeding to promulgate a regulation under section 1261(q)(1) of this title or subsection (e) of this section, respecting such risk of injury and shall publish in the Federal Register a notice which includes the determination of the Commission and which notifies the public that the Commission will rely on the voluntary standard to eliminate or reduce the risk of injury, except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider such comments in making any determination regarding reliance on the involved voluntary standard under this subsection.

(3) The Commission shall devise procedures to monitor compliance with any voluntary standards—

- (A) upon which the Commission has relied under paragraph (2) of this subsection;
- (B) which were developed with the participation of the Commission; or
- (C) whose development the Commission has monitored.

**(h) Publication of proposed rule together with preliminary regulatory analysis**

No regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous substance and no regulation under subsection (e) of this section may be proposed by the Commission unless the Commission publishes in the Federal Register the text of the proposed rule, including any alternatives, which the Commission proposes to promulgate, together with a preliminary regulatory analysis containing—

(1) a preliminary description of the potential benefits and potential costs of the proposed regulation, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

(2) a discussion of the reasons any standard or portion of a standard submitted to the Commission under subsection (f)(5) was not published by the Commission as the proposed regulation or part of the proposed regulation;

(3) a discussion of the reasons for the Commission's preliminary determination that efforts proposed under subsection (f)(6) and assisted by the Commission as required by section 2054(a)(3) of this title would not, within a reasonable period of time, be likely to result in the development of a voluntary standard that would eliminate or adequately reduce the risk of injury identified in the notice provided under subsection (f)(1); and

(4) a description of any reasonable alternatives to the proposed regulation, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed regulation.

The Commission shall transmit such notice within 10 calendar days to the appropriate Congressional committees. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed regulation.

**(i) Publication of final regulatory analysis with regulation; required findings; judicial review**

(1) The Commission shall not promulgate a regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section unless it has prepared a final regulatory analysis of the regulation containing the following information:

(A) A description of the potential benefits and potential costs of the regulation, including costs and benefits that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits and bear the costs.

(B) A description of any alternatives to the final regulation which were considered by the Commission, together with a summary description of their potential benefits and costs and a brief explanation of the reasons why these alternatives were not chosen.

(C) A summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

The Commission shall publish its final regulatory analysis with the regulation.

(2) The Commission shall not promulgate a regulation under section 1261(q)(1) of this title classifying an article or substance as a banned hazardous substance or a regulation under subsection (e) of this section unless it finds (and includes such finding in the regulation)—

(A) in the case of a regulation which relates to a risk of injury with respect to which persons who would be subject to such regulation have adopted and implemented a voluntary standard, that—

- (i) compliance with such voluntary standard is not likely to result in the elimination or

adequate reduction of such risk of injury; or

(ii) it is unlikely that there will be substantial compliance with such voluntary standard;

(B) that the benefits expected from the regulation bear a reasonable relationship to its costs; and

(C) that the regulation imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the regulation is being promulgated.

(3)(A) Any regulatory analysis prepared under subsection (h) or paragraph (1) shall not be subject to independent judicial review, except that when an action for judicial review of a regulation is instituted, the contents of any such regulatory analysis shall constitute part of the whole rulemaking record of agency action in connection with such review.

(B) The provisions of subparagraph (A) shall not be construed to alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

#### **(j) Petition to initiate rulemaking**

The Commission shall grant, in whole or in part, or deny any petition under section 553(e) of title 5 requesting the Commission to initiate a rulemaking, within a reasonable time after the date on which such petition is filed. The Commission shall state the reasons for granting or denying such petition. The Commission may not deny any such petition on the basis of a voluntary standard unless the voluntary standard is in existence at the time of the denial of the petition, the Commission has determined that the voluntary standard is likely to result in the elimination or adequate reduction of the risk of injury identified in the petition, and it is likely that there will be substantial compliance with the standard.

(Pub. L. 86-613, §3, July 12, 1960, 74 Stat. 374; Pub. L. 89-756, §2(d), (e), Nov. 3, 1966, 80 Stat. 1303, 1304; Pub. L. 91-113, §2(b), Nov. 6, 1969, 83 Stat. 187; Pub. L. 97-35, title XII, §1203(b)(1), Aug. 13, 1981, 95 Stat. 708; Pub. L. 101-608, title I, §§107(b), 108(b), 110(b), Nov. 16, 1990, 104 Stat. 3112, 3113; Pub. L. 110-314, title II, §204(b)(1), (3), (4)(B), (D), Aug. 14, 2008, 122 Stat. 3041, 3042.)

### **EDITORIAL NOTES**

#### **AMENDMENTS**

**2008**—Subsec. (a). Pub. L. 110-314, §204(b)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) authorized the Commission to declare hazardous substances by regulation and detailed proceedings for the issuance, amendment, or repeal of such regulations.

Subsecs. (b) to (e). Pub. L. 110-314, §204(b)(4)(D), substituted "it" for "he" and "its" for "his" wherever appearing in reference to the Secretary of Health, Education, and Welfare.

Pub. L. 110-314, §204(b)(4)(B), substituted "Commission" for "Secretary" wherever appearing.

Subsec. (f). Pub. L. 110-314, §204(b)(3)(A), substituted "may be commenced" for "shall be commenced" in introductory provisions.

Subsec. (g)(1). Pub. L. 110-314, §204(b)(3)(B), substituted "identified in a notice" for "identified in the notice".

Subsec. (h). Pub. L. 110-314, §204(b)(3)(C), (D), in introductory provisions, substituted "unless the" for "unless, not less than 60 days after publication of the notice required in subsection (f) of this section, the" and in concluding provisions, substituted "appropriate Congressional committees. Nothing in this subsection shall preclude any person from submitting an existing standard or portion of a standard as a proposed regulation." for "Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives."

**1990**—Subsec. (g)(2). Pub. L. 101-608, §108(b), struck out period at end and inserted ", except that the Commission shall terminate any such proceeding and rely on a voluntary standard only if such voluntary standard is in existence. For purposes of this section, a voluntary standard shall be considered to be in existence when it is finally approved by the organization or other person which developed such standard, irrespective of the effective date of the standard. Before relying upon any voluntary standard, the Commission shall afford interested persons (including manufacturers, consumers, and consumer organizations) a reasonable opportunity to submit written comments regarding such standard. The Commission shall consider

such comments in making any determination regarding reliance on the involved voluntary standard under this subsection."

Subsec. (g)(3). Pub. L. 101-608, §107(b), added par. (3).

Subsec. (j). Pub. L. 101-608, §110(b), added subsec. (j).

**1981**—Subsecs. (f) to (i). Pub. L. 97-35 added subsecs. (f) to (i).

**1969**—Subsec. (e). Pub. L. 91-113 added subsec. (e).

**1966**—Subsec. (b). Pub. L. 89-756, §2(d), substituted "any such hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance" for "any container of such hazardous substance, intended or suitable for household use, which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded package of a hazardous substance".

Subsec. (d). Pub. L. 89-756, §2(e), inserted "hazardous substance or" before "container of a hazardous substance".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 applicable with respect to regulations under this chapter and chapters 25 and 47 of this title for which notices of proposed rulemaking are issued after Aug. 14, 1981, see section 1215 of Pub. L. 97-35, set out as a note under section 2052 of this title.

### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-113 effective on sixtieth day following Nov. 6, 1969, see section 5 of Pub. L. 91-113, set out as a note under section 1261 of this title.

### NATIONAL COMMISSION ON PRODUCT SAFETY

Pub. L. 90-146, Nov. 20, 1967, 81 Stat. 466, as amended by Pub. L. 91-51, Aug. 4, 1969, 83 Stat. 86, established a National Commission on Product Safety to study and investigate the scope and adequacy of measures to protect consumers against unreasonable risk of injuries which may be caused by hazardous household products and required the Commission to transmit its final report to the President and to the Congress by June 30, 1970. Ninety days after submission of its final report the Commission ceased to exist by the express terms of Pub. L. 90-146.

<sup>1</sup> *So in original. Probably should be "it".*

<sup>2</sup> *So in original. Probably should be "Commission's".*

## §1263. Prohibited acts

The following acts and the causing thereof are prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any misbranded hazardous substance or banned hazardous substance.

(b) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of, or the doing of any other act with respect to, a hazardous substance, if such act is done while the substance is in interstate commerce, or while the substance is held for sale (whether or not the first sale) after shipment in interstate commerce, and results in the hazardous substance being a misbranded hazardous substance or banned hazardous substance.

(c) The receipt in interstate commerce of any misbranded hazardous substance or banned



hazardous substance and the delivery or proffered delivery thereof for pay or otherwise.

(d) The giving of a guarantee or undertaking referred to in section 1264(b)(2) of this title which guarantee or undertaking is false, except by a person who relied upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

(e) The failure to permit entry or inspection as authorized by section 1270(b) of this title or to permit access to and copying of any record as authorized by section 1271 of this title.

(f) The introduction or delivery for introduction into interstate commerce, or the receipt in interstate commerce and subsequent delivery or proffered delivery for pay or otherwise, of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this paragraph, the terms "food", "drug", and "cosmetic" shall have the same meanings as in the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(g) The manufacture of a misbranded hazardous substance or banned hazardous substance within the District of Columbia or within any territory not organized with a legislative body.

(h) The use by any person to his own advantage, or revealing other than to the Commission or officers or employees of the Commission, or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under authority of section 1270 of this title concerning any method of process which as a trade secret is entitled to protection.

(i) The failure to notify the Commission with respect to exports, pursuant to section 1273(d) of this title.

(j) The failure to comply with an order issued under section 1274 of this title.

(k) The introduction or delivery for introduction into interstate commerce of any lead solder which has a lead content in excess of 0.2 percent which does not prominently display a warning label stating the lead content of the solder and warning that the use of such solder in the making of joints or fittings in any private or public potable water supply system is prohibited.

(Pub. L. 86-613, §4, July 12, 1960, 74 Stat. 375; Pub. L. 89-756, §§2(f), 3(b), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 95-631, §7(a), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 97-35, title XII, §1211(f)(2), Aug. 13, 1981, 95 Stat. 723; Pub. L. 99-339, title I, §109(d)(2), June 19, 1986, 100 Stat. 653; Pub. L. 110-314, title II, §204(b)(4)(B), (C), (H), Aug. 14, 2008, 122 Stat. 3041, 3042.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (f), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

### AMENDMENTS

**2008**—Subsec. (h). Pub. L. 110-314, §204(b)(4)(B), (C), substituted "Commission or officers or employees of the Commission" for "Secretary or officers or employees of the Department".

Subsec. (i). Pub. L. 110-314, §204(b)(4)(H), substituted "Commission" for "Consumer Product Safety Commission".

**1986**—Subsec. (k). Pub. L. 99-339 added subsec. (k).

**1981**—Subsec. (j). Pub. L. 97-35 added subsec. (j).

**1978**—Subsec. (i). Pub. L. 95-631 added subsec. (i).

**1966**—Subsec. (a). Pub. L. 89-756, §§2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous substance" for "misbranded package of a hazardous substance".

Subsec. (b). Pub. L. 89-756, §§2(f)(2), 3(b), substituted "being a misbranded hazardous substance or banned hazardous substance" for "being in a misbranded package".

Subsec. (c). Pub. L. 89-756, §§2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous substance" for "misbranded package of a hazardous substance".



Subsec. (f). Pub. L. 89-756, §2(f)(2), substituted "being a misbranded hazardous substance" for "being in a misbranded package".

Subsec. (g). Pub. L. 89-756, §§2(f)(1), 3(b), substituted "misbranded hazardous substance or banned hazardous substance" for "misbranded package of a hazardous substance".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99-339 effective 24 months after June 19, 1986, see section 109(d)(3) of Pub. L. 99-339, set out as a note under section 1261 of this title.

### **EFFECTIVE DATE OF 1981 AMENDMENT**

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97-35, set out as a note under section 2052 of this title.

## **§1264. Penalties; exceptions**

### **(a) Criminal penalties**

Any person who violates any of the provisions of section 1263 of this title shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than \$500 or to imprisonment for not more than ninety days, or both; but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the penalty shall be imprisonment for not more than 5 years, a fine determined under section 3571 of title 18, or both.

### **(b) Exceptions**

No person shall be subject to the penalties of subsection (a) of this section, (1) for having violated section 1263(c) of this title, if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Commission, the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or (2) for having violated section 1263(a) of this title, if he established a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in this chapter; or (3) for having violated subsection (a) or (c) of section 1263 of this title with respect to any hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the foreign purchaser and in accordance with the laws of the foreign country, but if such hazardous substance is sold or offered for sale in domestic commerce or if the Commission determines that exportation of such substance presents an unreasonable risk of injury to persons residing within the United States, this clause shall not apply.

### **(c) Civil penalties**

(1) Any person who knowingly violates section 1263 of this title shall be subject to a civil penalty not to exceed \$100,000 for each such violation. Subject to paragraph (2), a violation of subsections (a), (b), (c), (d), (f), (g), (i), (j), and (k) of section 1263 of this title shall constitute a separate offense with respect to each substance involved, except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations. A violation of section 1263(e) of this title shall constitute a separate violation with respect to each failure or refusal to allow or perform an act required by section 1263(e) of this title; and, if such violation is a continuing one, each day of such violation shall constitute a separate offense, except that the maximum civil penalty shall not exceed \$15,000,000 for any related series of violations.

(2) The second sentence of paragraph (1) of this subsection shall not apply to violations of

subsection (a) or (c) of section 1263 of this title—

(A) if the person who violated such subsection is not the manufacturer, importer, or private labeler or a distributor of the substances involved; and

(B) if such person did not have either (i) actual knowledge that such person's distribution or sale of the substance violated such subsection, or (ii) notice from the Commission that such distribution or sale would be a violation of such subsection.

(3) In determining the amount of any penalty to be sought upon commencing an action seeking to assess a penalty for a violation of section 1263 of this title, the Commission shall consider the nature, circumstances, extent, and gravity of the violation, including the nature of the substance, the severity of the risk of injury, the occurrence or absence of injury, the amount of the substance distributed, the appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate.

(4) Any civil penalty under this subsection may be compromised by the Commission. In determining the amount of such penalty or whether it should be remitted or mitigated, and in what amount, the Commission shall consider the appropriateness of such penalty to the size of the business of the persons charged, including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including, <sup>1</sup> the nature of the substance involved, the severity of the risk of injury, the occurrence or absence of injury, and the amount of the substance distributed, and such other factors as appropriate. The amount of such penalty when finally determined, or the amount agreed on compromise, may be deducted from any sums owing by the United States to the person charged.

(5) As used in the first sentence of paragraph (1), the term "knowingly" means (A) having actual knowledge, or (B) the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations.

(6)(A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.

(B) Not later than December 1, 2011, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.

(C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding five years. Any increase determined under the preceding sentence shall be rounded to—

(i) in the case of penalties greater than \$1,000 but less than or equal to \$10,000, the nearest multiple of \$1,000;

(ii) in the case of penalties greater than \$10,000 but less than or equal to \$100,000, the nearest multiple of \$5,000;

(iii) in the case of penalties greater than \$100,000 but less than or equal to \$200,000, the nearest multiple of \$10,000; and

(iv) in the case of penalties greater than \$200,000, the nearest multiple of \$25,000.

(D) For purposes of this subsection:

(i) The term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Department of Labor.

(ii) The term "cost-of-living adjustment for the preceding five years" means the percentage by which—

(I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds

(II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted.

#### (d) Civil action for injunction

In the case of an attorney general of a State alleging a violation that affects or may affect such State or its residents, such attorney general may bring a civil action for an injunction to enforce any requirement of this chapter relating to misbranded or banned hazardous substances. The procedural requirements of section 2073 of this title shall apply to any such action.

(Pub. L. 86–613, §5, July 12, 1960, 74 Stat. 376; Pub. L. 89–756, §§2(g), 3(c), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 95–631, §7(b), Nov. 10, 1978, 92 Stat. 3745; Pub. L. 101–608, title I, §§115(b), 118(a), Nov. 16, 1990, 104 Stat. 3119, 3121; Pub. L. 110–314, title II, §§204(b)(4)(B), (H), 217(a)(2), (b)(1)(B), (c)(3), Aug. 14, 2008, 122 Stat. 3041, 3042, 3058, 3059, 3060.)

### EDITORIAL NOTES

#### AMENDMENTS

**2008**—Subsec. (a). Pub. L. 110–314, §217(c)(3), substituted "5 years, a fine determined under section 3571 of title 18, or both." for "one year, or a fine of not more than \$3,000, or both such imprisonment and fine."

Subsec. (b). Pub. L. 110–314, §204(b)(4)(B), (H), substituted "Commission" for "Secretary" in cl. (1) and "Commission" for "Consumer Product Safety Commission" in cl. (3).

Subsec. (c)(1). Pub. L. 110–314, §217(a)(2)(A), (B), substituted "\$100,000" for "\$5,000" and substituted "\$15,000,000" for "\$1,250,000" in two places.

Subsec. (c)(3). Pub. L. 110–314, §217(b)(1)(B)(i), inserted "the nature, circumstances, extent, and gravity of the violation, including" after "shall consider", substituted "substance distributed," for "substance distributed, and", and inserted ", including how to mitigate undue adverse economic impacts on small businesses, and such other factors as appropriate" before period at end.

Subsec. (c)(4). Pub. L. 110–314, §217(b)(1)(B)(ii)(II), inserted ", and such other factors as appropriate" after "substance distributed".

Pub. L. 110–314, §217(b)(1)(B)(ii)(I), which directed insertion of ", including how to mitigate undue adverse economic impacts on small businesses, the nature, circumstances, extent, and gravity of the violation, including" after "person charged", was executed by making the insertion after "persons charged" to reflect the probable intent of Congress.

Subsec. (c)(6)(B). Pub. L. 110–314, §217(a)(2)(C), which directed substitution of "December 1, 2011," for "December 1, 1994," in par. (6)(B) of subsec. (c)(1), was executed by making the substitution in subsec. (c)(6)(B) to reflect the probable intent of Congress.

**1990**—Subsec. (c). Pub. L. 101–608, §115(b), added subsec. (c).

Subsec. (d). Pub. L. 101–608, §118(a), added subsec. (d).

**1978**—Subsec. (b)(3). Pub. L. 95–631 substituted "with respect to" for "in respect of" and made cl. (3) inapplicable when the Consumer Product Safety Commission determines that exportation of the substance presents an unreasonable risk of injury to persons residing within the United States.

**1966**—Subsec. (b). Pub. L. 89–756 substituted "a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms" for "in misbranded packages within the meaning of that term".

### STATUTORY NOTES AND RELATED SUBSIDIARIES

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 217(a)(2) of Pub. L. 110–314 effective on the date that is the earlier of the date on which final regulations are issued under section 217(b)(2) of Pub. L. 110–314, set out as a note under section 2069 of this title, or 1 year after Aug. 14, 2008, see section 217(a)(4) of Pub. L. 110–314, set out as a note under section 1194 of this title.

#### CIVIL PENALTY CRITERIA

The Consumer Product Safety Commission to issue a final regulation providing its interpretation of penalty factors described in subsec. (c)(3) of this section no later than 1 year after Aug. 14, 2008, see section 217(b)(2) of Pub. L. 110–314, set out as a note under section 2069 of this title.

<sup>1</sup> *So in original. The comma probably should not appear.*

## **§1265. Seizures**

### **(a) Grounds and jurisdiction**

Any misbranded hazardous substance or banned hazardous substance when introduced into or while in interstate commerce or while held for sale (whether or not the first sale) after shipment in interstate commerce, or which may not, under the provisions of section 1263(f) of this title, be introduced into interstate commerce, or which has been manufactured in violation of section 1263(g) of this title, shall be liable to be proceeded against while in interstate commerce or at any time thereafter, on libel of information and condemned in any district court in the United States within the jurisdiction of which the hazardous substance is found: *Provided*, That this section shall not apply to a hazardous substance intended for export to any foreign country if it (1) is in a package branded in accordance with the specifications of the foreign purchaser, (2) is labeled in accordance with the laws of the foreign country, and (3) is labeled on the outside of the shipping package to show that it is intended for export, and (4) is so exported.

### **(b) Procedure; multiplicity of pending proceedings**

Such hazardous substance shall be liable to seizure by process pursuant to the libel, and the procedure in cases under this section shall conform, as nearly as may be, to the procedure in admiralty; except that on demand of either party any issue of fact joined in any such case shall be tried by jury. When libel for condemnation proceedings under this section, involving the same claimant and the same issues of misbranding, are pending in two or more jurisdictions, such pending proceedings, upon application of the United States or the claimant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the applicant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the United States or the claimant may apply to the court of one such jurisdiction, and such court (after giving the other party, the claimant, or the United States attorney for such district, reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the claimant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

### **(c) Disposition of goods after decree of condemnation**

Any hazardous substance condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such hazardous substance shall not be sold under such decree contrary to the provisions of this chapter or the laws of the jurisdiction in which sold: *Provided*, That, after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such hazardous substance shall not be sold or disposed of contrary to the provisions of this chapter or the laws of any State or territory in which sold, the court may by order direct that such hazardous substance be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this chapter under the supervision of an officer or employee duly designated by the Commission, and the expense of such supervision shall be paid by the person obtaining release of the hazardous substance under bond.

### **(d) Costs and fees**

When a decree of condemnation is entered against the hazardous substance, court costs and fees, and storage and other proper expenses, shall be awarded against the person, if any, intervening as claimant of the hazardous substance.

### **(e) Removal of case for trial**

In the case of removal for trial of any case as provided by subsection (b)—

(1) the clerk of the court from which removal is made shall promptly transmit to the court in which the case is to be tried all records in the case necessary in order that such court may exercise jurisdiction;

(2) the court to which such case is removed shall have the powers and be subject to the duties, for purposes of such case, which the court from which removal was made would have had, or to which such court would have been subject, if such case had not been removed.

(Pub. L. 86–613, §6, July 12, 1960, 74 Stat. 376; Pub. L. 89–756, §§2(h), 3(d), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 110–314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2008**—Subsec. (c). Pub. L. 110–314 substituted "Commission" for "Secretary".

**1966**—Subsec. (a). Pub. L. 89–756 substituted "Any misbranded hazardous substance or banned hazardous substance" for "Any hazardous substance that is in a misbranded package".

## **§1266. Hearing before report of criminal violation**

Before any violation of this chapter is reported by the Commission to any United States attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views, either orally or in writing, with regard to such contemplated proceeding.

(Pub. L. 86–613, §7, July 12, 1960, 74 Stat. 377; Pub. L. 110–314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2008**—Pub. L. 110–314 substituted "Commission" for "Secretary".

## **§1267. Injunctions; criminal contempt; trial by court or jury**

### **(a) Jurisdiction**

The United States district courts and the United States courts of the territories shall have jurisdiction, for cause shown and subject to the provisions of rule 65(a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of this chapter.

### **(b) Trials**

In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, which violation also constitutes a violation of this chapter, trial shall be by the court or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

(Pub. L. 86–613, §8, July 12, 1960, 74 Stat. 378.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TRANSFER OF FUNCTIONS**

Functions of Secretary of Health, Education, and Welfare under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

## **§1268. Proceedings in name of United States; subpoenas**

All criminal proceedings and all libel or injunction proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the United States. Subpoenas for witnesses who are required to attend a court of the United States in any district may run into any other district in any such proceeding.

(Pub. L. 86-613, §9, July 12, 1960, 74 Stat. 378.)

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **TRANSFER OF FUNCTIONS**

Functions of Secretary of Health, Education, and Welfare under this chapter transferred to Consumer Product Safety Commission, see section 2079 of this title.

## **§1269. Regulations**

### **(a) Authority**

The authority to promulgate regulations for the efficient enforcement of this chapter, except as otherwise provided in this section, is vested in the Commission.

### **(b) Joint regulations**

The Secretary of the Treasury and the Commission shall jointly prescribe regulations for the efficient enforcement of the provisions of section 1273 of this title, except as otherwise provided therein. Such regulations shall be promulgated in such manner and take effect at such time, after due notice, as the Commission shall determine.

(Pub. L. 86-613, §10, July 12, 1960, 74 Stat. 378; Pub. L. 110-314, title II, §204(b)(4)(B), (E), Aug. 14, 2008, 122 Stat. 3041, 3042.)

### **EDITORIAL NOTES**

#### **AMENDMENTS**

**2008**—Subsec. (a). Pub. L. 110-314, §204(b)(4)(B), substituted "Commission" for "Secretary".

Subsec. (b). Pub. L. 110-314, §204(b)(4)(E), substituted "Commission" for "Secretary of Health, Education, and Welfare" in two places.

## **§1270. Examinations and investigations**

### **(a) Authority to conduct**

The Commission is authorized to conduct examinations, inspections, and investigations for the purposes of this chapter through officers and employees of the Commission or through any health officer or employee of any State, territory, or political subdivision thereof, duly commissioned by the Commission as an officer of the Commission.

### **(b) Inspection; notice; samples**

For purposes of enforcement of this chapter, officers or employees duly designated by the Commission, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into interstate commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in interstate commerce; (2) to inspect, at reasonable times and within reasonable limits and in a reasonable manner, such factory, warehouse,

establishment, or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and (3) to obtain samples of such materials or packages thereof, or of such labeling. A separate notice shall be given for each such inspection, but a notice shall not be required for each entry made during the period covered by the inspection. Each such inspection shall be commenced and completed with reasonable promptness.

**(c) Receipt for sample; results of analysis**

If the officer or employee obtains any sample, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained. If an analysis is made of such sample, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(Pub. L. 86-613, §11, July 12, 1960, 74 Stat. 378; Pub. L. 110-314, title II, §204(b)(4)(B), (C), Aug. 14, 2008, 122 Stat. 3041, 3042.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2008**—Subsec. (a). Pub. L. 110-314, §204(b)(4)(B), (C), substituted "Commission is authorized" for "Secretary is authorized", "employees of the Commission" for "employees of the Department", "commissioned by the Commission" for "commissioned by the Secretary", and "officer of the Commission" for "officer of the Department".

Subsec. (b). Pub. L. 110-314, §204(b)(4)(B), substituted "Commission" for "Secretary".

**§1271. Records of interstate shipment**

For the purpose of enforcing the provisions of this chapter, carriers engaged in interstate commerce, and persons receiving hazardous substances in interstate commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the Commission, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in interstate commerce of any such hazardous substance, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates: *Provided*, That evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained: *Provided further*, That carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

(Pub. L. 86-613, §12, July 12, 1960, 74 Stat. 379; Pub. L. 91-452, title II, §219, Oct. 15, 1970, 84 Stat. 929; Pub. L. 110-314, title II, §204(b)(4)(B), Aug. 14, 2008, 122 Stat. 3041.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2008**—Pub. L. 110-314 substituted "Commission" for "Secretary".

**1970**—Pub. L. 91-452 inserted ", or any evidence which is directly or indirectly derived from such evidence," after "under this section".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 1970 AMENDMENT**

Amendment by Pub. L. 91-452 effective on sixtieth day following Oct. 15, 1970, and not to affect any

immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91-452, set out as an Effective Date; Savings Provision note under section 6001 of Title 18, Crimes and Criminal Procedure.

## **§1272. Publicity; reports; dissemination of information**

### **(a) Summaries of judgments, decrees, orders**

The Commission may cause to be published from time to time reports summarizing any judgments, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

### **(b) Information as to health dangers and investigations**

The Commission may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the Commission, imminent danger to health. Nothing in this section shall be construed to prohibit the Commission from collecting, reporting, and illustrating the results of the investigations of the Commission.

(Pub. L. 86-613, §13, July 12, 1960, 74 Stat. 379; Pub. L. 110-314, title II, §204(b)(4)(B), (C), Aug. 14, 2008, 122 Stat. 3041, 3042.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2008**—Subsec. (a). Pub. L. 110-314, §204(b)(4)(B), substituted "Commission" for "Secretary".

Subsec. (b). Pub. L. 110-314, §204(b)(4)(B), (C), substituted "Commission" for "Department" after "investigations of the" and for "Secretary" wherever appearing.

## **§1273. Imports**

### **(a) Delivery of samples to Commission; examination; refusal of admission**

The Secretary of the Treasury shall deliver to the Commission, upon its request, samples of hazardous substances which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Commission and have the right to introduce testimony. If it appears from the examination of such samples or otherwise that such hazardous substance is a misbranded hazardous substance or banned hazardous substance or in violation of section 1263(f) of this title, then such hazardous substance shall be refused admission, except as provided in subsection (b) of this section. The Secretary of the Treasury shall cause the destruction of any such hazardous substance refused admission unless such hazardous substance is exported, under regulations prescribed by the Secretary of the Treasury, within ninety days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.

### **(b) Disposition of refused articles**

Pending decision as to the admission of a hazardous substance being imported or offered for import, the Secretary of the Treasury may authorize delivery of such hazardous substance to the owner or consignee upon the execution by him of a good and sufficient bond providing for the payment of such liquidated damages in the event of default as may be required pursuant to regulations of the Secretary of the Treasury. If it appears to the Commission that the hazardous substance can, by relabeling or other action, be brought into compliance with this chapter, final determination as to admission of such hazardous substance may be deferred and, upon filing of timely written application by the owner or consignee and the execution by him of a bond as provided in the preceding provisions of this subsection, the Secretary <sup>1</sup> may, in accordance with regulations, authorize the applicant to perform such relabeling or other action specified in such authorization



(including destruction or export of rejected hazardous substances or portions thereof, as may be specified in the Secretary's <sup>2</sup> authorization). All such relabeling or other action pursuant to such authorization shall, in accordance with regulations, be under the supervision of an officer or employee of the Commission designated by the Secretary <sup>1</sup>, or an officer or employee of the Department of the Treasury designated by the Secretary of the Treasury.

**(c) Expenses in connection with refused articles**

All expenses (including travel, per diem, or subsistence, and salaries of officers or employees of the United States) in connection with the destruction provided for in subsection (a) of this section and the supervision of the relabeling or other action authorized under the provisions of subsection (b) of this section, the amount of such expenses to be determined in accordance with regulations, and all expenses in connection with the storage, cartage, or labor with respect to any hazardous substance refused admission under subsection (a) of this section, shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any future importations made by such owner or consignee.

**(d) Statement of exportation: filing period, information; notification of foreign country; petition for minimum filing period: good cause**

Not less than thirty days before any person exports to a foreign country any misbranded hazardous substance or banned hazardous substance, such person shall file a statement with the Commission notifying the Commission of such exportation, and the Commission, upon receipt of such statement, shall promptly notify the government of such country of such exportation and the basis upon which such substance is considered misbranded or has been banned under this chapter. Any statement filed with the Commission under the preceding sentence shall specify the anticipated date of shipment of such substance, the country and port of destination of such substance, and the quantity of such substance that will be exported, and shall contain such other information as the Commission may by regulation require. Upon petition filed with the Commission by any person required to file a statement under this subsection respecting an exportation, the Commission may, for good cause shown, exempt such person from the requirement of this subsection that such a statement be filed no less than thirty days before the date of the exportation, except that in no case shall the Commission permit such a statement to be filed later than the tenth day before such date.

(Pub. L. 86-613, §14, July 12, 1960, 74 Stat. 379; Pub. L. 89-756, §§2(i), 3(e), Nov. 3, 1966, 80 Stat. 1304, 1305; Pub. L. 95-631, §7(c), Nov. 10, 1978, 92 Stat. 3746; Pub. L. 110-314, title II, §204(b)(4)(D), (F)-(I), Aug. 14, 2008, 122 Stat. 3042.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2008**—Subsec. (a). Pub. L. 110-314, §204(b)(4)(D), (F), substituted "upon its request" for "upon his request" and substituted "Commission" for "Secretary of Health, Education, and Welfare" in two places.

Subsec. (b). Pub. L. 110-314, §204(b)(4)(F), (G), substituted "appears to the Commission" for "appears to the Secretary of Health, Education, and Welfare" and "Commission designated by" for "Department of Health, Education, and Welfare designated by".

Subsec. (d). Pub. L. 110-314, §204(b)(4)(H), (I), substituted "statement with the Commission" for "statement with the Consumer Product Safety Commission" and struck out "(hereinafter in this section referred to as the 'Commission')" before "notifying".

**1978**—Subsec. (d). Pub. L. 95-631 added subsec. (d).

**1966**—Subsec. (a). Pub. L. 89-756 substituted "a misbranded hazardous substance or banned hazardous substance" for "in misbranded packages".

<sup>1</sup> *So in original. Probably should be "Commission".*

<sup>2</sup> *So in original. Probably should be "Commission's".*

## **§1274. Remedies respecting banned hazardous substances**

### **(a) Notice to protect public; form and contents**

If any article or substance sold in commerce is defined as a banned hazardous substance (whether or not it was such at the time of its sale) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) that notification is required to adequately protect the public from such article or substance, the Commission may order the manufacturer or any distributor or dealer of the article or substance to take any one or more of the following actions:

- (1) To give public notice that the article or substance is a banned hazardous substance.
- (2) To mail such notice to each person who is a manufacturer, distributor, or dealer of such article or substance.
- (3) To mail such notice to every person to whom the person giving the notice knows such article or substance was delivered or sold.

An order under this subsection shall specify the form and content of any notice required to be given under the order.

### **(b) Order of Commission; repair, replacement, or refund**

If any article or substance sold in commerce is defined as a banned hazardous substance (whether or not it was such at the time of its sale) and the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing) that action under this subsection is in the public interest, the Commission may order the manufacturer, distributor, or dealer to take whichever of the following actions the person to whom the order is directed elects:

- (1) If repairs to or changes in the article or substance may be made so that it will not be a banned hazardous substance, to make such repairs or changes.
- (2) To replace such article or substance with a like or equivalent article or substance which is not a banned hazardous substance.
- (3) To refund the purchase price of the article or substance (less a reasonable allowance for use, if the article or substance has been in the possession of the consumer for one year or more—
  - (A) at the time of public notice under subsection (a), or
  - (B) at the time the consumer receives actual notice that the article or substance is a banned hazardous substance,

whichever first occurs).

An order under this subsection may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the persons to whom refunds must be made if the person to whom the order is directed elects to take the action described in paragraph (3). If an order under this subsection is directed to more than one person, the Commission shall specify which person has the election under this subsection. An order under this subsection may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, with respect to the article or substance with respect to which the order was issued.

### **(c) Discretionary remedial activities available to Commission; orders; contents**

(1) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned hazardous substance contains a defect which creates a substantial risk of injury to children (because of the

pattern of defect, the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that notification is required to protect adequately the public from such toy or article, the Commission may order the manufacturer or any distributor or dealer of such toy or article to take any one or more of the following actions:

(A) To give public notice that such defective toy or article contains a defect which creates a substantial risk of injury to children.

(B) To mail such notice to each person who is a manufacturer, distributor, or dealer of such toy or article.

(C) To mail such notice to every person to whom the person giving notice knows such toy or article was delivered or sold.

An order under this paragraph shall specify the form and content of any notice required to be given under the order.

(2) If the Commission determines (after affording interested persons, including consumers and consumer organizations, an opportunity for a hearing in accordance with subsection (e) of this section) that any toy or other article intended for use by children that is not a banned hazardous substance contains a defect which creates a substantial risk of injury to children (because of the pattern of defect, the number of defective toys or such articles distributed in commerce, the severity of the risk, or otherwise) and that action under this paragraph is in the public interest, the Commission may order the manufacturer, distributor, or dealer to take whichever of the following actions the person to whom the order is directed elects:

(A) If repairs to or changes in the toy or article can be made so that it will not contain a defect which creates a substantial risk of injury to children, to make such repairs or changes.

(B) To replace such toy or article with a like or equivalent toy or article which does not contain a defect which creates a substantial risk of injury to children.

(C) To refund the purchase price of such toy or article (less a reasonable allowance for use, if such toy or article has been in the possession of the consumer for 1 year or more (i) at the time of public notice under paragraph (1)(A), or (ii) at the time the consumer receives actual notice that the toy or article contains a defect which creates a substantial risk of injury to children, whichever first occurs).

An order under this paragraph may also require the person to whom it applies to submit a plan, satisfactory to the Commission, for taking the action which such person has elected to take. The Commission shall specify in the order the person to whom refunds must be made if the person to whom the order is directed elects to take the action described in subparagraph (C). If an order under this paragraph is directed to more than one person, the Commission shall specify which person has the election under this paragraph. An order under this paragraph may prohibit the person to whom it applies from manufacturing for sale, offering for sale, distributing in commerce, or importing into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States), or from doing any combination of such actions, with respect to the toy or article with respect to which the order was issued.

**(d) Charge for remedy; reimbursement for expenses**

(1) No charge shall be made to any person (other than a manufacturer, distributor, or dealer) who avails himself of any remedy provided under an order issued under subsection (b) or (c), and the person subject to the order shall reimburse each person (other than a manufacturer, distributor, or dealer) who is entitled to such a remedy for any reasonable and foreseeable expenses incurred by such person in availing himself of such remedy.

(2) An order issued under subsection (a), (b), or (c) with respect to a toy, article or substance may require any person who is a manufacturer, distributor, or dealer of the toy, article or substance to reimburse any other person who is a manufacturer, distributor, or dealer of such toy, article or substance for such other person's expenses in connection with carrying out the order, if the Commission determines such reimbursement to be in the public interest.

**(e) Hearing; representative of class**

An order under subsection (a), (b), or (c) may be issued only after an opportunity for a hearing in accordance with section 554 of title 5, except that, if the Commission determines that any person who wishes to participate in such hearing is a part of a class of participants who share an identity of interest, the Commission may limit such person's participation in such hearing to participation through a single representative designated by such class (or by the Commission if such class fails to designate such a representative).

**(f) "Manufacturer" defined**

For purposes of this section (1) the term "manufacturer" includes an importer for resale, and (2) a dealer who sells at wholesale an article or substance shall with respect to that sale be considered the distributor of that article or substance.

**(g) Cost-benefit analysis of notification or other action not required**

Nothing in this section shall be construed to require the Commission, in determining that an article or substance distributed in commerce presents a substantial product hazard and that notification or other action under this section should be taken, to prepare a comparison of the costs that would be incurred in providing notification or taking other action under this section with the benefits from such notification or action.

(Pub. L. 86-613, §15, as added Pub. L. 91-113, §4(a), Nov. 6, 1969, 83 Stat. 189; amended Pub. L. 97-35, title XII, §1211(f)(1), Aug. 13, 1981, 95 Stat. 721; Pub. L. 97-414, §9(l), Jan. 4, 1983, 96 Stat. 2065; Pub. L. 98-491, §2, Oct. 17, 1984, 98 Stat. 2269; Pub. L. 100-418, title I, §1214(c), Aug. 23, 1988, 102 Stat. 1156; Pub. L. 101-608, title I, §111(b), Nov. 16, 1990, 104 Stat. 3114; Pub. L. 110-314, title II, §204(b)(4)(H), Aug. 14, 2008, 122 Stat. 3042.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Harmonized Tariff Schedule of the United States, referred to in subsecs. (b) and (c)(2), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

**AMENDMENTS**

**2008**—Subsec. (b). Pub. L. 110-314 substituted "Commission may order" for "Consumer Product Safety Commission may order" in introductory provisions.

**1990**—Subsec. (g). Pub. L. 101-608 added subsec. (g).

**1988**—Subsecs. (b), (c)(2). Pub. L. 100-418 substituted "general note 2 of the Harmonized Tariff Schedule of the United States" for "general headnote 2 to the Tariff Schedules of the United States".

**1984**—Subsec. (c). Pub. L. 98-491, §2(a)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-491, §2(a)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 98-491, §2(b), inserted "or (c)" after "subsection (b)".

Subsec. (d)(2). Pub. L. 98-491, §2(c), (d), substituted "a toy, article" for "an article", "toy, article" for "article" in two places, and "subsection (a), (b), or (c)" for "subsection (a) or (b)".

Subsec. (e). Pub. L. 98-491, §2(a)(2), (d), redesignated subsec. (d) as (e) and substituted "subsection (a), (b), or (c)" for "subsection (a) or (b)". Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 98-491, §2(a)(1), redesignated subsec. (e) as (f).

**1983**—Subsec. (e). Pub. L. 97-414 added subsec. (e).

**1981**—Pub. L. 97-35 revised section generally and substituted provisions authorizing the Commission to require the manufacturers, distributors, or dealers as the case may be to notify the public that the article or substance was a banned hazardous one, and to repair, replace or refund the purchase price, when the Commission determines after providing the manufacturer, distributor, or dealer an opportunity for a hearing that banned hazardous substances were sold for provisions requiring the manufacturer, distributor or dealer to repurchase the banned hazardous article or substance.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-418 effective Jan. 1, 1989, and applicable with respect to articles entered on or after such date, see section 1217(b)(1) of Pub. L. 100-418, set out as an Effective Date note under section 3001 of Title 19, Customs Duties.

### **EFFECTIVE DATE OF 1981 AMENDMENT**

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, see section 1215 of Pub. L. 97-35, set out as a note under section 2052 of this title.

### **EFFECTIVE DATE**

Section effective on sixtieth day following Nov. 6, 1969, see section 5 of Pub. L. 91-113, set out as an Effective Date of 1969 Amendment note under section 1261 of this title.

## **§1275. Toxicological Advisory Board**

### **(a) Establishment; functions; review and recommendations**

(1) Within 180 days after November 10, 1978, the Commission shall establish, in accordance with subsection (b), a Toxicological Advisory Board (hereinafter in this section referred to as the "Board") to advise the Commission on precautionary labeling for hazardous substances. The Board shall provide scientific and technical advice to the Commission concerning—

(A) proper labeling under sections 1261(p)(1) and 1262(b) of this title, with special attention to—

(i) the description of precautionary measures required under section 1261(p)(1)(F) of this title;

(ii) the statement describing the hazards associated with a hazardous substance as required under section 1261(p)(1)(E) of this title; and

(iii) instructions for first-aid treatment under section 1261(p)(1)(G) of this title; and

(B) the exemption of certain substances from labeling requirements under this chapter as permitted under section 1262(c) of this title.

(2) In carrying out its duties under paragraph (1)(A), the Board shall review any labeling requirements or guidelines which have been established by the Commission under section 1261(p)(1) or 1262(b) of this title. Based upon its review the Board shall develop and submit to the Commission, within one year after the date that the Board is established, any recommendations for revisions in such labeling requirements or guidelines which the Board considers to be appropriate, including any general recommendations which may be of assistance to the Commission in carrying out its responsibilities under section 1261(p)(1) or 1262(b) of this title. The Board shall periodically review the labeling requirements and guidelines established by the Commission under such sections to determine whether such requirements and guidelines reflect relevant changes in scientific knowledge and shall revise any general recommendations submitted to the Commission under this paragraph to reflect such changes.

### **(b) Membership; appointment; qualifications; Chairman; term of office; reappointment; vacancies; meetings; compensation and travel expenses; Federal nonemployee status**

(1) The Board shall be composed of nine members appointed by the Commission. Each member of the Board shall be qualified by training and experience in one or more fields applicable to the duties of the Board, and at least three of the members of the Board shall be members of the American Board of Medical Toxicology. The Chairman of the Board shall be elected by the Board from among its members.

(2) The members of the Board shall be appointed for terms of three years. Members of the Board may be reappointed.

(3) Any vacancy in the Board shall be filled in the same manner in which the original appointment was made. Any member appointed to fill a vacancy occurring before the expiration of the term for

which his predecessor was appointed shall serve only for the remainder of such term.

(4) The Board shall meet at such times and places as may be designated by the Commission in consultation with the Chairman, but not less than two times each year.

(5) Members of the Board who are not officers or employees of the United States shall, while attending meetings or conferences of the Board or while otherwise engaged in the business of the Board, be entitled to receive compensation at a rate fixed by the Commission, not exceeding the daily equivalent of the annual rate of basic pay payable for grade GS-18 of the General Schedule under section 5332 of title 5. While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed under section 5703(b) <sup>1</sup> of such title. Individuals serving as members on the Board shall not be considered officers or employees of the United States by reason of receiving payments under this paragraph.

### **(c) Termination**

The Board shall terminate on the date six years after the date it is established under this section.

(Pub. L. 86-613, §20, as added Pub. L. 95-631, §10, Nov. 10, 1978, 92 Stat. 3747; amended Pub. L. 110-314, title II, §204(b)(4)(H), (I), Aug. 14, 2008, 122 Stat. 3042.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Section 5703 of title 5, referred to in subsec. (b)(5), was amended generally by Pub. L. 94-22, §4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

### **AMENDMENTS**

**2008**—Subsec. (a)(1). Pub. L. 110-314 substituted "Commission" for "Consumer Product Safety Commission" after "November 10, 1978, the" and struck out "(hereinafter in this section referred to as the 'Commission')" immediately thereafter.

## **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.

<sup>1</sup> [\*See References in Text note below.\*](#)

## **§1276. Congressional veto of hazardous substances regulations**

### **(a) Transmission to Congress**

The Commission shall transmit to the Secretary of the Senate and the Clerk of the House of Representatives a copy of any regulation promulgated by the Commission under section 1261(q)(1) of this title or subsection (e) of section 1262 of this title.

### **(b) Disapproval by concurrent resolution**

Any regulation specified in subsection (a) shall not take effect if—

(1) within the ninety calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, both Houses of the Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows (with the blank spaces appropriately filled): "That the Congress disapproves the regulation which was promulgated under the Federal Hazardous Substances Act by the Consumer Product Safety Commission with respect

to            and which was transmitted to the Congress on            and disapproves the regulation for the following reasons:            ."; or

(2) within the sixty calendar days of continuous session of the Congress which occur after the date of the promulgation of such regulation, one House of the Congress adopts such concurrent resolution and transmits such resolution to the other House and such resolution is not disapproved by such other House within the thirty calendar days of continuous session of the Congress which occur after the date of such transmittal.

**(c) Presumptions from Congressional action or inaction**

Congressional inaction on, or rejection of, a concurrent resolution of disapproval under this section shall not be construed as an expression of approval of the regulation involved, and shall not be construed to create any presumption of validity with respect to such regulation.

**(d) Continuous session of Congress**

For purposes of this section—

(1) continuity of session is broken only by an adjournment of the Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the periods of continuous session of the Congress specified in subsection (b).

(Pub. L. 86–613, §21, as added Pub. L. 97–35, title XII, §1207(c), Aug. 13, 1981, 95 Stat. 718; amended Pub. L. 110–314, title II, §204(b)(4)(H), Aug. 14, 2008, 122 Stat. 3042.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Hazardous Substances Act, referred to in subsec. (b), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

**AMENDMENTS**

**2008**—Pub. L. 110–314, which directed the substitution of "Commission" for "Consumer Product Safety Commission" in this section, was executed by making the substitution in subsec. (a), before "shall transmit", but not in subsec. (b)(1), to reflect the probable intent of Congress.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section applicable with respect to consumer product safety rules under chapter 47 of this title and regulations under this chapter and chapter 25 of this title promulgated after Aug. 13, 1981, see section 1215 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

**§1277. Labeling of art materials**

**(a) Regulation status of standard D–4236 of American Society for Testing and Materials**

On and after the last day of the 2-year period beginning on November 18, 1988, the requirements for the labeling of art materials set forth in the version of the standard of the American Society for Testing and Materials designated D–4236 that is in effect on November 18, 1988, and as modified by subsection (b) shall be deemed to be a regulation issued by the Commission under section 1262(b) of this title.

**(b) Requirements applicable to standard D–4236**

The following shall apply with respect to the standard of the American Society for Testing and Materials referred to in subsection (a):

(1) The term "art material or art material product" shall mean any substance marketed or

represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium. The term does not include economic poisons subject to the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or drugs, devices, or cosmetics subject to the Federal Food, Drug, and Cosmetics Act [21 U.S.C. 301 et seq.].

(2) The standard referred to in subsection (a) as modified by this subsection applies to art materials intended for users of any age.

(3) Each producer or repackager of art materials shall describe in writing the criteria used to determine whether an art material has the potential for producing chronic adverse health effects. Each producer or repackager shall be responsible for submitting to the Commission these criteria and a list of art materials that require hazard warning labels under this section.

(4) Upon the request of the Commission, a producer or repackager of art materials shall submit to the Commission product formulations and the criteria used to determine whether the art material or its ingredients have the potential for producing chronic adverse health effects.

(5) All art materials that require chronic hazard labeling pursuant to this section must include on the label the name and address of the producer or repackager of the art materials and an appropriate telephone number and a statement signifying that such art materials are inappropriate for use by children.

(6) If an art material producer or repackager becomes newly aware of any significant information regarding the hazards of an art material or ways to protect against the hazard, this new information must be incorporated into the labels of such art materials that are manufactured after 12 months from the date of discovery. If a producer or repackager reformulates an art material, the new formulation must be evaluated and labeled in accordance with the standard referred to in subsection (a) as modified by this subsection.

(7) If the Commission determines that an art material in a container equal to or smaller than one fluid ounce (30 ml) (if the product is sold by volume) or one ounce net weight (28 g) (if the product is sold by weight) has the potential for producing chronic adverse health effects with customary or reasonably foreseeable use despite its small size, the Commission may require the art material to carry a label which conveys all the information required under the standard referred to in subsection (a) as modified by this subsection for art materials in a container greater than one fluid ounce or one ounce net weight. If the information cannot fit on the package label, the Commission shall require the art material to have a package insert which conveys all this information. If the art material has a package insert, the label on the product shall include a signal word in conformance with paragraph 5 of the standard referred to in subsection (a), a list of potentially harmful or sensitizing components, and the statement "see package insert before use". For purposes of this subsection, the term "package insert" means a display of written, printed, or graphic matter upon a leaflet or suitable material accompanying the art material. This requirement is in addition to, and is not meant to supersede, the requirement of paragraph 5.8 of the standard designated D-4236.

(8) In determining whether an art material has the potential for producing chronic adverse health effects, including carcinogenicity and potential carcinogenicity, a toxicologist shall take into account opinions of various regulatory agencies and scientific bodies.

**(c) Revisions incorporated into standard D-4236; notice and hearing; amendment; opportunity for comment; transcript of proceedings**

If the Commission determines that a revision proposed by the American Society for Testing and Materials is in the public interest, it shall incorporate the revision into the standard referred to in subsection (a) as modified by subsection (b) after providing notice and an opportunity for comment. If at any time the Commission finds that the standard referred to in subsection (a) as modified by subsection (b) is inadequate for the protection of the public interest, it shall promulgate an amendment to the standard which will adequately protect the public interest. Such final standard shall be promulgated pursuant to section 553 of title 5, except that the Commission shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions. A transcript shall be kept of any oral presentation.



**(d) Guidelines for determining chronically hazardous art materials; issuance; public hearing; scope of criteria; review; amendment**

(1) Within 1 year of November 18, 1988, the Commission shall issue guidelines which specify criteria for determining when any customary or reasonably foreseeable use of an art material can result in a chronic hazard. In developing such guidelines the Commission shall conduct a public hearing and provide reasonable opportunity for the submission of comments.

(2) The guidelines established under paragraph (1) shall include—

(A) criteria for determining when art materials may produce chronic adverse health effects in children and criteria for determining when art materials may produce such health effects in adults,

(B) criteria for determining which substances contained in art materials have the potential for producing chronic adverse health effects and what those effects are,

(C) criteria for determining the bioavailability of chronically hazardous substances contained in art materials when the products are used in a customary or reasonably foreseeable manner, and

(D) criteria for determining acceptable daily intake levels for chronically hazardous substances contained in art materials.

Where appropriate, criteria used for assessing risks to children may be the same as those used for adults.

(3) The Commission shall periodically review the guidelines established under paragraph (1) to determine whether the guidelines reflect relevant changes in scientific knowledge and in the formulations of art materials, and shall amend the guidelines to reflect such changes.

**(e) Informational and educational materials; development and distribution**

The Commission shall develop informational and educational materials about art materials and shall distribute the informational and educational materials to interested persons.

**(f) Injunctions**

The Commission may bring an action under section 1267 of this title to enjoin the purchase of any art material required to be labeled under this chapter which is for use by children in pre-kindergarten, kindergarten, or grades 1 through 6.

(Pub. L. 86–613, §23, as added Pub. L. 100–695, Nov. 18, 1988, 102 Stat. 4568.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b)(1), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

**CODIFICATION**

Pub. L. 100–695 enacted section 23 of Pub. L. 86–613, classified to this section, without a prior enactment of a section 22 of Pub. L. 86–613.

**§1278. Requirements for labeling certain toys and games**

**(a) Toys or games for children who are at least 3**

**(1) Requirement**

The packaging of any toy or game intended for use by children who are at least 3 years old but not older than 6 years (or such other upper age limit as the Commission may determine, which

may not be less than 5 years old), any descriptive material which accompanies such toy or game, and, in the case of bulk sales of such toy or game when unpackaged, any bin, container for retail display, or vending machine from which the unpackaged toy or game is dispensed shall bear or contain the cautionary statement described in paragraph (2) if the toy or game—

(A) is manufactured for sale, offered for sale, or distributed in commerce in the United States, and

(B) includes a small part, as defined by the Commission.

**(2) Label**

The cautionary statement required by paragraph (1) for a toy or game shall be as follows:



**WARNING:**

**CHOKING HAZARD—Small parts.  
Not for children under 3 yrs.**

**(b) Balloons, small balls, and marbles**

**(1) Requirement**

In the case of any latex balloon, any ball with a diameter of 1.75 inches or less intended for children 3 years of age or older, any marble intended for children 3 years of age or older, or any toy or game which contains such a balloon, ball, or marble, which is manufactured for sale, offered for sale, or distributed in commerce in the United States—

(A) the packaging of such balloon, ball, marble, toy, or game,

(B) any descriptive material which accompanies such balloon, ball, marble, toy, or game, and

(C) in the case of bulk sales of any such product when unpackaged, any bin, container for retail display, or vending machine from which such unpackaged balloon, ball, marble, toy, or game is dispensed,

shall bear or contain the cautionary statement described in paragraph (2).

**(2) Label**

The cautionary statement required under paragraph (1) for a balloon, ball, marble, toy, or game shall be as follows:

**(A) Balloons**

In the case of balloons, or toys or games that contain latex balloons, the following cautionary statement applies:



## **WARNING:**

**CHOKING HAZARD—Children under 8 yrs. can choke or suffocate on uninflated or broken balloons. Adult supervision required.**

**Keep uninflated balloons from children.  
Discard broken balloons at once.**

**(B) Balls**

In the case of balls, the following cautionary statement applies:



## **WARNING:**

**CHOKING HAZARD—This toy is a small ball. Not for children under 3 yrs.**

**(C) Marbles**

In the case of marbles, the following cautionary statement applies:



**WARNING:**

**CHOKING HAZARD—This toy is a marble.  
Not for children under 3 yrs.**

**(D) Toys and games**

In the case of toys or games containing balls, the following cautionary statement applies:



**WARNING:**

**CHOKING HAZARD—Toy contains a small ball.  
Not for children under 3 yrs.**

In the case of toys or games containing marbles, the following cautionary statement applies:



**WARNING:**

**CHOKING HAZARD—Toy contains a marble.  
Not for children under 3 yrs.**

**(c) Advertising**

**(1) Requirement**

**(A) Cautionary statement**

Any advertisement by a retailer, manufacturer, importer, distributor, or private labeler (including advertisements on Internet websites or in catalogues or other printed materials) that

provides a direct means for the purchase or order of a product for which a cautionary statement is required under subsection (a) or (b) shall include the appropriate cautionary statement displayed on or immediately adjacent to that advertisement, as modified by regulations issued under paragraph (3).

**(B) Application to retailers**

**(i) Requirement to inform**

A manufacturer, importer, distributor, or private labeler that provides such a product to a retailer shall inform the retailer of any cautionary statement requirement applicable to the product.

**(ii) Retailer's requirement to inquire**

A retailer is not in violation of subparagraph (A) if the retailer requested information from the manufacturer, importer, distributor, or private labeler as to whether the cautionary statement required by subparagraph (A) applies to the product that is the subject of the advertisement and the manufacturer, importer, distributor, or private labeler provided false information or did not provide such information.

**(C) Display**

The cautionary statement required by subparagraph (A) shall be prominently displayed—

- (i) in the primary language used in the advertisement;
- (ii) in conspicuous and legible type in contrast by typography, layout, or color with other material printed or displayed in such advertisement; and
- (iii) in a manner consistent with part 1500 of title 16, Code of Federal Regulations.

**(D) Definitions**

In this subsection:

- (i) The terms "manufacturer", "distributor", and "private labeler" have the meaning given those terms in section 2052 of this title.
- (ii) The term "retailer" has the meaning given that term in section 2052 of this title, but does not include an individual whose selling activity is intermittent and does not constitute a trade or business.

**(2) Effective date**

The requirement in paragraph (1) shall take effect—

- (A) with respect to advertisements on Internet websites, 120 days after August 14, 2008; and
- (B) with respect to catalogues and other printed materials, 180 days after August 14, 2008.

**(3) Rulemaking**

Notwithstanding any provision of chapter 6 of title 5 or the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Commission shall, not later than 90 days after August 14, 2008, promulgate regulations to effectuate this section with respect to catalogues and other printed material. The Commission may, under such regulations, provide a grace period of no more than 180 days for catalogues and other printed material printed prior to the effective date of paragraph (1) during which time distribution of such catalogues and other printed material shall not be considered a violation of such paragraph. The Commission may promulgate regulations concerning the size and placement of the cautionary statement required by paragraph (1) of this subsection as appropriate relative to the size and placement of the advertisements in such catalogues and other printed material. The Commission shall promulgate regulations that clarify the applicability of these requirements to catalogues and other printed material distributed solely between businesses and not to individual consumers.

**(4) Enforcement**

The requirements in paragraph (1) shall be treated as a consumer product safety standard promulgated under section 2058 of this title. The publication or distribution of any advertisement that is not in compliance with paragraph (1) shall be treated as a prohibited act under section

2068(a)(1) of this title.

**(d) General labeling requirements**

**(1) In general**

Except as provided in paragraphs (2) and (3), any cautionary statement required under subsection (a) or (b) shall be—

(A) displayed in its entirety on the principal display panel of the product's package, and on any descriptive material which accompanies the product, and, in the case of bulk sales of such product when unpackaged, on the bin, container for retail display of the product, and any vending machine from which the unpackaged product is dispensed, and

(B) displayed in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on such package, descriptive materials, bin, container, and vending machine, and in a manner consistent with part 1500 of title 16, Code of Federal Regulations (or successor regulations thereto).

**(2) Exception for products manufactured outside United States**

In the case of a product manufactured outside the United States and directly shipped from the manufacturer to the consumer by United States mail or other delivery service, the accompanying material inside the package of the product may fail to bear the required statement if other accompanying material shipped with the product bears such statement.

**(3) Special rules for certain packages**

(A) A cautionary statement required by subsection (a) or (b) may, in lieu of display on the principal display panel of the product's package, be displayed on another panel of the package if—

(i) the package has a principal display panel of 15 square inches or less and the required statement is displayed in three or more languages; and

(ii) the statement specified in subparagraph (B) is displayed on the principal display panel and is accompanied by an arrow or other indicator pointing toward the place on the package where the statement required by subsection (a) or (b) appears.

(B)(i) In the case of a product to which subsection (a), subsection (b)(2)(B), subsection (b)(2)(C), or subsection (b)(2)(D) applies, the statement specified by this subparagraph is as follows:



**SAFETY WARNING**

(ii) In the case of a product to which subsection (b)(2)(A) applies, the statement specified by this subparagraph is as follows:



**WARNING—CHOKING HAZARD**

**(e) Treatment as misbranded hazardous substance**

A balloon, ball, marble, toy, or game, that is not in compliance with the requirements of this subsection <sup>1</sup> shall be considered a misbranded hazardous substance under section 1261(p) of this

title.

(Pub. L. 86–613, §24, as added Pub. L. 103–267, title I, §101(a), June 16, 1994, 108 Stat. 722; amended Pub. L. 110–314, title I, §105, Aug. 14, 2008, 122 Stat. 3031.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Paperwork Reduction Act of 1980, referred to in subsec. (c)(3), is Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

### AMENDMENTS

**2008**—Subsecs. (c) to (e). Pub. L. 110–314 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Pub. L. 103–267, title I, §101(d), June 16, 1994, 108 Stat. 725, provided that: "Subsections (a) and (b) [enacting this section and provisions set out as a note under section 1261 of this title] shall take effect January 1, 1995, and section 24 of the Federal Hazardous Substances Act [this section] shall apply only to products entered into commerce on or after January 1, 1995."

### REGULATIONS

Pub. L. 103–267, title I, §101(c), June 16, 1994, 108 Stat. 725, provided that: "The Consumer Product Safety Commission (hereinafter referred to as the 'Commission') shall promulgate regulations, under section 553 of title 5, United States Code, for the implementation of this section [enacting this section and provisions set out as notes under this section and section 1261 of this title] and section 24 of the Federal Hazardous Substances Act [this section] by July 1, 1994, or the date that is 6 months after the date of enactment of this Act [June 16, 1994], whichever occurs first. Subsections (f) through (i) of section 3 of the Federal Hazardous Substances Act (15 U.S.C. 1262) shall not apply with respect to the issuance of regulations under this subsection."

### PREEMPTION

Pub. L. 103–267, title I, §101(e), June 16, 1994, 108 Stat. 725, provided that:

"(1) IN GENERAL.—Subject to paragraph (2), a State or political subdivision of a State may not establish or enforce a requirement relating to cautionary labeling of small parts hazards or choking hazards in any toy, game, marble, small ball, or balloon intended or suitable for use by children unless such requirement is identical to a requirement established by amendments made by this section to the Federal Hazardous Substances Act [enacting this section] or by regulations promulgated by the Commission.

"(2) EXCEPTION.—A State or political subdivision of a State may, until January 1, 1995, enforce a requirement described in paragraph (1) if such requirement was in effect on October 2, 1993."

<sup>1</sup> *So in original. Probably should be "this section".*

## §1278a. Children's products containing lead; lead paint rule

### (a) General lead ban

#### (1) Treatment as a banned hazardous substance

Except as expressly provided in subsection (b) beginning on the dates provided in paragraph (2), any children's product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a))) that contains more lead than the limit established by paragraph (2) shall be

treated as a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.).

## **(2) Lead limit**

### **(A) 600 parts per million**

Except as provided in subparagraphs (B), (C), (D), and (E), beginning 180 days after August 14, 2008, the lead limit referred to in paragraph (1) is 600 parts per million total lead content by weight for any part of the product.

### **(B) 300 parts per million**

Except as provided by subparagraphs (C), (D), and (E), beginning on the date that is 1 year after August 14, 2008, the lead limit referred to in paragraph (1) is 300 parts per million total lead content by weight for any part of the product.

### **(C) 100 parts per million**

Except as provided in subparagraphs (D) and (E), beginning on the date that is 3 years after August 14, 2008, subparagraph (B) shall be applied by substituting "100 parts per million" for "300 parts per million" unless the Commission determines that a limit of 100 parts per million is not technologically feasible for a product or product category. The Commission may make such a determination only after notice and a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products.

### **(D) Alternate reduction of limit**

If the Commission determines under subparagraph (C) that the 100 parts per million limit is not technologically feasible for a product or product category, the Commission shall, by regulation, establish an amount that is the lowest amount of lead, lower than 300 parts per million, the Commission determines to be technologically feasible to achieve for that product or product category. The amount of lead established by the Commission under the preceding sentence shall be substituted for the 300 parts per million limit under subparagraph (B) beginning on the date that is 3 years after August 14, 2008.

### **(E) Periodic review and further reductions**

The Commission shall, based on the best available scientific and technical information, periodically review and revise downward the limit set forth in this subsection, no less frequently than every 5 years after promulgation of the limit under subparagraph (C) or (D) to require the lowest amount of lead that the Commission determines is technologically feasible to achieve. The amount of lead established by the Commission under the preceding sentence shall be substituted for the lead limit in effect immediately before such revision.

## **(3) Application**

Each limit set forth in paragraph (2) (except for the limit set forth in subparagraphs (A) and (B)) shall apply only to a children's product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a))) that is manufactured after the effective date of such respective limit.

## **(b) Exclusion of certain materials or products and inaccessible component parts**

### **(1) Functional purpose exception**

#### **(A) In general**

The Commission, on its own initiative or upon petition by an interested party, shall grant an exception to the limit in subsection (a) for a specific product, class of product, material, or component part if the Commission, after notice and a hearing, determines that—

- (i) the product, class of product, material, or component part requires the inclusion of lead because it is not practicable or not technologically feasible to manufacture such product, class of product, material, or component part, as the case may be, in accordance with subsection (a) by removing the excessive lead or by making the lead inaccessible;
- (ii) the product, class of product, material, or component part is not likely to be placed in



the mouth or ingested, taking into account normal and reasonably foreseeable use and abuse of such product, class of product, material, or component part by a child; and

(iii) an exception for the product, class of product, material, or component part will have no measurable adverse effect on public health or safety, taking into account normal and reasonably foreseeable use and abuse.

**(B) Measurement**

For purposes of subparagraph (A)(iii), there is no measurable adverse effect on public health or safety if the exception described in subparagraph (A) will result in no measurable increase in blood lead levels of a child. The Commission may adopt an alternative method of measurement other than blood lead levels if it determines, after notice and a hearing, that such alternative method is a better scientific method for measuring adverse effect on public health and safety.

**(C) Procedures for granting exception**

**(i) Burden of proof**

A party seeking an exception under subparagraph (A) has the burden of demonstrating that it meets the requirements of such subparagraph.

**(ii) Grounds for decision**

In the case where a party has petitioned for an exception, in determining whether to grant the exception, the Commission may base its decision solely on the materials presented by the party seeking the exception and any materials received through notice and a hearing.

**(iii) Admissible evidence**

In demonstrating that it meets the requirements of subparagraph (A), a party seeking an exception under such subparagraph may rely on any nonproprietary information submitted by any other party seeking such an exception and such information shall be considered part of the record presented by the party that relies on that information.

**(iv) Scope of exception**

If an exception is sought for an entire product, the burden is on the petitioning party to demonstrate that the criteria in subparagraph (A) are met with respect to every accessible component or accessible material of the product.

**(D) Limitation on exception**

If the Commission grants an exception for a product, class of product, material, or component part under subparagraph (A), the Commission may, as necessary to protect public health or safety—

(i) establish a lead limit that such product, class of product, material, or component part may not exceed; or

(ii) place a manufacturing expiration date on such exception or establish a schedule after which the manufacturer of such product, class of product, material, or component part shall be in full compliance with the limit established under clause (i) or the limit set forth in subsection (a).

**(E) Application of exception**

An exception under subparagraph (A) for a product, class of product, material, or component part shall apply regardless of the date of manufacture unless the Commission expressly provides otherwise.

**(F) Previously submitted petitions**

A party seeking an exception under this paragraph may rely on materials previously submitted in connection with a petition for exclusion under this section. In such cases, petitioners must notify the Commission of their intent to rely on materials previously submitted. Such reliance does not affect petitioners' obligation to demonstrate that they meet all requirements of this paragraph as required by subparagraph (C)(i).

## **(2) Exception for inaccessible component parts**

### **(A) In general**

The limits established under subsection (a) shall not apply to any component part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission. A component part is not accessible under this subparagraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product. Reasonably foreseeable use and abuse shall include swallowing, mouthing, breaking, or other children's activities, and the aging of the product.

### **(B) Inaccessibility proceeding**

Within 1 year after August 14, 2008, the Commission shall promulgate a rule providing guidance with respect to what product components, or classes of components, will be considered to be inaccessible for purposes of subparagraph (A).

### **(C) Application pending CPSC guidance**

Until the Commission promulgates a rule pursuant to subparagraph (B), the determination of whether a product component is inaccessible to a child shall be made in accordance with the requirements laid out in subparagraph (A) for considering a component to be inaccessible to a child.

## **(3) Certain barriers disqualified**

For purposes of this subsection, paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate inaccessible to a child, or to prevent absorption of any lead into the human body, through normal and reasonably foreseeable use and abuse of the product.

## **(4) Certain electronic devices**

If the Commission determines that it is not technologically feasible for certain electronic devices, including devices containing batteries, to comply with subsection (a), the Commission, by regulation, shall—

(A) issue requirements to eliminate or minimize the potential for exposure to and accessibility of lead in such electronic devices, which may include requirements that such electronic devices be equipped with a child-resistant cover or casing that prevents exposure to and accessibility of the parts of the product containing lead; and

(B) establish a schedule by which such electronic devices shall be in full compliance with the limits in subsection (a), unless the Commission determines that full compliance will not be technologically feasible for such devices within a schedule set by the Commission.

## **(5) Exception for off-highway vehicles**

### **(A) In general**

Subsection (a) shall not apply to an off-highway vehicle.

### **(B) Off-highway vehicle defined**

For purposes of this section, the term "off-highway vehicle"—

(i) means any motorized vehicle—

(I) that is manufactured primarily for use off public streets, roads, and highways;

(II) designed to travel on 2, 3, or 4 wheels; and

(III) that has either—

(aa) a seat designed to be straddled by the operator and handlebars for steering control; or

(bb) a nonstraddle seat, steering wheel, seat belts, and roll-over protective structure; and

(ii) includes a snowmobile.

## **(6) Bicycles and related products**

In lieu of the lead limits established in subsection (a)(2), the limits set forth for each respective material in the notice of the Commission entitled "Notice of Stay of Enforcement Pertaining to Bicycles and Related Products", published June 30, 2009 (74 Fed. Reg. 31254), shall apply to any metal component part of the products to which the stay of enforcement described in such notice applies, except that after December 31, 2011, the limits set forth in such notice shall not be more than 300 parts per million total lead content by weight for any metal component part of the products to which such stay pertains.

## **(7) Exclusion of certain used children's products**

### **(A) General exclusion**

The lead limits established under subsection (a) shall not apply to a used children's product.

### **(B) Definition**

In this paragraph, the term "used children's product" means a children's product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)) <sup>1</sup> that was obtained by the seller for use and not for the purpose of resale or was obtained by the seller, either directly or indirectly, from a person who obtained such children's product for use and not for the purpose of resale. Such term also includes a children's product that was donated to the seller for charitable distribution or resale to support charitable purposes. Such term shall not include—

- (i) children's metal jewelry;
- (ii) any children's product for which the donating party or the seller has actual knowledge that the product is in violation of the lead limits in this section; or
- (iii) any other children's product or product category that the Commission determines, after notice and a hearing.

For purposes of this definition, the term "seller" includes a person who lends or donates a used children's product.

## **(8) Periodic review**

The Commission shall, based on the best available scientific and technical information, periodically review and revise the regulations promulgated pursuant to this subsection no less frequently than every 5 years after the first promulgation of a regulation under this subsection to make them more stringent and to require the lowest amount of lead the Commission determines is technologically feasible to achieve.

## **(c) Application with ASTM F963**

To the extent that any regulation promulgated by the Commission under this section (or any section of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.] or any other Act enforced by the Commission, as such Acts are affected by this section) is inconsistent with the ASTM F963 standard, such promulgated regulation shall supersede the ASTM F963 standard to the extent of the inconsistency.

## **(d) Technological feasibility defined**

For purposes of this section, a limit shall be deemed technologically feasible with regard to a product or product category if—

- (1) a product that complies with the limit is commercially available in the product category;
- (2) technology to comply with the limit is commercially available to manufacturers or is otherwise available within the common meaning of the term;
- (3) industrial strategies or devices have been developed that are capable or will be capable of achieving such a limit by the effective date of the limit and that companies, acting in good faith, are generally capable of adopting; or
- (4) alternative practices, best practices, or other operational changes would allow the manufacturer to comply with the limit.

**(e) Pending rulemaking proceedings to have no effect**

The pendency of a rulemaking proceeding to consider—

- (1) a delay in the effective date of a limit or an alternate limit under this section related to technological feasibility,
- (2) an exception for certain products or materials or inaccessibility guidance under subsection (b) of this section, or
- (3) any other request for modification of or exemption from any regulation, rule, standard, or ban under this Act or any other Act enforced by the Commission,

shall not delay the effect of any provision or limit under this section nor shall it stay general enforcement of the requirements of this section.

**(f) More stringent lead paint ban**

**(1) In general**

Effective on the date that is 1 year after August 14, 2008, the Commission shall modify section 1303.1 of its regulations (16 C.F.R. 1301.1) by substituting "0.009 percent" for "0.06 percent" in subsection (a) of that section.

**(2) Periodic review and reduction**

The Commission shall, no less frequently than every 5 years after the date on which the Commission modifies the regulations pursuant to paragraph (1), review the limit for lead in paint set forth in section 1303.1 of title 16, Code of Federal Regulations (as revised by paragraph (1)), and shall by regulation revise downward the limit to require the lowest amount of lead that the Commission determines is technologically feasible to achieve.

**(3) Methods for screening lead in small painted areas**

In order to provide for effective and efficient enforcement of the limit set forth in section 1303.1 of title 16, Code of Federal Regulations, the Commission may rely on x-ray fluorescence technology or other alternative methods for measuring lead in paint or other surface coatings on products subject to such section where the total weight of such paint or surface coating is no greater than 10 milligrams or where such paint or surface coating covers no more than 1 square centimeter of the surface area of such products. Such alternative methods for measurement shall not permit more than 2 micrograms of lead in a total weight of 10 milligrams or less of paint or other surface coating or in a surface area of 1 square centimeter or less.

**(4) Alternative methods of measuring lead in paint generally**

**(A) Study**

Not later than 1 year after August 14, 2008, the Commission shall complete a study to evaluate the effectiveness, precision, and reliability of x-ray fluorescence technology and other alternative methods for measuring lead in paint or other surface coatings when used on a children's product or furniture article in order to determine compliance with part 1303 of title 16, Code of Federal Regulations, as modified pursuant to this subsection.

**(B) Rulemaking**

If the Commission determines, based on the study in subparagraph (A), that x-ray fluorescence technology or other alternative methods for measuring lead in paint are as effective, precise, and reliable as the methodology used by the Commission for compliance determinations prior to August 14, 2008, the Commission may promulgate regulations governing the use of such methods in determining the compliance of products with part 1303 of title 16, Code of Federal Regulations, as modified pursuant to this subsection. Any regulations promulgated by the Commission shall ensure that such alternative methods are no less effective, precise, and reliable than the methodology used by the Commission prior to August 14, 2008.

**(5) Periodic review**

The Commission shall, no less frequently than every 5 years after the Commission completes

the study required by paragraph (4)(A), review and revise any methods for measurement utilized by the Commission pursuant to paragraph (3) or pursuant to any regulations promulgated under paragraph (4) to ensure that such methods are the most effective methods available to protect children's health. The Commission shall conduct an ongoing effort to study and encourage the further development of alternative methods for measuring lead in paint and other surface coating that can effectively, precisely, and reliably detect lead levels at or below the level set forth in part 1303 of title 16, Code of Federal Regulations, or any lower level established by regulation.

**(6) No effect on legal limit**

Nothing in paragraph (3), nor reliance by the Commission on any alternative method of measurement pursuant to such paragraph, nor any rule prescribed pursuant to paragraph (4), nor any method established pursuant to paragraph (5) shall be construed to alter the limit set forth in section 1303 of title 16, Code of Federal Regulations, as modified pursuant to this subsection, or provide any exemption from such limit.

**(7) Construction**

Nothing in this subsection shall be construed to affect the authority of the Commission or any other person to use alternative methods for detecting lead as a screening method to determine whether further testing or action is needed.

**(g) Treatment as a regulation under the FHSA**

Any ban imposed by subsection (a) or rule promulgated under subsection (a) or (b) of this section, and section 1303.1 of title 16, Code of Federal Regulations (as modified pursuant to subsection (f)(1) or (2)), or any successor regulation, shall be considered a regulation of the Commission promulgated under or for the enforcement of section 2(q) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)).

(Pub. L. 110–314, title I, §101, Aug. 14, 2008, 122 Stat. 3017; Pub. L. 112–28, §§1, 10(b), Aug. 12, 2011, 125 Stat. 273, 283.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Hazardous Substances Act, referred to in subsec. (a)(1), is Pub. L. 86–613, July 12, 1960, 74 Stat. 372, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

The Consumer Product Safety Act, referred to in subsec. (c), 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.

This Act, referred to in subsec. (e)(3), is Pub. L. 110–314, Aug. 14, 2008, 122 Stat. 3016, known as the Consumer Product Safety Improvement Act of 2008. For complete classification of this Act to the Code, see Short Title of 2008 Amendment note set out under section 2051 of this title and Tables.

**CODIFICATION**

Section was enacted as part of the Consumer Product Safety Improvement Act of 2008, and not as part of the Federal Hazardous Substances Act which comprises this chapter.

**AMENDMENTS**

**2011**—Subsec. (a)(1). Pub. L. 112–28, §10(b), substituted "(as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)))" for "(as defined in section 3(a)(16) of the Consumer Product Safety Act (15 U.S.C. 2052(a)(16)))".

Subsec. (a)(3). Pub. L. 112–28, §1(a), added par. (3).

Subsec. (b)(1). Pub. L. 112–28, §1(b)(1), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "The Commission may, by regulation, exclude a specific product or material from the prohibition in subsection (a) if the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither—

"(A) result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product; nor

"(B) have any other adverse impact on public health or safety."

Subsec. (b)(2)(A). Pub. L. 112-28, §1(b)(2), substituted "include" for "include to,".

Subsec. (b)(5) to (8). Pub. L. 112-28, §1(b)(3), added pars. (5) to (7) and redesignated former par. (5) as (8).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2011 AMENDMENT

Pub. L. 112-28, §11, Aug. 12, 2011, 125 Stat. 283, provided that: "Except as provided otherwise, the amendments made by this Act [amending this section and sections 2055a, 2056a, 2056b, 2057c, 2063, 2068, and 2076 of this title and enacting provisions set out as a note under section 2089 of this title] shall take effect on the date of enactment of this Act [Aug. 12, 2011]."

### DEFINITION

For definition of "Commission" used in this section, see section 2(a) of Pub. L. 110-314, set out as a note under section 2051 of this title.

*<sup>1</sup> So in original. Probably should be "2052(a)).".*

## CHAPTER 31—DESTRUCTION OF PROPERTY MOVING IN COMMERCE

### §§1281, 1282. Repealed. Pub. L. 103-272, §7(b), July 5, 1994, 108 Stat. 1379

Section 1281, Pub. L. 87-221, §1, Sept. 13, 1961, 75 Stat. 494, related to willful destruction or injury, or attempted destruction or injury, of property moving in interstate or foreign commerce in possession of common or contract carriers, penalties for such acts, and proof of interstate or foreign nature of property. See section 80501 of Title 49, Transportation.

Section 1282, Pub. L. 87-221, §2, Sept. 13, 1961, 75 Stat. 494, provided that judgment of conviction or acquittal on merits under laws of any State or possession, District of Columbia, or Puerto Rico, was bar to prosecution under this chapter for same acts. See section 80501 of Title 49.

## CHAPTER 32—TELECASTING OF PROFESSIONAL SPORTS CONTESTS

Sec.

- 1291. Exemption from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues.
- 1292. Area telecasting restriction limitation.
- 1293. Intercollegiate and interscholastic football contest limitations.
- 1294. Antitrust laws unaffected as regards to other activities of professional sports contests.
- 1295. "Persons" defined.

### §1291. Exemption from antitrust laws of agreements covering the telecasting of sports contests and the combining of professional football leagues

The antitrust laws, as defined in section 1 of the Act of October 15, 1914, as amended (38 Stat. 730) [15 U.S.C. 12], or in the Federal Trade Commission Act, as amended (38 Stat. 717) [15 U.S.C. 41 et seq.], shall not apply to any joint agreement by or among persons engaging in or conducting the organized professional team sports of football, baseball, basketball, or hockey, by which any league

of clubs participating in professional football, baseball, basketball, or hockey contests sells or otherwise transfers all or any part of the rights of such league's member clubs in the sponsored telecasting of the games of football, baseball, basketball, or hockey, as the case may be, engaged in or conducted by such clubs. In addition, such laws shall not apply to a joint agreement by which the member clubs of two or more professional football leagues, which are exempt from income tax under section 501(c)(6) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(6)], combine their operations in expanded single league so exempt from income tax, if such agreement increases rather than decreases the number of professional football clubs so operating, and the provisions of which are directly relevant thereto.

(Pub. L. 87-331, §1, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89-800, §6(b)(1), Nov. 8, 1966, 80 Stat. 1515; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095.)

#### **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.

#### **AMENDMENTS**

**1986**—Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

**1966**—Pub. L. 89-800 extended exemption from antitrust laws to include a joint agreement by which the member clubs of two or more professional football leagues combine their operations in an expanded single league.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **SHORT TITLE**

Pub. L. 87-331, Sept. 30, 1961, 75 Stat. 732, as amended, which enacted this chapter, is popularly known as the Sports Broadcasting Act of 1961.

#### **SAVINGS PROVISION**

Pub. L. 87-331, §6, Sept. 30, 1961, 75 Stat. 732, provided that: "Nothing in this Act [this chapter] shall affect any cause of action existing on the effective date hereof [Sept. 30, 1961] in respect to the organized professional team sports of baseball, football, basketball, or hockey."

### **§1292. Area telecasting restriction limitation**

Section 1291 of this title shall not apply to any joint agreement described in the first sentence in such section which prohibits any person to whom such rights are sold or transferred from televising any games within any area, except within the home territory of a member club of the league on a day when such club is playing a game at home.

(Pub. L. 87-331, §2, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89-800, §6(b)(2), Nov. 8, 1966, 80 Stat. 1515.)

#### **EDITORIAL NOTES**

#### **AMENDMENTS**

**1966**—Pub. L. 89-800 substituted "described in the first sentence of such section" for "described in such section".

### **§1293. Intercollegiate and interscholastic football contest limitations**

The first sentence of section 1291 of this title shall not apply to any joint agreement described in such section which permits the telecasting of all or a substantial part of any professional football game on any Friday after six o'clock postmeridian or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December in any year from any telecasting station located within seventy-five miles of the game site of any intercollegiate or interscholastic football contest scheduled to be played on such a date if—

(1) such intercollegiate football contest is between institutions of higher learning both of which confer degrees upon students following completion of sufficient credit hours to equal a four-year course, or

(2) in the case of an interscholastic football contest, such contest is between secondary schools, both of which are accredited or certified under the laws of the State or States in which they are situated and offer courses continuing through the twelfth grade of the standard school curriculum, or the equivalent, and

(3) such intercollegiate or interscholastic football contest and such game site were announced through publication in a newspaper of general circulation prior to August 1 of such year as being regularly scheduled for such day and place.

(Pub. L. 87-331, §3, Sept. 30, 1961, 75 Stat. 732; Pub. L. 89-800, §6(b)(3), Nov. 8, 1966, 80 Stat. 1515.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1966**—Pub. L. 89-800 substituted "The first sentence of section 1291 of this title" for "Section 1291 of this title" at beginning of section, extended limitation granted for football contests on game sites located within 75 miles of telecasting stations to include interscholastic contests, redesignated cl. (2) as (3), added a new cl. (2), and, in cl. (3) as so redesignated, substituted "newspaper of general circulation prior to August 1" for "daily newspaper of general circulation prior to March 1" as description of the type newspaper required for the announcement of the game site of intercollegiate or interscholastic football games.

### **§1294. Antitrust laws unaffected as regards to other activities of professional sports contests**

Nothing contained in this chapter shall be deemed to change, determine, or otherwise affect the applicability or nonapplicability of the antitrust laws to any act, contract, agreement, rule, course of conduct, or other activity by, between, or among persons engaging in, conducting, or participating in the organized professional team sports of football, baseball, basketball, or hockey, except the agreements to which section 1291 of this title shall apply.

(Pub. L. 87-331, §4, Sept. 30, 1961, 75 Stat. 732.)

### **§1295. "Persons" defined**

As used in this chapter, "persons" means any individual, partnership, corporation, or unincorporated association or any combination or association thereof.

(Pub. L. 87-331, §5, Sept. 30, 1961, 75 Stat. 732.)

## **CHAPTER 33—BRAKE FLUID REGULATION**

**§§1301 to 1303. Repealed. Pub. L. 89-563, title I, §117(a), Sept. 9, 1966, 80 Stat.**



**727**

Sections, Pub. L. 87-637, §§1-3, Sept. 5, 1962, 76 Stat. 437, provided for promulgation of standards for hydraulic brake fluid used in motor vehicles and set the penalty for the unlawful sale, importation, or introduction into commerce of fluid not meeting the published standards. See chapter 38 (§1381 et seq.) of this title.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**SAVINGS PROVISION**

Pub. L. 89-563, title I, §117(b)-(e), Sept. 9, 1966, 80 Stat. 727, provided that persons willfully violating sections 1301 to 1303 and 1321 to 1323 of this title would be punished in accordance with provisions of laws in effect on date of violation, prior to repeal by Pub. L. 103-272, §7(b), July 5, 1994, 108 Stat. 1379.

**CHAPTER 34—ANTITRUST CIVIL PROCESS**

Sec.

- 1311. Definitions.
- 1312. Civil investigative demands.
- 1313. Custodian of documents, answers and transcripts.
- 1314. Judicial proceedings.

**§1311. Definitions**

For the purposes of this chapter—

(a) The term "antitrust law" includes:

- (1) Each provision of law defined as one of the antitrust laws by section 12 of this title; and
- (2) Any statute enacted on and after September 19, 1962, by the Congress which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to any restraint upon or monopolization of interstate or foreign trade or commerce;

(b) The term "antitrust order" means any final order, decree, or judgment of any court of the United States, duly entered in any case or proceeding arising under any antitrust law;

(c) The term "antitrust investigation" means any inquiry conducted by any antitrust investigator for the purpose of ascertaining whether any person is or has been engaged in any antitrust violation or in any activities in preparation for a merger, acquisition, joint venture, or similar transaction, which, if consummated, may result in an antitrust violation;

(d) The term "antitrust violation" means any act or omission in violation of any antitrust law, any antitrust order or, with respect to the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6201 et seq.], any of the foreign antitrust laws;

(e) The term "antitrust investigator" means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any antitrust law;

(f) The term "person" means any natural person, partnership, corporation, association, or other legal entity, including any person acting under color or authority of State law;

(g) The term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, and any product of discovery;

(h) The term "custodian" means the custodian or any deputy custodian designated under section 1313(a) of this title;

(i) The term "product of discovery" includes without limitation the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission obtained by any method of discovery in any judicial litigation or in any

administrative litigation of an adversarial nature; any digest, analysis, selection, compilation, or any derivation thereof; and any index or manner of access thereto; and

(j) The term "agent" includes any person retained by the Department of Justice in connection with the enforcement of the antitrust laws.

(k) The term "foreign antitrust laws" has the meaning given such term in section 12 of the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6211].

(Pub. L. 87-664, §2, Sept. 19, 1962, 76 Stat. 548; Pub. L. 94-435, title I, §101, Sept. 30, 1976, 90 Stat. 1383; Pub. L. 96-349, §§2(a), 7(a)(1), Sept. 12, 1980, 94 Stat. 1154, 1158; Pub. L. 103-438, §3(e)(1)(A), Nov. 2, 1994, 108 Stat. 4598.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 87-664, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

The International Antitrust Enforcement Assistance Act of 1994, referred to in subsec. (d), is Pub. L. 103-438, Nov. 2, 1994, 108 Stat. 4597, which is classified principally to chapter 88 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

### **AMENDMENTS**

**1994**—Subsec. (d). Pub. L. 103-438, §3(e)(1)(A)(i), substituted ", any" for "or any" and inserted before semicolon at end "or, with respect to the International Antitrust Enforcement Assistance Act of 1994, any of the foreign antitrust laws".

Subsec. (k). Pub. L. 103-438, §3(e)(1)(A)(ii), added subsec. (k).

**1980**—Subsec. (g). Pub. L. 96-349, §2(a)(1), extended definition of "documentary material" to include any product of discovery.

Subsec. (h). Pub. L. 96-349, §2(a)(2), substituted a semicolon for period at end.

Subsec. (i). Pub. L. 96-349, §2(a)(3), added subsec. (i).

Subsec. (j). Pub. L. 96-349, §7(a)(1), added subsec. (j).

**1976**—Subsec. (a). Pub. L. 94-435, §101(1), in par. (1) inserted "and" after semicolon preceding par. (2), struck out par. (2) which included the Federal Trade Commission Act in definition of antitrust law for purposes of this chapter, redesignated par. (3) as (2), struck out "(A)" before "any restraint", and struck out subpar. (B) which related to any unfair trade practice in or affecting interstate or foreign trade or commerce.

Subsec. (c). Pub. L. 94-435, §101(2), inserted "or in any activities in preparation for a merger, acquisition, joint venture, or similar transaction, which if consummated, may result in an antitrust violation;" after "engaged in any antitrust violation".

Subsec. (f). Pub. L. 94-435, §101(3), included "any natural person" and "any person acting under color or authority of State law" in definition of "person".

Subsec. (h). Pub. L. 94-435, §101(4), substituted "the custodian" for "the antitrust document custodian".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1976 AMENDMENT**

Pub. L. 94-435, title I, §106, Sept. 30, 1976, 90 Stat. 1390, provided that: "The amendments to the Antitrust Civil Process Act [see section 1 of Pub. L. 87-664 set out as a Short Title note under this section] and to section 1505 of title 18, United States Code, made by this title [title I of Pub. L. 94-435] shall take effect on the date of enactment of this Act [Sept. 30, 1976], except section 3(i)(8) of the Antitrust Civil Process Act [section 1312(i)(8) of this title] (as amended by this Act) shall take effect on the later of (1) the date of enactment of this Act [Sept. 30, 1976], or (2) October 1, 1976. Any such amendment which provides for the production of documentary material, answers to interrogatories, or oral testimony shall apply to any act or practice without regard to the date on which it occurred."

### **SHORT TITLE OF 1980 AMENDMENT**

Pub. L. 96-349, §1, Sept. 12, 1980, 94 Stat. 1154, provided: "That this Act [amending sections 15, 15a,

15c, 16, 18, and 1311 to 1314 of this title, section 1905 of Title 18, Crimes and Criminal Procedure, and section 1927 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under sections 15, 16, and 18 of this title] may be cited as the 'Antitrust Procedural Improvements Act of 1980'."

#### **SHORT TITLE**

Pub. L. 87-664, §1, Sept. 19, 1962, 76 Stat. 548, provided: "That this Act [enacting this chapter and amending section 1505 of Title 18, Crimes and Criminal Procedure] may be cited as the 'Antitrust Civil Process Act'."

#### **SAVINGS PROVISION**

Pub. L. 87-664, §7, Sept. 19, 1962, 76 Stat. 552, provided that: "Nothing contained in this Act [see Short Title note above] shall impair the authority of the Attorney General, the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, or any antitrust investigator to (a) lay before any grand jury impaneled before any district court of the United States any evidence concerning any alleged antitrust violation, (b) invoke the power of any such court to compel the production of any evidence before any such grand jury, or (c) institute any proceeding for the enforcement of any order or process issued in execution of such power, or to punish disobedience of any such order of process by any person, including a natural person."

### **§1312. Civil investigative demands**

#### **(a) Issuance; service; production of material; testimony**

Whenever the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to a civil antitrust investigation or, with respect to the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6201 et seq.], an investigation authorized by section 3 of such Act [15 U.S.C. 6202], he may, prior to the institution of a civil or criminal proceeding by the United States thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General or the Assistant Attorney General in charge of the Antitrust Division shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and notify the person to whom such demand is issued of the date on which such copy was served.

#### **(b) Contents; return date for demand for product of discovery**

Each such demand shall—

(1) state the nature of—

(A) the conduct constituting the alleged antitrust violation, or

(B) the activities in preparation for a merger, acquisition, joint venture, or similar transaction, which, if consummated, may result in an antitrust violation,

which are under investigation and the provision of law applicable thereto;

(2) if it is a demand for production of documentary material—

(A) describe the class or classes of documentary material to be produced thereunder with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available; or

(3) if it is a demand for answers to written interrogatories—

- (A) propound with definiteness and certainty the written interrogatories to be answered;
- (B) prescribe a date or dates at which time answers to written interrogatories shall be submitted; and
- (C) identify the custodian to whom such answers shall be submitted; or

(4) if it is a demand for the giving of oral testimony—

- (A) prescribe a date, time, and place at which oral testimony shall be commenced; and
- (B) identify an antitrust investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

Any such demand which is an express demand for any product of discovery shall not be returned or returnable until twenty days after a copy of such demand has been served upon the person from whom the discovery was obtained.

**(c) Protected material or information; demand for product of discovery superseding disclosure restrictions except trial preparation materials**

(1) No such demand shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony, if such material, answers, or testimony would be protected from disclosure under—

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States in aid of a grand jury investigation, or

(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this chapter.

(2) Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this chapter) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege, including without limitation any right or privilege which may be invoked to resist discovery of trial preparation materials, to which the person making such disclosure may be entitled.

**(d) Service; jurisdiction**

(1) Any such demand may be served by any antitrust investigator, or by any United States marshal or deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

(2) any <sup>1</sup> such demand or any petition filed under section 1314 of this title may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this chapter by such person that such court would have if such person were personally within the jurisdiction of such court.

**(e) Service upon legal entities and natural persons**

(1) Service of any such demand or of any petition filed under section 1314 of this title may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity to be served; or

(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Service of any such demand or of any petition filed under section 1314 of this title may be made upon any natural person by—

(A) delivering a duly executed copy thereof to the person to be served; or

(B) depositing such copy in the United States mails by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

**(f) Proof of service**

A verified return by the individual serving any such demand or petition setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

**(g) Sworn certificates**

The production of documentary material in response to a demand served pursuant to this section shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

**(h) Interrogatories**

Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons responsible for answering each interrogatory, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

**(i) Oral examinations**

(1) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(2) The antitrust investigator or investigators conducting the examination shall exclude from the place where the examination is held all other persons except the person being examined, his counsel, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

The provisions of section 30<sup>2</sup> of this title shall not apply to such examinations.

(3) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the antitrust investigator conducting the examination and such person.

(4) When the testimony is fully transcribed, the antitrust investigator or the officer shall afford the witness (who may be accompanied by counsel) a reasonable opportunity to examine the transcript; and the transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the antitrust investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within thirty days of his being afforded a reasonable opportunity to examine it, the officer or the antitrust investigator shall sign it and state on the record

the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

(5) The officer shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness, and the officer or antitrust investigator shall promptly deliver it or send it by registered or certified mail to the custodian.

(6) Upon payment of reasonable charges therefor, the antitrust investigator shall furnish a copy of the transcript to the witness only, except that the Assistant Attorney General in charge of the Antitrust Division may for good cause limit such witness to inspection of the official transcript of his testimony.

(7)(A) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not by himself or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, the antitrust investigator conducting the examination may petition the district court of the United States pursuant to section 1314 of this title for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of Part V of title 18.

(8) Any person appearing for oral examination pursuant to a demand served under this section shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(Pub. L. 87-664, §3, Sept. 19, 1962, 76 Stat. 548; Pub. L. 94-435, title I, §102, Sept. 30, 1976, 90 Stat. 1384; Pub. L. 96-349, §2(b)(1)-(3), Sept. 12, 1980, 94 Stat. 1154; Pub. L. 103-438, §3(e)(1)(B), Nov. 2, 1994, 108 Stat. 4598.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The International Antitrust Enforcement Assistance Act of 1994, referred to in subsec. (a), is Pub. L. 103-438, Nov. 2, 1994, 108 Stat. 4597, which is classified principally to chapter 88 (§6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

This chapter, referred to in subsecs. (c)(1)(B), (2) and (d), was in the original "this Act", meaning Pub. L. 87-664, known as the Antitrust Civil Process 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 1311 of this title and Tables.

Section 30 of this title, referred to in subsec. (i)(2), was repealed by Pub. L. 107-273, div. C, title IV, §14102(f), Nov. 2, 2002, 116 Stat. 1922.

### AMENDMENTS

**1994**—Subsec. (a). Pub. L. 103-438 inserted "or, with respect to the International Antitrust Enforcement Assistance Act of 1994, an investigation authorized by section 3 of such Act" after "investigation" and "by the United States" after "proceeding".

**1980**—Subsec. (a). Pub. L. 96-349, §2(b)(1), inserted provision for service and notice of a civil investigative demand for any product of discovery.

Subsec. (b). Pub. L. 96-349, §2(b)(2), inserted provision respecting time demand for product of discovery is returnable.

Subsec. (c). Pub. L. 96-349, §2(b)(3), designated existing provisions as par. (1), redesignated as cls. (A) and (B) former cls. (1) and (2), and added par. (2).

**1976**—Subsec. (a). Pub. L. 94-435 struck out "under investigation" before "may be in possession", inserted

"or may have any information" after "any documentary material", and inserted provision requiring the production of documentary material for inspection or reproduction, answers in writing to written interrogatories, the giving of oral testimony concerning documentary material or information, and the furnishing of any combination of such material, answers, or testimony.

Subsec. (b). Pub. L. 94-435 restructured subsec. (b) and as so restructured, in par. (1) inserted provisions of cl. (B), in par. (2), added cls. (B) and (C), in par. (3) substituted provisions relating to written interrogatories for provisions relating to prescription of a return date for demanded material, and in par. (4), substituted provisions relating to oral testimony for provisions requiring a demand to identify the custodian to whom demanded material shall be made available.

Subsec. (c). Pub. L. 94-435 inserted provision relating to the submission of answers to written interrogatories and the giving of oral testimony, struck out provisions of par. (1) relating to the reasonableness requirement for demands for documentary material, redesignated par. (2) as (1) and provided that protected status of any information or material would be determined by standards applicable in the case of a subpoena or subpoena duces tecum issued by a court of the United States, and added par. (2).

Subsec. (d). Pub. L. 94-435 redesignated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 94-435 redesignated existing provisions as par. (1), inserted "return receipt requested" after "certified mail" in par. (C), and added par. (2).

Subsecs. (g) to (i). Pub. L. 94-435 added subsecs. (g) to (i).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-435 effective Sept. 30, 1976, except subsec. (i)(8) of this section effective Oct. 1, 1976, see section 106 of Pub. L. 94-435, set out as a note under section 1311 of this title.

<sup>1</sup> *So in original. Probably should be capitalized.*

<sup>2</sup> *See References in Text note below.*

## §1313. Custodian of documents, answers and transcripts

### (a) Designation

The Assistant Attorney General in charge of the Antitrust Division of the Department of Justice shall designate an antitrust investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter, and such additional antitrust investigators as he shall determine from time to time to be necessary to serve as deputies to such officer.

### (b) Production of materials

Any person, upon whom any demand under section 1312 of this title for the production of documentary material has been duly served, shall make such material available for inspection and copying or reproduction to the custodian designated therein at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct, pursuant to section 1314(d) <sup>1</sup> of this title) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute copies for originals of all or any part of such material.

### (c) Responsibility for materials; disclosure

(1) The custodian to whom any documentary material, answers to interrogatories, or transcripts of oral testimony are delivered shall take physical possession thereof, and shall be responsible for the use made thereof and for the return of documentary material, pursuant to this chapter.

(2) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any

duly authorized official, employee, or agent of the Department of Justice under regulations which shall be promulgated by the Attorney General. Notwithstanding paragraph (3) of this subsection, such material, answers, and transcripts may be used by any such official, employee, or agent in connection with the taking of oral testimony pursuant to this chapter.

(3) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, so produced shall be available for examination, without the consent of the person who produced such material, answers, or transcripts, and, in the case of any product of discovery produced pursuant to an express demand for such material, of the person from whom the discovery was obtained, by any individual other than a duly authorized official, employee, or agent of the Department of Justice. Nothing in this section is intended to prevent disclosure to either body of the Congress or to any authorized committee or subcommittee thereof.

(4) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe, (A) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by any duly authorized representative of such person, and (B) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or his counsel.

**(d) Use of investigative files**

(1) Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal administrative or regulatory agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case, grand jury, or proceeding as such attorney determines to be required. Upon the completion of any such case, grand jury, or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

(2) The custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony may deliver to the Federal Trade Commission, in response to a written request, copies of such material, answers, or transcripts for use in connection with an investigation or proceeding under the Commission's jurisdiction. Such material, answers, or transcripts may only be used by the Commission in such manner and subject to such conditions as apply to the Department of Justice under this chapter.

**(e) Return of material to producer**

If any documentary material has been produced in the course of any antitrust investigation by any person pursuant to a demand under this chapter and—

(1) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal administrative or regulatory agency involving such material, has been completed, or

(2) no case or proceeding, in which such material may be used, has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies thereof furnished to the custodian pursuant to subsection (b) of this section or made by the Department of Justice pursuant to subsection (c) of this section) which has not passed into the control of any court, grand jury, or agency through the introduction thereof into the record of such case or proceeding.

**(f) Appointment of successor custodians**

In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony



produced under any demand issued pursuant to this chapter, or the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Assistant Attorney General in charge of the Antitrust Division shall promptly (1) designate another antitrust investigator to serve as custodian of such material, answers, or transcripts, and (2) transmit in writing to the person who produced such material, answers, or testimony notice as to the identity and address of the successor so designated. Any successor designated under this subsection shall have with regard to such material, answers, or transcripts all duties and responsibilities imposed by this chapter upon his predecessor in office with regard thereto, except that he shall not be held responsible for any default or dereliction which occurred prior to his designation.

(Pub. L. 87-664, §4, Sept. 19, 1962, 76 Stat. 549; Pub. L. 94-435, title I, §103, Sept. 30, 1976, 90 Stat. 1387; Pub. L. 96-349, §§2(b)(4), 7(a)(2), Sept. 12, 1980, 94 Stat. 1155, 1158.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Section 1314(d) of this title, referred to in subsec. (b), was redesignated section 1314(e) of this title by Pub. L. 96-349.

This chapter, referred to in subsecs. (c), (e), and (f), was in the original "this Act", meaning Pub. L. 87-664, known as the Antitrust Civil Process 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 1311 of this title and Tables.

### AMENDMENTS

**1980**—Subsec. (c)(2). Pub. L. 96-349, §7(a)(2), provided for use of copies of documentary material by agents of the Department of Justice, including use by such agents in connection with the taking of oral testimony.

Subsec. (c)(3). Pub. L. 96-349, §§2(b)(4), 7(a)(2), inserted ", and, in the case of any product of discovery produced pursuant to an express demand for such material, of the person from whom the discovery was obtained" before ", by any individual" and reference to "agent" of the Department of Justice.

**1976**—Subsec. (a). Pub. L. 94-435 substituted "custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter" for "antitrust documentary custodian".

Subsec. (b). Pub. L. 94-435 struck out "issued" after "any demand", inserted "for the production of documentary material" before "has been duly served", and substituted "copies for originals of all or any part of such material" for "for copies of all or any part of such material originals thereof".

Subsec. (c). Pub. L. 94-435, among other changes, inserted provisions relating to answers to interrogatories and transcripts of oral testimony and, in par. (1), substituted "of documentary material" for "thereof", in par. (2), inserted "by any duly authorized official or employee of the Department of Justice" after "for official use", and inserted a provision relating to the use of documentary material, answers to interrogatories, and transcripts in connection with the taking of oral testimony, in par. (3), inserted "Except as otherwise provided in this section" before "while in the possession", substituted "no documentary material" for "no material", "official" for "officer, member", and inserted provision relating to disclosure of information to Congress or authorized committees or subcommittees thereof, in par. (4), added cl. (B).

Subsec. (d). Pub. L. 94-435, among other changes, in par. (1), inserted provisions relating to answers to interrogatories and transcripts of oral testimony, substituted a provision that an attorney designated under this section be from the Department of Justice for a provision that a designated attorney be appearing on behalf of the United States, provided that such an attorney can make an appearance under this section before a Federal administrative or regulatory agency in addition to a court or grand jury, and added par. (2).

Subsec. (e). Pub. L. 94-435, among other changes, inserted provisions of subsec. (f) relating to the institution of a case or proceeding within a reasonable time after examination and analysis of any evidence assembled during the course of an investigation, and relating to written demand for the return of such material, and, in addition, provided that copies furnished the custodian pursuant to subsec. (b) of this section need not be returned by the custodian.

Subsecs. (f), (g). Pub. L. 94-435 redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e)(2).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

## EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-435 effective Sept. 30, 1976, see section 106 of Pub. L. 94-435, set out as a note under section 1311 of this title.

<sup>1</sup> [See References in Text note below.](#)

### **§1314. Judicial proceedings**

#### **(a) Petition for enforcement; venue**

Whenever any person fails to comply with any civil investigative demand duly served upon him under section 1312 of this title or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General, through such officers or attorneys as he may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this chapter.

#### **(b) Petition for order modifying or setting aside demand; time for petition; suspension of time allowed for compliance with demand during pendency of petition; grounds for relief**

(1) Within twenty days after the service of any such demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand, such person may file and serve upon such antitrust investigator, and in the case of any express demand for any product of discovery upon the person from whom such discovery was obtained, a petition for an order modifying or setting aside such demand—

(A) in the district court of the United States for the judicial district within which such person resides, is found, or transacts business; or

(B) in the case of a petition addressed to an express demand for any product of discovery, only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending.

(2) The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief and may be based upon any failure of such demand to comply with the provisions of this chapter, or upon any constitutional or other legal right or privilege of such person.

#### **(c) Petition for order modifying or setting aside demand for production of product of discovery; grounds for relief; stay of compliance with demand and of running of time allowed for compliance with demand**

Whenever any such demand is an express demand for any product of discovery, the person from whom such discovery was obtained may file, at any time prior to compliance with such express demand, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any antitrust investigator named in the demand and upon the recipient of the demand, a petition for an order of such court modifying or setting aside those portions of the demand requiring production of any such product of discovery. Such petition shall specify each ground upon which the petitioner relies in seeking such relief and may be based upon any failure of such portions of the demand to comply with the provisions of this chapter, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of such petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

**(d) Petition for order requiring performance by custodian of duties; venue**

At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories delivered, or transcripts of oral testimony given by any person in compliance with any such demand, such person, and, in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this chapter.

**(e) Jurisdiction; appeal; contempts**

Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this chapter. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

**(f) Applicability of Federal Rules of Civil Procedure**

To the extent that such rules may have application and are not inconsistent with the provisions of this chapter, the Federal Rules of Civil Procedure shall apply to any petition under this chapter.

**(g) Disclosure exemption**

Any documentary material, answers to written interrogatories, or transcripts of oral testimony provided pursuant to any demand issued under this chapter shall be exempt from disclosure under section 552 of title 5.

(Pub. L. 87-664, §5, Sept. 19, 1962, 76 Stat. 551; Pub. L. 94-435, title I, §104, Sept. 30, 1976, 90 Stat. 1389; Pub. L. 96-349, §2(b)(5), Sept. 12, 1980, 94 Stat. 1155.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 87-664, known as the Antitrust Civil Process 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 1311 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (f), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

**AMENDMENTS**

**1980**—Subsec. (b). Pub. L. 96-349, §2(b)(5)(A), designated existing provisions as par. (1), provided for filing and serving a petition for an order modifying or setting aside a demand in the case of an express demand for any product of discovery upon the person from whom the discovery was obtained, incorporated existing provision in cl. (A), added cl. (B), and designated existing provisions as par. (2).

Subsecs. (c), (d). Pub. L. 96-349, §2(b)(5)(B) to (D), added subsec. (c), redesignated former subsec. (c) as (d) and authorized petition, in the case of an express demand for any product of discovery, by the person from whom the discovery was obtained, for an order requiring performance by the custodian of his duties. Former subsec. (d) redesignated (e).

Subsecs. (e) to (g). Pub. L. 96-349, §2(b)(5)(B), redesignated former subsecs. (d) to (f) as (e) to (g), respectively.

**1976**—Subsec. (a). Pub. L. 94-435, §104(a), struck out provision which permitted a petition for an enforcement order to be filed in the judicial district where a person who had failed to comply with a demand and who transacted business in one or more districts, maintained his principal place of business, or in such other district, in which such person transacted business, as was agreed upon by the parties to the petition.

Subsec. (b). Pub. L. 94-435, §104(b), (c), inserted "or within such period exceeding twenty days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand," after "whichever period is shorter", substituted "antitrust investigator" for "custodian" before "a petition for an order", and inserted proviso that petitioner should comply with portions of a contested demand which are not being challenged.

Subsec. (c). Pub. L. 94-435, §104(d), substituted "or answers to interrogatories delivered, or transcripts of oral testimony given" for "delivered".

Subsec. (f). Pub. L. 94-435, §104(e), added subsec. (f).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-435 effective Sept. 30, 1976, see section 106 of Pub. L. 94-435, set out as a note under section 1311 of this title.

## CHAPTER 35—SEAT BELT REGULATION

### §§1321 to 1323. Repealed. Pub. L. 89-563, title I, §117(a), Sept. 9, 1966, 80 Stat. 727

Sections, Pub. L. 88-201, §§1-3, Dec. 13, 1963, 77 Stat. 361, provided for the promulgation of standards for seat belts in motor vehicles and set the penalty for the unlawful sale, importation, or introduction into commerce of seat belts not meeting the published standards. For savings provision, see section 117(b) to (e) of Pub. L. 89-563, formerly set out as a note under section 1301 of this title.

## CHAPTER 36—CIGARETTE LABELING AND ADVERTISING

Sec.

- 1331. Congressional declaration of policy and purpose.
- 1332. Definitions.
- 1333. Labeling.
- 1334. Preemption.
- 1335. Unlawful advertisements on medium of electronic communication.
- 1335a. List of cigarette ingredients; annual submission to Secretary; transmittal to Congress; confidentiality.
- 1336. Authority of Federal Trade Commission; unfair or deceptive acts or practices.
- 1337. Omitted.
- 1338. Criminal penalty.
- 1339. Injunction proceedings.
- 1340. Cigarettes for export.
- 1341. Smoking, research, education and information.

### §1331. Congressional declaration of policy and purpose

It is the policy of the Congress, and the purpose of this chapter, to establish a comprehensive Federal Program to deal with cigarette labeling and advertising with respect to any relationship between smoking and health, whereby—

(1) the public may be adequately informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement of cigarettes; and

(2) commerce and the national economy may be (A) protected to the maximum extent consistent with this declared policy and (B) not impeded by diverse, nonuniform, and confusing cigarette labeling and advertising regulations with respect to any relationship between smoking and health.

(Pub. L. 89-92, §2, July 27, 1965, 79 Stat. 282; Pub. L. 91-222, §2, Apr. 1, 1970, 84 Stat. 87; Pub.

L. 98-474, §6(a), Oct. 12, 1984, 98 Stat. 2204.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1984**—Par. (1). Pub. L. 98-474 substituted "about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and in each advertisement;" for "that cigarette smoking may be hazardous to health by inclusion of a warning to that effect on each package of cigarettes;".

**1970**—Pub. L. 91-222 reenacted section without change.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1970 AMENDMENT**

Pub. L. 91-222, §3, Apr. 1, 1970, 84 Stat. 90, provided in part that: "All other provisions of the amendment made by this Act [enacting section 1340 of this title, amending this section and sections 1332 and 1335 to 1339 of this title, and enacting provisions set out as notes under this section] except where otherwise specified shall take effect on January 1, 1970."

### **EFFECTIVE DATE**

Pub. L. 89-92, §12, formerly §11, July 27, 1965, 79 Stat. 284, as renumbered by Pub. L. 98-474, §5(a), Oct. 12, 1984, 98 Stat. 2203, provided that: "This Act [this chapter] shall take effect on January 1, 1966."

### **SHORT TITLE OF 1984 AMENDMENT**

Pub. L. 98-474, §1, Oct. 12, 1984, 98 Stat. 2200, provided that: "This Act [enacting sections 1335a and 1341 of this title, amending this section and sections 1332, 1333, 1336, and 1337 of this title, and enacting provisions set out as notes under this section and sections 1333 and 1335a of this title] may be cited as the 'Comprehensive Smoking Education Act'."

### **SHORT TITLE OF 1973 AMENDMENT**

Pub. L. 93-109, §1, Sept. 21, 1973, 87 Stat. 352, provided: "That this Act [amending sections 1332 and 1335 of this title] may be cited as the 'Little Cigar Act of 1973'."

### **SHORT TITLE OF 1970 AMENDMENT**

Pub. L. 91-222, §1, Apr. 1, 1970, 84 Stat. 87, provided: "That this Act [enacting section 1340 of this title, amending this section and sections 1332 to 1339 of this title, and enacting provisions set out as notes under this section and sections 1333 and 1334 of this title] may be cited as the 'Public Health Cigarette Smoking Act of 1969'."

### **SHORT TITLE**

Pub. L. 89-92, §1, July 27, 1965, 79 Stat. 282, provided: "This Act [enacting this chapter] may be cited as the 'Federal Cigarette Labeling and Advertising Act'."

### **SEPARABILITY**

Pub. L. 89-92, §13, formerly §12, as added by Pub. L. 91-222, §2, Apr. 1, 1970, 84 Stat. 90, and renumbered Pub. L. 98-474, §5(a), Oct. 12, 1984, 98 Stat. 2203, provided that: "If any provision of this Act [this chapter] or the application thereof to any person or circumstances is held invalid, the other provisions of this Act [this chapter] and the application of such provisions to other persons or circumstances shall not be affected thereby."

### **CONGRESSIONAL STATEMENT OF PURPOSE**

Pub. L. 98-474, §2, Oct. 12, 1984, 98 Stat. 2200, provided that: "It is the purpose of this Act [see Short Title of 1984 Amendment note above] to provide a new strategy for making Americans more aware of any adverse health effects of smoking, to assure the timely and widespread dissemination of research findings and to enable individuals to make informed decisions about smoking."

## **§1332. Definitions**

As used in this chapter—

(1) The term "cigarette" means—

- (A) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and
- (B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A).

(2) The term "commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island and any place outside thereof; (B) commerce between points in any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island, but through any place outside thereof; or (C) commerce wholly within the District of Columbia, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, or Johnston Island.

(3) The term "United States", when used in a geographical sense, includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and Johnston Island. The term "State" includes any political division of any State.

(4) The term "package" means a pack, box, carton, or container of any kind in which cigarettes are offered for sale, sold, or otherwise distributed to consumers.

(5) The term "person" means an individual, partnership, corporation, or any other business or legal entity.

(6) The term "sale or distribution" includes sampling or any other distribution not for sale.

(7) The term "little cigar" means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco (other than any roll of tobacco which is a cigarette within the meaning of subsection (1)) and as to which one thousand units weigh not more than three pounds.

(8) The term "brand style" means a variety of cigarettes distinguished by the tobacco used, tar and nicotine content, flavoring used, size of the cigarette, filtration on the cigarette, or packaging.

(9) The term "Secretary" means the Secretary of Health and Human Services.

(Pub. L. 89–92, §3, July 27, 1965, 79 Stat. 282; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 93–109, §2, Sept. 21, 1973, 87 Stat. 352; Pub. L. 98–474, §6(b), Oct. 12, 1984, 98 Stat. 2204; Pub. L. 99–92, §11(b), Aug. 16, 1985, 99 Stat. 403.)

## EDITORIAL NOTES

### AMENDMENTS

**1985**—Pars. (8), (9). Pub. L. 99–92 added par. (8) and redesignated former par. (8) as (9).

**1984**—Par. (8). Pub. L. 98–474 added par. (8).

**1973**—Subsec. (7). Pub. L. 93–109 added subsec. (7).

**1970**—Subsec. (3). Pub. L. 91–222 inserted provisions defining "State".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1973 AMENDMENT

Pub. L. 93–109, §4, Sept. 21, 1973, 87 Stat. 352, provided that: "The amendment made by this Act [amending this section and section 1335 of this title] shall become effective thirty days after the date of enactment [Sept. 21, 1973]."

### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91–222, set out in part as a note under section 1331 of this title.

## **§1333. Labeling**

### **(a) Label requirements**

#### **(1) In general**

It shall be unlawful for any person to manufacture, package, sell, offer to sell, distribute, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels:

WARNING: Cigarettes are addictive.

WARNING: Tobacco smoke can harm your children.

WARNING: Cigarettes cause fatal lung disease.

WARNING: Cigarettes cause cancer.

WARNING: Cigarettes cause strokes and heart disease.

WARNING: Smoking during pregnancy can harm your baby.

WARNING: Smoking can kill you.

WARNING: Tobacco smoke causes fatal lung disease in nonsmokers.

WARNING: Quitting smoking now greatly reduces serious risks to your health.

#### **(2) Placement; typography; etc.**

Each label statement required by paragraph (1) shall be located in the upper portion of the front and rear panels of the package, directly on the package underneath the cellophane or other clear wrapping. Each label statement shall comprise the top 50 percent of the front and rear panels of the package. The word "WARNING" shall appear in capital letters and all text shall be in conspicuous and legible 17-point type, unless the text of the label statement would occupy more than 70 percent of such area, in which case the text may be in a smaller conspicuous and legible type size, provided that at least 60 percent of such area is occupied by required text. The text shall be black on a white background, or white on a black background, in a manner that contrasts, by typography, layout, or color, with all other printed material on the package, in an alternating fashion under the plan submitted under subsection (c).

#### **(3) Does not apply to foreign distribution**

The provisions of this subsection do not apply to a tobacco product manufacturer or distributor of cigarettes which does not manufacture, package, or import cigarettes for sale or distribution within the United States.

#### **(4) Applicability to retailers**

A retailer of cigarettes shall not be in violation of this subsection for packaging that—

(A) contains a warning label;

(B) is supplied to the retailer by a license- or permit-holding tobacco product manufacturer, importer, or distributor; and

(C) is not altered by the retailer in a way that is material to the requirements of this subsection.

### **(b) Advertising requirements**

#### **(1) In general**

It shall be unlawful for any tobacco product manufacturer, importer, distributor, or retailer of cigarettes to advertise or cause to be advertised within the United States any cigarette unless its advertising bears, in accordance with the requirements of this section, one of the labels specified in subsection (a).

#### **(2) Typography, etc.**

Each label statement required by subsection (a) in cigarette advertising shall comply with the standards set forth in this paragraph. For press and poster advertisements, each such statement and (where applicable) any required statement relating to tar, nicotine, or other constituent (including a smoke constituent) yield shall comprise at least 20 percent of the area of the advertisement and shall appear in a conspicuous and prominent format and location at the top of each advertisement

within the trim area. The Secretary may revise the required type sizes in such area in such manner as the Secretary determines appropriate. The word "WARNING" shall appear in capital letters, and each label statement shall appear in conspicuous and legible type. The text of the label statement shall be black if the background is white and white if the background is black, under the plan submitted under subsection (c). The label statements shall be enclosed by a rectangular border that is the same color as the letters of the statements and that is the width of the first downstroke of the capital "W" of the word "WARNING" in the label statements. The text of such label statements shall be in a typeface pro rata to the following requirements: 45-point type for a whole-page broadsheet newspaper advertisement; 39-point type for a half-page broadsheet newspaper advertisement; 39-point type for a whole-page tabloid newspaper advertisement; 27-point type for a half-page tabloid newspaper advertisement; 31.5-point type for a double page spread magazine or whole-page magazine advertisement; 22.5-point type for a 28 centimeter by 3 column advertisement; and 15-point type for a 20 centimeter by 2 column advertisement. The label statements shall be in English, except that—

(A) in the case of an advertisement that appears in a newspaper, magazine, periodical, or other publication that is not in English, the statements shall appear in the predominant language of the publication; and

(B) in the case of any other advertisement that is not in English, the statements shall appear in the same language as that principally used in the advertisement.

### **(3) Matchbooks**

Notwithstanding paragraph (2), for matchbooks (defined as containing not more than 20 matches) customarily given away with the purchase of tobacco products, each label statement required by subsection (a) may be printed on the inside cover of the matchbook.

### **(4) Adjustment by Secretary**

The Secretary may, through a rulemaking under section 553 of title 5, adjust the format and type sizes for the label statements required by this section; the text, format, and type sizes of any required tar, nicotine yield, or other constituent (including smoke constituent) disclosures; or the text, format, and type sizes for any other disclosures required under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]. The text of any such label statements or disclosures shall be required to appear only within the 20 percent area of cigarette advertisements provided by paragraph (2). The Secretary shall promulgate regulations which provide for adjustments in the format and type sizes of any text required to appear in such area to ensure that the total text required to appear by law will fit within such area.

## **(c) Marketing requirements**

### **(1) Random display**

The label statements specified in subsection (a)(1) shall be randomly displayed in each 12-month period, in as equal a number of times as is possible on each brand of the product and be randomly distributed in all areas of the United States in which the product is marketed in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer and approved by the Secretary.

### **(2) Rotation**

The label statements specified in subsection (a)(1) shall be rotated quarterly in alternating sequence in advertisements for each brand of cigarettes in accordance with a plan submitted by the tobacco product manufacturer, importer, distributor, or retailer to, and approved by, the Secretary.

### **(3) Review**

The Secretary shall review each plan submitted under paragraph (2) and approve it if the plan—

(A) will provide for the equal distribution and display on packaging and the rotation required in advertising under this subsection; and

(B) assures that all of the labels required under this section will be displayed by the tobacco product manufacturer, importer, distributor, or retailer at the same time.



#### **(4) Applicability to retailers**

This subsection and subsection (b) apply to a retailer only if that retailer is responsible for or directs the label statements required under this section except that this paragraph shall not relieve a retailer of liability if the retailer displays, in a location open to the public, an advertisement that does not contain a warning label or has been altered by the retailer in a way that is material to the requirements of this subsection and subsection (b).

#### **(d) <sup>1</sup> Graphic label statements**

Not later than 24 months after June 22, 2009, the Secretary shall issue regulations that require color graphics depicting the negative health consequences of smoking to accompany the label statements specified in subsection (a)(1). The Secretary may adjust the type size, text and format of the label statements specified in subsections (a)(2) and (b)(2) as the Secretary determines appropriate so that both the graphics and the accompanying label statements are clear, conspicuous, legible and appear within the specified area.

#### **(d) <sup>1</sup> Change in required statements**

The Secretary through a rulemaking conducted under section 553 of title 5 may adjust the format, type size, color graphics, and text of any of the label requirements, or establish the format, type size, and text of any other disclosures required under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], if the Secretary finds that such a change would promote greater public understanding of the risks associated with the use of tobacco products.

#### **(e) Tar, nicotine, and other smoke constituent disclosure**

##### **(1) In general**

The Secretary shall, by a rulemaking conducted under section 553 of title 5, determine (in the Secretary's sole discretion) whether cigarette and other tobacco product manufacturers shall be required to include in the area of each cigarette advertisement specified by subsection (b) of this section, or on the package label, or both, the tar and nicotine yields of the advertised or packaged brand. Any such disclosure shall be in accordance with the methodology established under such regulations, shall conform to the type size requirements of subsection (b) of this section, and shall appear within the area specified in subsection (b) of this section.

##### **(2) Resolution of differences**

Any differences between the requirements established by the Secretary under paragraph (1) and tar and nicotine yield reporting requirements established by the Federal Trade Commission shall be resolved by a memorandum of understanding between the Secretary and the Federal Trade Commission.

##### **(3) Cigarette and other tobacco product constituents**

In addition to the disclosures required by paragraph (1), the Secretary may, under a rulemaking conducted under section 553 of title 5, prescribe disclosure requirements regarding the level of any cigarette or other tobacco product constituent including any smoke constituent. Any such disclosure may be required if the Secretary determines that disclosure would be of benefit to the public health, or otherwise would increase consumer awareness of the health consequences of the use of tobacco products, except that no such prescribed disclosure shall be required on the face of any cigarette package or advertisement. Nothing in this section shall prohibit the Secretary from requiring such prescribed disclosure through a cigarette or other tobacco product package or advertisement insert, or by any other means under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

##### **(4) Retailers**

This subsection applies to a retailer only if that retailer is responsible for or directs the label statements required under this section.

(Pub. L. 89-92, §4, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, §2, Apr. 1, 1970, 84 Stat. 88; Pub.

L. 98-474, §4(a), Oct. 12, 1984, 98 Stat. 2201; Pub. L. 99-92, §11[(a)], Aug. 16, 1985, 99 Stat. 402; Pub. L. 99-117, §11(d), Oct. 7, 1985, 99 Stat. 495; Pub. L. 111-31, div. A, title II, §§201(a), 202(b), 206, June 22, 2009, 123 Stat. 1842, 1845, 1849.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (b)(4), (d), and (e)(3), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

### **AMENDMENTS**

**2009**—Pub. L. 111-31, §201(a), amended section generally. Prior to amendment, section related to cigarette labeling requirements.

Subsec. (d). Pub. L. 111-31, §202(b), added subsec. (d) relating to change in required statements.

Subsec. (e). Pub. L. 111-31, §206, added subsec. (e).

**1985**—Subsec. (c). Pub. L. 99-92 designated existing provisions as par. (1), substituted "Except as provided in paragraph (2), the" for "The label", and added par. (2).

Subsec. (c)(2)(A). Pub. L. 99-117 substituted "brand style" for "brand" in provisions preceding cl. (i).

**1984**—Pub. L. 98-474 amended section generally, designating existing provisions as subsec. (a), expanding choice of warnings to be placed on cigarette packaging and further expanding scope of places that must contain warnings to include advertisements and outdoor billboards, and adding subsecs. (b) to (d).

**1970**—Pub. L. 91-222 substituted "Warning: The Surgeon General Has Determined That Cigarette Smoking Is Dangerous to Your Health" for "Caution: Cigarette Smoking May Be Hazardous to Your Health."

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2009 AMENDMENT**

Pub. L. 111-31, div. A, title II, §201(b), June 22, 2009, 123 Stat. 1845, provided that: "The amendment made by subsection (a) [amending this section] shall take effect 15 months after the issuance of the regulations required by subsection (a) [final rule issued June 22, 2011, eff. Sept. 22, 2012; see 76 F.R. 36628]. Such effective date shall be with respect to the date of manufacture, provided that, in any case, beginning 30 days after such effective date, a manufacturer shall not introduce into the domestic commerce of the United States any product, irrespective of the date of manufacture, that is not in conformance with section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), as amended by subsection (a)."

### **EFFECTIVE DATE OF 1985 AMENDMENT**

Pub. L. 99-92, §11(c), Aug. 16, 1985, 99 Stat. 403, provided that:

"(1) The amendments made by subsection (a) [probably refers to undesignated par. preceding subsec. (b), amending this section] shall take effect October 12, 1985, except that—

"(A) on and after the date of the enactment of this Act [Aug. 16, 1985] a manufacturer or importer of cigarettes may apply to the Federal Trade Commission to have the label rotation specified in section 4(c)(2) of the Federal Cigarette Labeling and Advertising Act [subsec. (c)(2) of this section], as amended by subsection (a), apply to its brand styles of cigarettes and the Commission may take action on such an application, and

"(B) a manufacturer or importer of cigarettes may elect to have the amendments apply at an earlier date or dates selected by the manufacturer or importer.

"(2) The Federal Trade Commission may, upon application of a manufacturer or importer of cigarettes with an approved application under section 4(c)(2) of the Federal Cigarette Labeling and Advertising Act [subsec. (c)(2) of this section], as amended by subsection (a), extend the effective date specified in paragraph (1) to January 11, 1986. The Commission may approve an application for such an extension only if the Commission determines that the effective date specified in such paragraph (1) would cause unreasonable economic hardship to the applicant. Section 4 of the Federal Cigarette Labeling and Advertising Act [this section], as in effect before October 12, 1985, shall apply with respect to a manufacturer or importer with an application approved under this paragraph."

### **EFFECTIVE DATE OF 1984 AMENDMENT**

Pub. L. 98–474, §4(b), Oct. 12, 1984, 98 Stat. 2203, provided that: "The amendment made by subsection (a) [amending this section] shall take effect upon the expiration of a one-year period beginning on the date of the enactment of this Act [Oct. 12, 1984]."

#### EFFECTIVE DATE OF 1970 AMENDMENT

Pub. L. 91–222, §3, Apr. 1, 1970, 84 Stat. 90, provided in part that: "Section 4 of the amendment made by this Act [amending this section] shall take effect on the first day of the seventh calendar month which begins after the date of the enactment of this Act [Apr. 1, 1970]."

*<sup>1</sup> So in original. There are two subsecs. designated (d).*

### §1334. Preemption

#### (a) Additional statements

Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), or as required under section 387c(a)(2) of title 21 or section 387t(a) of title 21, no statement relating to smoking and health, other than the statement required by section 1333 of this title, shall be required on any cigarette package.

#### (b) State regulations

No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter.

#### (c) Exception

Notwithstanding subsection (b), a State or locality may enact statutes and promulgate regulations, based on smoking and health, that take effect after the effective date of the Family Smoking Prevention and Tobacco Control Act, imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.

(Pub. L. 89–92, §5, July 27, 1965, 79 Stat. 283; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 88; Pub. L. 111–31, div. A, title II, §§202(a), 203, June 22, 2009, 123 Stat. 1845, 1846.)

#### EDITORIAL NOTES

#### REFERENCES IN TEXT

The Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (a), is div. A of Pub. L. 111–31, June 22, 2009, 123 Stat. 1776. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 301 of Title 21, Food and Drugs, and Tables.

The effective date of the Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (c), probably means the date of enactment of Pub. L. 111–31, which was approved June 22, 2009.

#### AMENDMENTS

**2009**—Subsec. (a). Pub. L. 111–31, §202(a), substituted "Except to the extent the Secretary requires additional or different statements on any cigarette package by a regulation, by an order, by a standard, by an authorization to market a product, or by a condition of marketing a product, pursuant to the Family Smoking Prevention and Tobacco Control Act (and the amendments made by that Act), or as required under section 387c(a)(2) of title 21 or section 387t(a) of title 21, no" for "No".

Subsec. (c). Pub. L. 111–31, §203, added subsec. (c).

**1970**—Subsec. (b). Pub. L. 91–222 substituted provision that no requirement or prohibition based on smoking and health should be imposed under State law with respect to the advertising or promotion of any cigarettes which packages are labeled in conformity with the provisions of this chapter for provision that no statement relating to smoking and health should be required in the advertising of any cigarettes which packages are labeled in conformity with the provisions of this chapter.

Subsecs. (c), (d). Pub. L. 91-222 struck out subsecs. (c) and (d) relating to the authority of the Federal Trade Commission with respect to unfair or deceptive advertising acts or practices, and reports to Congress by the Secretary of Health, Education, and Welfare and the Federal Trade Commission. See sections 1336 and 1337 of this title.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1970 AMENDMENT**

Pub. L. 91-222, §3, Apr. 1, 1970, 84 Stat. 90, provided in part that: "Section 5 of the amendment made by this Act [amending this section] shall take effect as of July 1, 1969."

## **§1335. Unlawful advertisements on medium of electronic communication**

After January 1, 1971, it shall be unlawful to advertise cigarettes and little cigars on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission. (Pub. L. 89-92, §6, July 27, 1965, 79 Stat. 283; Pub. L. 91-222, §2, Apr. 1, 1970, 84 Stat. 89; Pub. L. 93-109, §3, Sept. 21, 1973, 87 Stat. 352.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1973**—Pub. L. 93-109 extended prohibition against advertisements to little cigars.

**1970**—Pub. L. 91-222 substituted provision that after January 1, 1971, it shall be unlawful to advertise cigarettes on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission, for provision that a violation of this chapter should constitute misdemeanor and be punishable by fine. See, now, section 1338 of this title.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1973 AMENDMENT**

Amendment by Pub. L. 93-109 effective thirty days after Sept. 21, 1973, see section 4 of Pub. L. 93-109, set out as a note under section 1332 of this title.

### **EFFECTIVE DATE OF 1970 AMENDMENT**

Amendment by Pub. L. 91-222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91-222, set out in part as a note under section 1331 of this title.

## **§1335a. List of cigarette ingredients; annual submission to Secretary; transmittal to Congress; confidentiality**

(a) Each person who manufactures, packages, or imports cigarettes shall annually provide the Secretary with a list of the ingredients added to tobacco in the manufacture of cigarettes which does not identify the company which uses the ingredients or the brand of cigarettes which contain the ingredients. A person or group of persons required to provide a list by this subsection may designate an individual or entity to provide the list required by this subsection.

(b)(1) At such times as the Secretary considers appropriate, the Secretary shall transmit to the Congress a report, based on the information provided under subsection (a), respecting—

(A) a summary of research activities and proposed research activities on the health effects of ingredients added to tobacco in the manufacture of cigarettes and the findings of such research;

(B) information pertaining to any such ingredient which in the judgement of the Secretary poses a health risk to cigarette smokers; and

(C) any other information which the Secretary determines to be in the public interest.

(2)(A) Any information provided to the Secretary under subsection (a) shall be treated as trade secret or confidential information subject to section 552(b)(4) of title 5 and section 1905 of title 18 and shall not be revealed, except as provided in paragraph (1), to any person other than those authorized by the Secretary in carrying out their official duties under this section.

(B) Subparagraph (A) does not authorize the withholding of a list provided under subsection (a) from any duly authorized subcommittee or committee of the Congress. If a subcommittee or committee of the Congress requests the Secretary to provide it such a list, the Secretary shall make the list available to the subcommittee or committee and shall, at the same time, notify in writing the person who provided the list of such request.

(C) The Secretary shall establish written procedures to assure the confidentiality of information provided under subsection (a). Such procedures shall include the designation of a duly authorized agent to serve as custodian of such information. The agent—

(i) shall take physical possession of the information and, when not in use by a person authorized to have access to such information, shall store it in a locked cabinet or file, and

(ii) shall maintain a complete record of any person who inspects or uses the information.

Such procedures shall require that any person permitted access to the information shall be instructed in writing not to disclose the information to anyone who is not entitled to have access to the information.

(Pub. L. 89–92, §7, as added Pub. L. 98–474, §5(a), Oct. 12, 1984, 98 Stat. 2203.)

#### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

A prior section 7 of Pub. L. 89–92 was renumbered section 8 and is classified to section 1336 of this title.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

##### **EFFECTIVE DATE OF 1984 AMENDMENT**

Pub. L. 98–474, §5(b), Oct. 12, 1984, 98 Stat. 2204, provided that: "Section 7 of the Federal Cigarette Labeling and Advertising Act [this section] added by subsection (a) shall take effect upon the expiration of the one-year period beginning on the date of the enactment of this Act [Oct. 12, 1984]."

### **§1336. Authority of Federal Trade Commission; unfair or deceptive acts or practices**

Nothing in this chapter (other than the requirements of section 1333 of this title) shall be construed to limit, restrict, expand, or otherwise affect the authority of the Federal Trade Commission with respect to unfair or deceptive acts or practices in the advertising of cigarettes.

(Pub. L. 89–92, §8, formerly §7, July 27, 1965, 79 Stat. 283; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 89; renumbered §8 and amended Pub. L. 98–474, §§5(a), 6(c), Oct. 12, 1984, 98 Stat. 2203, 2204; Pub. L. 99–92, §12, Aug. 16, 1985, 99 Stat. 404.)

#### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

A prior section 8 of Pub. L. 89–92 was renumbered section 9, classified to section 1337 of this title, and subsequently omitted from the Code.

#### **AMENDMENTS**

**1985**—Pub. L. 99–92 struck out "(b)" after "1333".

**1984**—Pub. L. 98–474 amended section generally, striking out subsecs. (a) and (c) which dealt with the

authority of the Federal Trade Commission with respect to its pending trade regulation rule proceeding relating to cigarette advertising and its authority to issue trade regulation rules or to require an affirmative statement in any cigarette advertisement, which left the provisions of former subsec. (b) to constitute this section.

**1970**—Pub. L. 91–222 substituted provisions concerning the action of the Federal Trade Commission with respect to its pending trade regulation rule proceeding relating to cigarette advertising, the Commission's authority with respect to unfair or deceptive cigarette advertising acts or practices, and its authority to issue trade regulation rules or to require an affirmative statement in any cigarette advertisement, for provisions investing the several district courts with jurisdiction, for cause shown, to prevent and restrain violations of this chapter upon proper application. See section 1339 of this title.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1970 AMENDMENT**

Amendment by Pub. L. 91–222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91–222, set out in part as a note under section 1331 of this title.

## **§1337. Omitted**

## **EDITORIAL NOTES**

### **CODIFICATION**

Section, Pub. L. 89–92, §9, formerly §8, July 27, 1965, 79 Stat. 283; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 89; renumbered §9 and amended Pub. L. 98–474, §§5(a), 6(d), Oct. 12, 1984, 98 Stat. 2203, 2205, which required the Secretary of Health and Human Services to transmit an annual report to Congress concerning health consequences of smoking and recommendations for legislation, and which required the Federal Trade Commission to transmit an annual report to Congress concerning practices and methods of cigarette advertising and promotion and recommendations for legislation, 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, pages 95 and 172 of House Document No. 103–7.

A prior section 9 of Pub. L. 89–92 was renumbered section 10 and is classified to section 1338 of this title.

## **§1338. Criminal penalty**

Any person who violates the provisions of this chapter shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than \$10,000.

(Pub. L. 89–92, §10, formerly §9, July 27, 1965, 79 Stat. 284; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 89; renumbered §10, Pub. L. 98–474, §5(a), Oct. 12, 1984, 98 Stat. 2203.)

## **EDITORIAL NOTES**

### **PRIOR PROVISIONS**

A prior section 10 of Pub. L. 89–92 was renumbered section 11 and is classified to section 1339 of this title.

### **AMENDMENTS**

**1970**—Pub. L. 91–222 substituted provisions that violators shall be guilty of a misdemeanor and subject to fine, for provision that if any part of this chapter be held invalid, other provisions thereof shall not be affected. See Separability note set out under section 1331 of this title.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1970 AMENDMENT**

Amendment by Pub. L. 91–222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of

Pub. L. 91–222, set out in part as a note under section 1331 of this title.

### **§1339. Injunction proceedings**

The several district courts of the United States are invested with jurisdiction, for cause shown, to prevent and restrain violations of this chapter upon the application of the Attorney General of the United States acting through the several United States attorneys in their several districts.

(Pub. L. 89–92, §11, formerly §10, July 27, 1965, 79 Stat. 284; Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 89; renumbered §11, Pub. L. 98–474, §5(a), Oct. 12, 1984, 98 Stat. 2203.)

#### **EDITORIAL NOTES**

#### **PRIOR PROVISIONS**

Two prior sections 11 of Pub. L. 89–92 were renumbered section 12 by section 5(a) of Pub. L. 98–474 and are classified to section 1340 of this title and as an Effective Date note under section 1331 of this title.

#### **AMENDMENTS**

**1970**—Pub. L. 91–222 substituted provision that the several district courts are invested with jurisdiction in injunction proceedings, for provisions that regulation of advertising terminate on July 1, 1969, but that such termination shall not be construed as limiting, expanding or otherwise affecting such jurisdiction which Federal Trade Commission or other federal agencies had prior to July 27, 1965.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE OF 1970 AMENDMENT**

Amendment by Pub. L. 91–222 effective Jan. 1, 1970, except where otherwise specified, see section 3 of Pub. L. 91–222, set out in part as a note under section 1331 of this title.

### **§1340. Cigarettes for export**

Packages of cigarettes manufactured, imported, or packaged (1) for export from the United States or (2) for delivery to a vessel or aircraft, as supplies, for consumption beyond the jurisdiction of the internal revenue laws of the United States shall be exempt from the requirements of this chapter, but such exemptions shall not apply to cigarettes manufactured, imported, or packaged for sale or distribution to members or units of the Armed Forces of the United States located outside of the United States.

(Pub. L. 89–92, §12, formerly §11, as added Pub. L. 91–222, §2, Apr. 1, 1970, 84 Stat. 89; renumbered §12, Pub. L. 98–474, §5(a), Oct. 12, 1984, 98 Stat. 2203.)

#### **EDITORIAL NOTES**

#### **CODIFICATION**

Another section 12 of Pub. L. 89–92, July 27, 1965, 79 Stat. 284, is set out as an Effective Date note under section 1331 of this title.

#### **PRIOR PROVISIONS**

A prior section 12 of Pub. L. 89–92 was renumbered section 13 and is set out as a Separability note under section 1331 of this title.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE**

Section effective Jan. 1, 1970, see section 3 of Pub. L. 91–222, set out in part as a note under section 1331

of this title.

## **§1341. Smoking, research, education and information**

### **(a) Establishment of program; Secretary; functions**

The Secretary of Health and Human Services (hereinafter in this section referred to as the "Secretary") shall establish and carry out a program to inform the public of any dangers to human health presented by cigarette smoking. In carrying out such program, the Secretary shall—

(1) conduct and support research on the effect of cigarette smoking on human health and develop materials for informing the public of such effect;

(2) coordinate all research and educational programs and other activities within the Department of Health and Human Services (hereinafter in this section referred to as the "Department") which relate to the effect of cigarette smoking on human health and coordinate, through the Interagency Committee on Smoking and Health (established under subsection (b)), such activities with similar activities of other Federal agencies and of private agencies;

(3) establish and maintain a liaison with appropriate private entities, other Federal agencies, and State and local public agencies respecting activities relating to the effect of cigarette smoking on human health;

(4) collect, analyze, and disseminate (through publications, bibliographies, and otherwise) information, studies, and other data relating to the effect of cigarette smoking on human health, and develop standards, criteria, and methodologies for improved information programs related to smoking and health;

(5) compile and make available information on State and local laws relating to the use and consumption of cigarettes; and

(6) undertake any other additional information and research activities which the Secretary determines necessary and appropriate to carry out this section.

### **(b) Interagency Committee on Smoking and Health; composition; chairman; compensation; staffing and other assistance**

(1) To carry out the activities described in paragraphs (2) and (3) of subsection (a) there is established an Interagency Committee on Smoking and Health. The Committee shall be composed of—

(A) members appointed by the Secretary from appropriate institutes and agencies of the Department, which may include the National Cancer Institute, the National Heart, Lung, and Blood Institute, the Eunice Kennedy Shriver National Institute of Child Health and Human Development, the National Institute on Drug Abuse, the Health Resources and Services Administration, and the Centers for Disease Control and Prevention;

(B) at least one member appointed from the Federal Trade Commission, the Department of Education, the Department of Labor, and any other Federal agency designated by the Secretary, the appointment of whom shall be made by the head of the entity from which the member is appointed; and

(C) five members appointed by the Secretary from physicians and scientists who represent private entities involved in informing the public about the health effects of smoking.

The Secretary shall designate the chairman of the Committee.

(2) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence,<sup>1</sup> in the manner provided by sections 5702 and 5703 of title 5.

(3) The Secretary shall make available to the Committee such staff, information, and other assistance as it may require to carry out its activities effectively.

### **(c) Report to Congress; contents**

The Secretary shall transmit a report to Congress not later than January 1, 1986, and biennially



thereafter which shall contain—

- (1) an overview and assessment of Federal activities undertaken to inform the public of the health consequences of smoking and the extent of public knowledge of such consequences,
- (2) a description of the Secretary's and Committee's activities under subsection (a),
- (3) information regarding the activities of the private sector taken in response to the effects of smoking on health, and
- (4) such recommendations as the Secretary may consider appropriate.

(Pub. L. 98–474, §3, Oct. 12, 1984, 98 Stat. 2200; Pub. L. 99–92, §13, Aug. 16, 1985, 99 Stat. 404; Pub. L. 102–531, title III, §312(a), Oct. 27, 1992, 106 Stat. 3504; Pub. L. 110–154, §1(c)(1), Dec. 21, 2007, 121 Stat. 1827.)

## EDITORIAL NOTES

### CODIFICATION

Section was enacted as part of the Comprehensive Smoking Education Act, and not as part of the Federal Cigarette Labeling and Advertising Act which comprises this chapter.

### AMENDMENTS

**2007**—Subsec. (b)(1)(A). Pub. L. 110–154 substituted "Eunice Kennedy Shriver National Institute of Child Health and Human Development" for "National Institute of Child Health and Human Development".

**1992**—Subsec. (b)(1)(A), Pub. L. 102–531 substituted "Centers for Disease Control and Prevention" for "Centers for Disease Control".

**1985**—Subsec. (c). Pub. L. 99–92 substituted "1986" for "1985".

<sup>1</sup> So in original. Probably should be "subsistence."

## CHAPTER 37—STATE TECHNICAL SERVICES

Sec.

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|-------|---|
| 1351. | Declaration of purpose.   |
| 1352. | Definitions.  |
| 1353. | Selection of designated agency.   |
| 1354. | Five-year plan; annual technical services program.  |
| 1355. | Conditions precedent to acceptance of plans and programs for review and approval by Secretary.                              |
| 1356. | Review and approval of plans and programs by Secretary.   |
| 1357. | Interstate cooperation in administration and coordination of plans and programs.  |
| 1358. | Consent of Congress for interstate compacts; reservation of right to alter, amend, or repeal.                               |
| 1359. | Advisory councils for technical services; appointment; functions; compensation and expenses.                                |
| 1360. | Appropriations and payments.  |
| 1361. | Reference services to assist designated agencies to obtain information outside State.                                       |
| 1362. | Rules and regulations.  |
| 1363. | Prohibition against control over educational institutions; functions or responsibilities of other departments not affected. |
| 1364. | Annual report by designated agencies to Secretary; reports by Secretary to President and Congress.                          |
| 1365. | Public committee; appointment; functions; report.   |
| 1366. | Termination of payments for noncompliance with law or diversion of funds.   |
| 1367. | Repayments.   |
| 1368. | Records.  |

## **§1351. Declaration of purpose**

Congress finds that wider diffusion and more effective application of science and technology in business, commerce, and industry are essential to the growth of the economy, to higher levels of employment, and to the competitive position of United States products in world markets. The Congress also finds that the benefits of federally financed research, as well as other research, must be placed more effectively in the hands of American business, commerce, and industrial establishments. The Congress further finds that the several States through cooperation with universities, communities, and industries can contribute significantly to these purposes by providing technical services designed to encourage a more effective application of science and technology to both new and established business, commerce, and industrial establishments. The Congress, therefore, declares that the purpose of this chapter is to provide a national program of incentives and support for the several States individually and in cooperation with each other in their establishing and maintaining State and interstate technical service programs designed to achieve these ends.

(Pub. L. 89-182, §1, Sept. 14, 1965, 79 Stat. 679.)

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **SHORT TITLE**

Pub. L. 89-182, §19, Sept. 14, 1965, 79 Stat. 684, provided that: "This Act [this chapter] may be cited as the 'State Technical Services Act of 1965'."

## **§1352. Definitions**

For the purposes of this chapter—

(a) "Technical services" means activities or programs designed to enable businesses, commerce, and industrial establishments to acquire and use scientific and engineering information more effectively through such means as—

(1) preparing and disseminating technical reports, abstracts, computer tapes, microfilm, reviews, and similar scientific or engineering information, including the establishment of State or interstate technical information centers for this purpose;

(2) providing a reference service to identify sources of engineering and other scientific expertise; and

(3) sponsoring industrial workshops, seminars, training programs, extension courses, demonstrations, and field visits designed to encourage the more effective application of scientific and engineering information.

(b) "Designated agency" means the institution or agency which has been designated as administrator of the program for any State or States under section 1353 or 1357 of this title.

(c) "Qualified institution" means (1) an institution of higher learning with a program leading to a degree in science, engineering, or business administration which is accredited by a nationally recognized accrediting agency or association to be listed by the Secretary of Education, or such an institution which is listed separately after evaluation by the Secretary of Education pursuant to this subsection; or (2) a State agency or a private, nonprofit institution which meets criteria of competence established by the Secretary of Commerce and published in the Federal Register. For the purpose of this subsection the Secretary of Education shall publish a list of nationally recognized accrediting agencies or associations which he determines to be reliable authority as to the quality of science, engineering, or business education or training offered. When the Secretary of Education determines that there is no nationally recognized accrediting agency or association qualified to accredit such programs he shall publish a list of institutions he finds qualified after prior evaluation by an advisory committee, composed of persons he determines to be specially qualified to evaluate the training provided under such programs.

(d) "Participating institution" means each qualified institution in a State, which participates in the

administration or execution of the State technical services program as provided by this chapter.

(e) "Secretary" means the Secretary of Commerce.

(f) "State" means one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam or the Virgin Islands.

(g) "Governor", in the case of the District of Columbia, means the Board of Commissioners of the District of Columbia.

(Pub. L. 89-182, §2, Sept. 14, 1965, 79 Stat. 679; Pub. L. 89-771, Nov. 6, 1966, 80 Stat. 1322; Pub. L. 96-88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1966**—Subsec. (f). Pub. L. 89-771 included Guam within definition of "State".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TRANSFER OF FUNCTIONS**

"Secretary of Education" substituted for "United States Commissioner of Education" and "Commissioner" in subsec. (c) pursuant to sections 301(a)(1) and 507 of Pub. L. 96-88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

### **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

Except as otherwise provided in Reorg. Plan No. 3 of 1967, eff. Aug. 11, 1967 (in part), 32 F.R. 11669, 81 Stat. 948, functions of Board of Commissioners of District of Columbia transferred to Commissioner of District of Columbia by section 401 of Reorg. Plan No. 3 of 1967. Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93-198, title VII, §711, Dec. 24, 1973, 87 Stat. 818, and replaced by office of Mayor of District of Columbia by section 421 of Pub. L. 93-198.

## **§1353. Selection of designated agency**

The Governor of any State which wishes to receive Federal payments under this chapter in support of its existing or planned technical services program shall designate, under appropriate State laws and regulations, an institution or agency to administer and coordinate that program and to prepare and submit a plan and programs to the Secretary of Commerce for approval under this chapter.

(Pub. L. 89-182, §3, Sept. 14, 1965, 79 Stat. 680.)

## **§1354. Five-year plan; annual technical services program**

The designated agency shall prepare and submit to the Secretary in accordance with such regulations as he may publish—

(a) A five-year plan which may be revised annually and which shall: (1) outline the technological and economic conditions of the State, taking into account its region, business, commerce, and its industrial potential and identify the major regional and industrial problems; (2) identify the general approaches and methods to be used in the solution of these problems and outline the means for measuring the impact of such assistance on the State or regional economy; and (3) explain the methods to be used in administering and coordinating the technical services program.

(b) An annual technical services program which shall (1) identify specific methods, which may

include contracts, for accomplishing particular goals and outline the likely impact of these methods in terms of the five-year plan; (2) contain a detailed budget, together with procedures for adequate fiscal control, fund accounting, and auditing, to assure proper disbursement for funds paid to the State under this chapter; and (3) indicate the specific responsibilities assigned to each participating institution in the State.

(Pub. L. 89-182, §4, Sept. 14, 1965, 79 Stat. 680.)

### **§1355. Conditions precedent to acceptance of plans and programs for review and approval by Secretary**

The Secretary shall not accept the five-year plan of a State for review and approval under this chapter unless the Governor of the State or his designee determines and certifies that the plan is consistent with State policies and objectives; and the Secretary shall not accept an annual technical services program for review and approval under this chapter unless the designated agency has, as certified thereto by the Governor or his designee—

(a) invited all qualified institutions in the State to submit proposals for providing technical services under the chapter;

(b) coordinated its programs with other States and with other publicly supported activities within the State, as appropriate;

(c) established adequate rules to insure that no officer or employee of the State, the designated agency, or any participating institution, shall receive compensation for technical services he performs, for which funds are provided under this chapter, from sources other than his employer, and shall not otherwise maintain any private interest in conflict with his public responsibility;

(d) determined that matching funds will be available from State or other non-Federal sources;

(e) determined that such technical services program does not provide a service which on the date of such certification is economically and readily available in such State from private technical services, professional consultants, or private institutions;

(f) planned no services specially related to a particular firm or company, public work, or other capital project except insofar as the services are of general concern to the industry and commerce of the community, State, or region;

(g) provided for making public all reports prepared in the course of furnishing technical services supported under this chapter or for making them available at cost to any person on request.

(Pub. L. 89-182, §5, Sept. 14, 1965, 79 Stat. 681.)

### **§1356. Review and approval of plans and programs by Secretary**

The Secretary shall review the five-year plan and each annual program submitted by a designated agency under section 1354 or 1357 of this title, and shall approve only those which (1) bear the certification required by the Governor or his designee under section 1355 of this title; (2) comply with regulations and meet criteria that the Secretary shall promulgate and publish in the Federal Register; and (3) otherwise accomplish the purpose of this chapter.

(Pub. L. 89-182, §6, Sept. 14, 1965, 79 Stat. 681.)

### **§1357. Interstate cooperation in administration and coordination of plans and programs**

Two or more States may cooperate in administering and coordinating their plans and programs supported under this chapter, in which event all or part of the sums authorized and payable under section 1360 of this title to all of the cooperating States may be paid to the designated agency, participating institutions, or persons authorized to receive them under the terms of the agreement

between the cooperating States. When the cooperative agreement designates an interstate agency to act on behalf of all of the cooperating States, it shall submit to the Secretary for review and approval under section 1356 of this title an interstate five-year plan and an annual interstate technical services program which, as nearly as practicable, shall meet the requirements of sections 1354 and 1355 of this title.

(Pub. L. 89-182, §7, Sept. 14, 1965, 79 Stat. 681.)

### **§1358. Consent of Congress for interstate compacts; reservation of right to alter, amend, or repeal**

(a) The consent of the Congress is given to any two or more States to enter into agreement or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance and in designating agencies, under section 1357 of this title, for accomplishing the purposes of this chapter.

(b) The right to alter, amend, or repeal this section, or consent granted by this section, is expressly reserved.

(Pub. L. 89-182, §8, Sept. 14, 1965, 79 Stat. 682.)

### **§1359. Advisory councils for technical services; appointment; functions; compensation and expenses**

Each designated agency shall appoint an advisory council for technical services, the members of which shall represent broad community interests and shall be qualified to evaluate programs submitted under section 1354 of this title. The advisory council shall review each annual program, evaluate its relation to the purposes of this chapter, and report its findings to the designated agency and the Governor or his designee. Each report of each advisory council shall be available to the Secretary on request. Members of any such advisory council shall not be compensated for serving as such, but may be reimbursed for necessary expenses incurred by them in connection with attending meetings of any advisory council of which they are members.

(Pub. L. 89-182, §9, Sept. 14, 1965, 79 Stat. 682.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TERMINATION OF ADVISORY COUNCILS**

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, 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.

### **§1360. Appropriations and payments**

#### **(a) Authorization of appropriations**

There are authorized to be appropriated for the purposes of this chapter, \$10,000,000 for the fiscal year ending June 30, 1966; \$20,000,000 for the fiscal year ending June 30, 1967; \$30,000,000 for the fiscal year ending June 30, 1968; \$6,600,000 for the fiscal year ending June 30, 1969; \$10,000,000 for the fiscal year ending June 30, 1970; \$10,000,000 for the fiscal year ending June 30, 1971.

#### **(b) Authorization of annual payments; maximum amounts**

From these amounts, the Secretary is authorized to make an annual payment to each designated agency, participating institution, or person authorized to receive payments in support of each

approved technical services program. Maximum amounts which may be paid to the States under this subsection shall be fixed in accordance with regulations which the Secretary shall promulgate and publish in the Federal Register from time to time, considering (1) population according to the last decennial census; (2) business, commercial, industrial and economic development and productive efficiency; and (3) technical resources.

**(c) Payments for programs of special merit or additional programs**

The Secretary may reserve an amount equal to not more than 20 per centum of the total amount appropriated for each year under this section and is authorized to make payments from such amount to any designated agency or participating institution for technical services programs which he determines have special merit or to any qualified institution for additional programs which he determines are necessary to accomplish the purposes of this chapter, under criteria and regulations that he shall promulgate and publish in the Federal Register.

**(d) Expenses of administration**

An amount equal to not more than 5 per centum of the total amount appropriated each year under this section shall be available to the Secretary for the direct expenses of administering this chapter.

**(e) Limitations on payments**

(1) No amount paid for any technical services program under subsection (b) or (c) shall exceed the amount of non-Federal funds expended to carry out such program: *Provided*, That the Secretary may pay an amount not to exceed \$25,000 a year for each of the first three fiscal years to each designated agency, other than a designated agency under section 1357 of this title, to assist in the preparation of the five-year plan and the initial annual technical services programs, without regard to any of the preceding requirements of this section.

(2) No funds appropriated pursuant to the provisions of this section shall be paid to any designated agency, participating institution, or person on account of any such agency or institution, to carry out any technical services activity or program in any State if such activity or program duplicates any activity or program readily available in such State from Federal or State agencies, including publicly supported institutions of higher learning in such State.

(Pub. L. 89-182, §10, Sept. 14, 1965, 79 Stat. 682; Pub. L. 90-422, July 24, 1968, 82 Stat. 423.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1968**—Subsec. (a). Pub. L. 90-422 authorized appropriation of \$6,600,000 for fiscal year ending June 30, 1969, \$10,000,000 for fiscal year ending June 30, 1970, and \$10,000,000 for fiscal year ending June 30, 1971.

**§1361. Reference services to assist designated agencies to obtain information outside State**

The Secretary is authorized and directed to aid designated agencies in carrying out their technical services programs by providing reference services which a designated agency may use to obtain scientific, technical, and engineering information from sources outside the State or States which it serves, for the purposes of this chapter.

(Pub. L. 89-182, §11, Sept. 14, 1965, 79 Stat. 683.)

**§1362. Rules and regulations**

The Secretary is authorized to establish such policies, standards, criteria, and procedures and to prescribe such rules and regulations as he may deem necessary or appropriate for the administration of this chapter.

(Pub. L. 89-182, §12, Sept. 14, 1965, 79 Stat. 683.)

### **§1363. Prohibition against control over educational institutions; functions or responsibilities of other departments not affected**

#### **(a) Control of educational institutions**

Nothing contained in this chapter shall be construed as authorizing a department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over, or impose any requirements or conditions with respect to the personnel, curriculum, methods of instruction, or administration of any educational institution.

#### **(b) Functions of other agencies**

Nothing contained in this chapter shall be deemed to affect the functions or responsibilities under law of any other department or agency of the United States.

(Pub. L. 89-182, §13, Sept. 14, 1965, 79 Stat. 683.)

### **§1364. Annual report by designated agencies to Secretary; reports by Secretary to President and Congress**

#### **(a) Agency reports**

Each designated agency shall make an annual report to the Secretary on or before the first day of September of each year on the work accomplished under the technical services program and the status of current services, together with a detailed statement of the amounts received under any of the provisions of this chapter during the preceding fiscal year, and of their disbursement.

#### **(b) Reports of Secretary of Commerce**

The Secretary shall make a complete report with respect to the administration of this chapter to the President and the Congress not later than January 31 following the end of each fiscal year for which amounts are appropriated pursuant to this chapter.

(Pub. L. 89-182, §14, Sept. 14, 1965, 79 Stat. 683.)

## **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 related to the "State Technical Services Act" required under "15 U.S.C. 7364", probably referring to the report related to the State Technical Services Act of 1965 required under subsec. (b) of this section, is listed on page 52), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

### **§1365. Public committee; appointment; functions; report**

Within three years from September 14, 1965, the Secretary shall appoint a public committee, none of the members of which shall have been directly concerned with the preparation of plans, administration of programs or participation in programs under this chapter. The Committee shall evaluate the significance and impact of the program under this chapter and make recommendations concerning the program. A report shall be transmitted to the Secretary within sixty days after the end of such three-year period.

(Pub. L. 89-182, §15, Sept. 14, 1965, 79 Stat. 684.)

### **§1366. Termination of payments for noncompliance with law or diversion of funds**

Whenever the Secretary, after reasonable notice and opportunity for hearing to any designated agency or participating institution receiving funds under this chapter finds that—

(a) the agency or institution is not complying substantially with provisions of this chapter, with the regulations promulgated by the Secretary, or with the approved annual technical services program; or

(b) any funds paid to the agency or institution under the provisions of this chapter have been lost, misapplied, or otherwise diverted from the purposes for which they were paid or furnished—

the Secretary shall notify such agency or institution that no further payments will be made under the provisions of this chapter until he is satisfied that there is substantial compliance or the diversion has been corrected or, if compliance or correction is impossible, until such agency or institution repays or arranges for the repayment of Federal funds which have been diverted or improperly expended.

(Pub. L. 89–182, §16, Sept. 14, 1965, 79 Stat. 684.)

### **§1367. Repayments**

Upon notice by the Secretary to any designated agency or participating institution that no further payments will be made pending substantial compliance, correction, or repayment under section 1366 of this title, any funds which may have been paid to such agency or institution under this chapter and which are not expended by the agency or institution on the date of such notice, shall be repaid to the Secretary and be deposited to the account of the appropriations from which they originally were paid.

(Pub. L. 89–182, §17, Sept. 14, 1965, 79 Stat. 684.)

### **§1368. Records**

#### **(a) Grant recipients**

Each recipient of a grant under this chapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and the disposition of such grant, the total cost of the related approved program, the amount and nature of the cost of the program supplied by other sources, and such other records as will facilitate an effective audit.

#### **(b) Access to records of recipients**

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the recipient that are pertinent to amounts received under this chapter.

(Pub. L. 89–182, §18, Sept. 14, 1965, 79 Stat. 684.)

## **CHAPTER 38—TRAFFIC AND MOTOR VEHICLE SAFETY**

### **§1381. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379**

Section, Pub. L. 89–563, §1, Sept. 9, 1966, 80 Stat. 718, provided congressional declaration of purpose of this chapter. See section 30101 of Title 49, Transportation.



## STATUTORY NOTES AND RELATED SUBSIDIARIES

### SHORT TITLE

Pub. L. 89–563, title I, §101, Sept. 9, 1966, 80 Stat. 718, provided that Pub. L. 89–563 could be cited as the "National Traffic and Motor Vehicle Safety Act of 1966", prior to repeal by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.

## SUBCHAPTER I—MOTOR VEHICLE SAFETY STANDARDS

### PART A—GENERAL PROVISIONS

#### **§§1391, 1392. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379**

Section 1391, Pub. L. 89–563, title I, §102, Sept. 9, 1966, 80 Stat. 718; Pub. L. 91–265, §2, May 22, 1970, 84 Stat. 262; Pub. L. 93–492, title I, §110(a), title II, §201, Oct. 27, 1974, 88 Stat. 1484, provided definitions for purposes of this subchapter. See sections 30102, 30111, and 30125 of Title 49, Transportation.

Section 1392, Pub. L. 89–563, title I, §103, Sept. 9, 1966, 80 Stat. 719; Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931; Pub. L. 93–492, title II, §202, Oct. 27, 1974, 88 Stat. 1484; Pub. L. 94–346, §§2, 3, July 8, 1976, 90 Stat. 815; Pub. L. 97–331, §3, Oct. 15, 1982, 96 Stat. 1619; Pub. L. 102–240, title II, §2505, Dec. 18, 1991, 105 Stat. 2084, related to motor vehicle safety standards. See sections 30103, 30111, and 30125 of Title 49.

#### **§1393. Repealed. Pub. L. 93–492, title I, §107(b), Oct. 27, 1974, 88 Stat. 1482**

Section, Pub. L. 89–563, title I, §104, Sept. 9, 1966, 80 Stat. 720; Pub. L. 93–492, title I, §107(a), Oct. 27, 1974, 88 Stat. 1481, provided for National Motor Vehicle Safety Advisory Council; subsec. (a) relating to establishment and membership of Council, representative of the general public, publication of names of members, and selection of Chairman; subsec. (b) relating to consultations with Secretary of Transportation; and subsec. (c) relating to compensation and travel expenses of members.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF REPEAL

Section 107(b) of Pub. L. 93–492 provided that the repeal of this section is effective Oct. 1, 1977, prior to repeal by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379.

#### **§§1394 to 1410b. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379**

Section 1394, Pub. L. 89–563, title I, §105, Sept. 9, 1966, 80 Stat. 720, related to judicial review of orders establishing standards, presentation of additional evidence before Secretary, and certified copy of transcript of record. See sections 30103 and 30161 of Title 49, Transportation.

Section 1395, Pub. L. 89–563, title I, §106, Sept. 9, 1966, 80 Stat. 721, related to research, testing, development, and training in traffic and vehicle safety.

Section 1396, Pub. L. 89–563, title I, §107, Sept. 9, 1966, 80 Stat. 721, related to cooperation of Secretary with governmental and private agencies in developing motor vehicle safety standards and methods for determining compliance with such standards. See sections 30111 and 30166 of Title 49.

Section 1397, Pub. L. 89–563, title I, §108, Sept. 9, 1966, 80 Stat. 722; Pub. L. 93–492, title I, §103(a), title II, §203, Oct. 27, 1974, 88 Stat. 1477, 1485; Pub. L. 100–562, §2(a)–(d), Oct. 31, 1988, 102 Stat. 2818, 2824, prohibited manufacture, sale, delivery, or importation of substandard vehicles and rendering inoperative certain devices, elements of design, or motor vehicle equipment. See sections 30103, 30112, 30114, 30115, 30117 to 30122, 30125, 30126, 30141 to 30147, 30166, and 30167 of Title 49.

Section 1398, Pub. L. 89-563, title I, §109, Sept. 9, 1966, 80 Stat. 723; Pub. L. 93-492, title I, §103(b), Oct. 27, 1974, 88 Stat. 1478, related to civil penalties for violations of former section 1397 of this title and Secretary's authority to compromise such penalties. See section 30165 of Title 49.

Section 1399, Pub. L. 89-563, title I, §110, Sept. 9, 1966, 80 Stat. 723; Pub. L. 93-492, title I, §§102(b)(2), 103(c), Oct. 27, 1974, 88 Stat. 1477, 1478, related to jurisdiction of United States district courts for injunctive relief for violations of this subchapter, criminal contempt proceedings, venue, subpoenas, and designation of agent for service of process. See sections 30163 to 30165 of Title 49.

Section 1400, Pub. L. 89-563, title I, §111, Sept. 9, 1966, 80 Stat. 724, required manufacturer or distributor to repurchase or repair motor vehicle or motor vehicle equipment not in compliance with safety standards and provided for civil action against manufacturer or distributor refusing to repurchase or repair. See section 30116 of Title 49.

Section 1401, Pub. L. 89-563, title I, §112, Sept. 9, 1966, 80 Stat. 725; Pub. L. 91-265, §3, May 22, 1970, 84 Stat. 262; Pub. L. 93-492, title I, §104, Oct. 27, 1974, 88 Stat. 1478, related to inspections and investigations for enforcement of this subchapter and of motor vehicle accidents. See sections 30117, 30166, and 30167 of Title 49.

Section 1402, Pub. L. 89-563, title I, §113, as added Pub. L. 93-492, title I, §105, Oct. 27, 1974, 88 Stat. 1480, required manufacturer opposing action of Secretary under this chapter on ground of increased cost to submit cost information necessary to evaluation of manufacturer's statement. See section 30167 of Title 49.

A prior section 1402, Pub. L. 89-563, title I, §113, Sept. 9, 1966, 80 Stat. 725; Pub. L. 91-265, §4(a)-(c), May 22, 1970, 84 Stat. 262, related to discovery of defects by manufacturer, prior to repeal by section 102(a) of Pub. L. 93-492 effective on sixtieth day after Oct. 27, 1974.

Section 1403, Pub. L. 89-563, title I, §114, Sept. 9, 1966, 80 Stat. 726, related to certification of conformity with motor vehicle safety standards and form and placement of certification. See section 30115 of Title 49.

Section 1404, Pub. L. 89-563, title I, §115, Sept. 9, 1966, 80 Stat. 727, as amended by Pub. L. 89-670, §§3(f)(1), 8(i), Oct. 15, 1966, 80 Stat. 931, 943, and Pub. L. 90-83, §10(b), Sept. 11, 1967, 81 Stat. 224, authorized Secretary of Transportation to carry out the provisions of this chapter through a National Traffic Safety Bureau, headed by a Traffic Safety Director.

Section 1405, Pub. L. 89-563, title I, §116, Sept. 9, 1966, 80 Stat. 727, related to effect of this chapter on antitrust laws of the United States. See section 30103 of Title 49.

Section 1406, Pub. L. 89-563, title I, §118, Sept. 9, 1966, 80 Stat. 728, required Secretary, in exercising authority under this subchapter, to utilize services, research, and testing facilities of public agencies to maximum extent practicable.

Section 1407, Pub. L. 89-563, title I, §119, Sept. 9, 1966, 80 Stat. 728, authorized Secretary to issue, amend, and revoke such rules and regulations as Secretary deemed necessary to carry out this subchapter.

Section 1408, Pub. L. 89-563, title I, §120, Sept. 9, 1966, 80 Stat. 728; Pub. L. 91-265, §5, May 22, 1970, 84 Stat. 263; Pub. L. 93-492, title I, §110(b), Oct. 27, 1974, 88 Stat. 1484, related to annual report to Congress. See section 30169 of Title 49.

Section 1409, Pub. L. 89-563, title I, §121, Sept. 9, 1966, 80 Stat. 728; Pub. L. 91-265, §1, May 22, 1970, 84 Stat. 262; Pub. L. 92-548, §2, Oct. 25, 1972, 86 Stat. 1159; Pub. L. 93-492, title I, §101, Oct. 27, 1974, 88 Stat. 1470; Pub. L. 94-346, §1, July 8, 1976, 90 Stat. 815; Pub. L. 97-331, §2(a), Oct. 15, 1982, 96 Stat. 1619, authorized appropriations to carry out this chapter for fiscal years 1983, 1984, and 1985.

Section 1410, Pub. L. 89-563, title I, §123, as added Pub. L. 90-283, Apr. 10, 1968, 82 Stat. 72; amended Pub. L. 92-548, §3, Oct. 25, 1972, 86 Stat. 1159, related to exemption from safety standards of motor vehicles. See section 30113 of Title 49.

Section 1410a, Pub. L. 89-563, title I, §124, as added Pub. L. 93-492, title I, §106, Oct. 27, 1974, 88 Stat. 1481, related to petitions of interested persons to commence proceedings on orders issued under sections 1392 and 1412(b) of this title. See sections 30103 and 30162 of Title 49.

Section 1410b, Pub. L. 89-563, title I, §125, as added Pub. L. 93-492, title I, §109, Oct. 27, 1974, 88 Stat. 1482; amended S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980, related to occupant restraint systems. See section 30124 of Title 49.

## **PART B—DISCOVERY, NOTIFICATION, AND REMEDY OF MOTOR VEHICLE DEFECTS**

**§§1411 to 1420. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379**

Section 1411, Pub. L. 89–563, title I, §151, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1470, related to notification respecting manufacturer's finding of defect or failure to comply with motor vehicle safety standard. See section 30118 of Title 49, Transportation.

Section 1412, Pub. L. 89–563, title I, §152, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1470, related to notification of Secretary's finding of defect or failure to comply with motor vehicle safety standard, publication in Federal Register, and opportunity to present data, views, and arguments. See section 30118 of Title 49.

Section 1413, Pub. L. 89–563, title I, §153, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1471; amended Pub. L. 97–331, §4(b), Oct. 15, 1982, 96 Stat. 1620; Pub. L. 102–240, title II, §2504(a), Dec. 18, 1991, 105 Stat. 2083, related to contents, time, and method of notification regarding manufacturer's finding of defect or failure to comply with motor vehicle safety standard. See sections 30118 and 30119 of Title 49.

Section 1414, Pub. L. 89–563, title I, §154, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1472; amended Pub. L. 102–240, title II, §2504(b), Dec. 18, 1991, 105 Stat. 2083, related to remedy for defect or failure to comply with motor vehicle safety standard. See sections 30119 and 30120 of Title 49.

Section 1415, Pub. L. 89–563, title I, §155, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1474; amended Pub. L. 98–620, title IV, §402(17), Nov. 8, 1984, 98 Stat. 3358, related to enforcement of notification and remedy orders. See section 30121 of Title 49.

Section 1416, Pub. L. 89–563, title I, §156, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1475, related to hearing on reasonableness of notification and remedy for defect or failure to comply with motor vehicle safety standard. See sections 30118 and 30120 of Title 49.

Section 1417, Pub. L. 89–563, title I, §157, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1475, related to exemption for inconsequential defect or failure to comply with motor vehicle safety standard. See sections 30118 and 30120 of Title 49.

Section 1418, Pub. L. 89–563, title I, §158, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1475; amended Pub. L. 95–599, title III, §317, Nov. 6, 1978, 92 Stat. 2752; Pub. L. 97–331, §4(a), Oct. 15, 1982, 96 Stat. 1619, related to information, disclosure, and recordkeeping, and to confidential information. See sections 30117, 30166, and 30167 of Title 49.

Section 1419, Pub. L. 89–563, title I, §159, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1476, provided definitions for purposes of this part. See section 30102 of Title 49.

Section 1420, Pub. L. 89–563, title I, §160, as added Pub. L. 93–492, title I, §102(a), Oct. 27, 1974, 88 Stat. 1477, provided that this part did not create or affect warranty obligations under State or Federal law and that consumer remedies under this part were in addition to, and not in lieu of, rights or remedies under State or Federal law. See section 30103 of Title 49.

## **SUBCHAPTER II—TIRE SAFETY**

**§§1421 to 1426. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379**

Section 1421, Pub. L. 89–563, title II, §201, Sept. 9, 1966, 80 Stat. 728, related to labeling for pneumatic tires and required contents of label.

Section 1422, Pub. L. 89–563, title II, §202, Sept. 9, 1966, 80 Stat. 729, related to maximum permissible load standards for original equipment tires. See section 30123 of Title 49, Transportation.

Section 1423, Pub. L. 89–563, title II, §203, Sept. 9, 1966, 80 Stat. 729, related to uniform quality grading system for motor vehicle tires and elimination of deceptive and confusing tire nomenclature. See section 30123 of Title 49.

Section 1424, Pub. L. 89–563, title II, §204, Sept. 9, 1966, 80 Stat. 729; Pub. L. 93–492, title I, §110(c), Oct. 27, 1974, 88 Stat. 1484, related to regrooved tires. See sections 30123, 30163, and 30165 of Title 49.

Section 1425, Pub. L. 89–563, title II, §205, Sept. 9, 1966, 80 Stat. 729, provided that, in event of conflict, orders and regulations issued by Secretary under this subchapter and subchapter I of this chapter applicable to motor vehicle tires were to prevail over orders and interpretations issued by Federal Trade Commission. See section 30123 of Title 49.

Section 1426, Pub. L. 89–563, title II, §206, as added Pub. L. 91–265, §6, May 22, 1970, 84 Stat. 263,

related to safety standards for retreaded tires.

## SUBCHAPTER III—RESEARCH AND TEST FACILITIES

### §1431. Repealed. Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379

Section, Pub. L. 89–563, title III, §301, as added Pub. L. 91–265, §7, May 22, 1970, 84 Stat. 263; amended H. Res. 988, Jan. 3, 1975; S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980, related to facilities for research and testing in traffic safety.

## CHAPTER 39—FAIR PACKAGING AND LABELING PROGRAM

Sec.

- 1451. Congressional declaration of policy.
- 1452. Unfair and deceptive packaging and labeling; scope of prohibition.
- 1453. Requirements of labeling; placement, form, and contents of statement of quantity; supplemental statement of quantity.
- 1454. Rules and regulations.
- 1455. Procedure for promulgation of regulations.
- 1456. Enforcement.
- 1457. Omitted.
- 1458. Cooperation with State authorities; transmittal of regulations to States; noninterference with existing programs.
- 1459. Definitions.
- 1460. Savings provisions.
- 1461. Effect upon State law.

### §1451. Congressional declaration of policy

Informed consumers are essential to the fair and efficient functioning of a free market economy. Packages and their labels should enable consumers to obtain accurate information as to the quantity of the contents and should facilitate value comparisons. Therefore, it is hereby declared to be the policy of the Congress to assist consumers and manufacturers in reaching these goals in the marketing of consumer goods.

(Pub. L. 89–755, §2, Nov. 3, 1966, 80 Stat. 1296.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Pub. L. 89–755, §13, Nov. 3, 1966, 80 Stat. 1302, provided that: "This Act [enacting this chapter] shall take effect on July 1, 1967: *Provided*, That the Secretary (with respect to any consumer commodity which is a food, drug, device, or cosmetic, as those terms are defined by the Federal Food, Drug, and Cosmetic Act) [section 301 et seq. of Title 21, Food and Drugs], and the Commission (with respect to any other consumer commodity) may by regulation postpone, for an additional twelve-month period, the effective date of this Act [this chapter] with respect to any class or type of consumer commodity on the basis of a finding that such a postponement would be in the public interest."

### SHORT TITLE

Pub. L. 89–755, §1, Nov. 3, 1966, 80 Stat. 1296, provided: "That this Act [enacting this chapter] may be cited as the 'Fair Packaging and Labeling Act'."

## **§1452. Unfair and deceptive packaging and labeling; scope of prohibition**

### **(a) Nonconforming labels**

It shall be unlawful for any person engaged in the packaging or labeling of any consumer commodity (as defined in this chapter) for distribution in commerce, or for any person (other than a common carrier for hire, a contract carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, to distribute or to cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this chapter and of regulations promulgated under the authority of this chapter.

### **(b) Exemptions**

The prohibition contained in subsection (a) shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons (1) are engaged in the packaging or labeling of such commodities, or (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(Pub. L. 89-755, §3, Nov. 3, 1966, 80 Stat. 1296.)

## **§1453. Requirements of labeling; placement, form, and contents of statement of quantity; supplemental statement of quantity**

### **(a) Contents of label**

No person subject to the prohibition contained in section 1452 of this title shall distribute or cause to be distributed in commerce any packaged consumer commodity unless in conformity with regulations which shall be established by the promulgating authority pursuant to section 1455 of this title which shall provide that—

(1) The commodity shall bear a label specifying the identity of the commodity and the name and place of business of the manufacturer, packer, or distributor;

(2) The net quantity of contents (in terms of weight or mass, measure, or numerical count) shall be separately and accurately stated in a uniform location upon the principal display panel of that label, using the most appropriate units of both the customary inch/pound system of measure, as provided in paragraph (3) of this subsection, and, except as provided in paragraph (3)(A)(ii) or paragraph (6) of this subsection, the SI metric system;

(3) The separate label statement of net quantity of contents appearing upon or affixed to any package—

(A)(i) if on a package labeled in terms of weight, shall be expressed in pounds, with any remainder in terms of ounces or common or decimal fractions of the pound; or in the case of liquid measure, in the largest whole unit (quarts, quarts and pints, or pints, as appropriate) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart;

(ii) if on a random package, may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places and is not required to, but may, include a statement in terms of the SI metric system carried out to not more than three decimal places;

(iii) if on a package labeled in terms of linear measure, shall be expressed in terms of the largest whole unit (yards, yards and feet, or feet, as appropriate) with any remainder in terms of inches or common or decimal fractions of the foot or yard;

(iv) if on a package labeled in terms of measure of area, shall be expressed in terms of the largest whole square unit (square yards, square yards and square feet, or square feet, as appropriate) with any remainder in terms of square inches or common or decimal fractions of the square foot or square yard;

(B) shall appear in conspicuous and easily legible type in distinct contrast (by topography, layout, color, embossing, or molding) with other matter on the package;

(C) shall contain letters or numerals in a type size which shall be (i) established in relationship to the area of the principal display panel of the package, and (ii) uniform for all packages of substantially the same size; and

(D) shall be so placed that the lines of printed matter included in that statement are generally parallel to the base on which the package rests as it is designed to be displayed; and

(4) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight or mass, measure, or numerical count) of each such serving.

(5) For purposes of paragraph (3)(A)(ii) of this subsection the term "random package" means a package which is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights or masses, that is, packages with no fixed weight or mass pattern.

(6) The requirement of paragraph (2) that the statement of net quantity of contents include a statement in terms of the SI metric system shall not apply to foods that are packaged at the retail store level.

### **(b) Supplemental statements**

No person subject to the prohibition contained in section 1452 of this title shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a), but nothing in this subsection or in paragraph (2) of subsection (a) shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: *Provided*, That such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight or mass, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(Pub. L. 89-755, §4, Nov. 3, 1966, 80 Stat. 1297; Pub. L. 102-245, title I, §107(a), Feb. 14, 1992, 106 Stat. 13; Pub. L. 102-329, §§1, 3, Aug. 3, 1992, 106 Stat. 847, 848.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1992**—Pub. L. 102-245, §107, which directed amendment of section, effective two years after Feb. 14, 1992, by substituting "weight or mass" for "weight" in subsecs. (a)(2), (4), (5) and (b) and "weights or masses" for "weights" in subsec. (a)(5), by inserting ", using the most appropriate units of the SI metric system as the primary system for measuring quantity" after "panel of that label" in subsec. (a)(2), by substituting "that also displays the avoirdupois system of measure, and that contains" for "containing" in subsec. (a)(3)(A)(i), by inserting "that also displays the avoirdupois system of measure" after "random package" in subsec. (a)(3)(A)(ii), by inserting "that also displays the avoirdupois system of measure" after "linear measure" in subsec. (a)(3)(A)(iii), and by inserting "that also displays the avoirdupois system of measure" in subsec. (a)(3)(A)(iv), was repealed by Pub. L. 102-329, §3.

Subsec. (a)(2). Pub. L. 102-329, §1(1), (3), substituted "weight or mass" for "weight" and inserted before semicolon at end ", using the most appropriate units of both the customary inch/pound system of measure, as provided in paragraph (3) of this subsection, and, except as provided in paragraph (3)(A)(ii) or paragraph (6) of this subsection, the SI metric system".

Subsec. (a)(3)(A)(i). Pub. L. 102-329, §1(4)(A), substituted "labeled in terms of weight, shall be expressed in pounds" for "containing less than four pounds or one gallon and labeled in terms of weight or fluid measure, shall, unless subparagraph (ii) applies and such statement is set forth in accordance with such subparagraph, be expressed both in ounces (with identification as to avoirdupois or fluid ounces) and, if applicable, in pounds for weight units".

Subsec. (a)(3)(A)(ii). Pub. L. 102-329, §1(4)(B), (C), substituted "three" for "two" and inserted before semicolon at end "and is not required to, but may, include a statement in terms of the SI metric system carried out to not more than three decimal places".

Subsec. (a)(3)(A)(iii). Pub. L. 102-329, §1(4)(D), substituted "in terms of" for "both in terms of inches and".

Subsec. (a)(3)(A)(iv). Pub. L. 102-329, §1(4)(E), substituted "in terms of" for "both in terms of square

inches and".

Subsec. (a)(4). Pub. L. 102-329, §1(1), substituted "weight or mass" for "weight".

Subsec. (a)(5). Pub. L. 102-329, §1(1), (2), substituted "weight or mass" for "weight" and "weights or masses" for "weights".

Subsec. (a)(6). Pub. L. 102-329, §1(5), added par. (6).

Subsec. (b). Pub. L. 102-329, §1(1), substituted "weight or mass" for "weight".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1992 AMENDMENTS

Pub. L. 102-329, §2, Aug. 3, 1992, 106 Stat. 847, provided that: "The amendments made by section 1 [amending this section and section 1454 of this title] shall take effect on February 14, 1994. The amendments made by section 1 shall have no effect on the sale or distribution of products whose labels have been printed before such effective date. Nothing in the amendments made by section 1 shall apply to unit pricing, advertising, recipe programs, nutrition labeling, or other general pricing information. Nothing in the amendments made by section 1 shall be construed to require changes in package size or to affect in any way the size of packages."

Section 107(b) of Pub. L. 102-245, which provided that section 107 of Pub. L. 102-245 which amended this section and section 1454 of this title was to take effect 2 years after Feb. 14, 1992, was repealed by Pub. L. 102-329, §3, Aug. 3, 1992, 106 Stat. 848.

## §1454. Rules and regulations

### (a) Promulgating authority

The authority to promulgate regulations under this chapter is vested in (A) the Secretary of Health and Human Services (referred to hereinafter as the "Secretary") with respect to any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 321 of title 21; and (B) the Federal Trade Commission (referred to hereinafter as the "Commission") with respect to any other consumer commodity.

### (b) Exemption of commodities from regulations

If the promulgating authority specified in this section finds that, because of the nature, form, or quantity of a particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable under section 1453 of this title is impracticable or is not necessary for the adequate protection of consumers, the Secretary or the Commission (whichever the case may be) shall promulgate regulations exempting such commodity from those requirements to the extent and under such conditions as the promulgating authority determines to be consistent with section 1451 of this title.

### (c) Scope of additional regulations

Whenever the promulgating authority determines that regulations containing prohibitions or requirements other than those prescribed by section 1453 of this title are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, such authority shall promulgate with respect to that commodity regulations effective to—

(1) establish and define standards for characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation on the size, shape, weight or mass, dimensions, or number of packages which may be used to enclose any commodity;

(2) regulate the placement upon any package containing any commodity, or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;

(3) require that the label on each package of a consumer commodity (other than one which is a food within the meaning of section 321(f) of title 21) bear (A) the common or usual name of such consumer commodity, if any, and (B) in case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or

(4) prevent the nonfunctional-slack-fill of packages containing consumer commodities.

For purposes of paragraph (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than (A) protection of the contents of such package or (B) the requirements of machines used for enclosing the contents in such package.

**(d) Development by manufacturers, packers, and distributors of voluntary product standards**

Whenever the Secretary of Commerce determines that there is undue proliferation of the weights or masses, measures, or quantities in which any consumer commodity or reasonably comparable consumer commodities are being distributed in packages for sale at retail and such undue proliferation impairs the reasonable ability of consumers to make value comparisons with respect to such consumer commodity or commodities, he shall request manufacturers, packers, and distributors of the commodity or commodities to participate in the development of a voluntary product standard for such commodity or commodities under the procedures for the development of voluntary products standards established by the Secretary pursuant to section 272 of this title. Such procedures shall provide adequate manufacturer, packer, distributor, and consumer representation.

**(e) Report and recommendations to Congress upon industry failure to develop or abide by voluntary product standards**

If (1) after one year after the date on which the Secretary of Commerce first makes the request of manufacturers, packers, and distributors to participate in the development of a voluntary product standard as provided in subsection (d) of this section, he determines that such a standard will not be published pursuant to the provisions of such subsection (d), or (2) if such a standard is published and the Secretary of Commerce determines that it has not been observed, he shall promptly report such determination to the Congress with a statement of the efforts that have been made under the voluntary standards program and his recommendation as to whether Congress should enact legislation providing regulatory authority to deal with the situation in question.

(Pub. L. 89-755, §5, Nov. 3, 1966, 80 Stat. 1298; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 102-245, title I, §107(a)(1), (2), Feb. 14, 1992, 106 Stat. 13; Pub. L. 102-329, §§1(1), (2), 3, Aug. 3, 1992, 106 Stat. 847, 848.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1992**—Pub. L. 102-245, §107(a)(1), (2), (b), which directed amendment of section, effective two years after Feb. 14, 1992, by substituting "weight or mass" for "weight" in subsec. (c)(1) and "weights or masses" for "weights" in subsec. (d), was repealed by Pub. L. 102-329, §3.

Subsec. (c)(1). Pub. L. 102-329, §1(1), substituted "weight or mass" for "weight".

Subsec. (d). Pub. L. 102-329, §1(2), substituted "weights or masses" for "weights".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**CHANGE OF NAME**

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (a) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

**EFFECTIVE DATE OF 1992 AMENDMENT**



Amendment by Pub. L. 102-329 effective Feb. 14, 1994, but with such amendment to have no effect on the sale or distribution of products whose labels have been printed before such date, no application to unit pricing, advertising, recipe programs, nutrition labeling, or other general pricing information, and no construction requiring changes in package size or affecting in any way the size of packages, see section 2 of Pub. L. 102-329, set out as a note under section 1453 of this title.

## **§1455. Procedure for promulgation of regulations**

### **(a) Hearings by Secretary of Health and Human Services**

Regulations promulgated by the Secretary under section 1453 or 1454 of this title shall be promulgated, and shall be subject to judicial review, pursuant to the provisions of subsections (e), (f), and (g) of section 371 of title 21. Hearings authorized or required for the promulgation of any such regulations by the Secretary shall be conducted by the Secretary or by such officer or employees of the Department of Health and Human Services as he may designate for that purpose.

### **(b) Judicial review; hearings by Federal Trade Commission**

Regulations promulgated by the Commission under section 1453 or 1454 of this title shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 371 of title 21 in the same manner, and with the same effect, as if such proceedings were taken by the Secretary pursuant to subsection (a) of this section. Hearings authorized or required for the promulgation of any such regulations by the Commission shall be conducted by the Commission or by such officer or employee of the Commission as the Commission may designate for that purpose.

### **(c) Cooperation with other departments and agencies**

In carrying into effect the provisions of this chapter, the Secretary and the Commission are authorized to cooperate with any department or agency of the United States, with any State, Commonwealth, or possession of the United States, and with any department, agency, or political subdivision of any such State, Commonwealth, or possession.

### **(d) Returnable or reusable glass containers for beverages**

No regulation adopted under this chapter shall preclude the continued use of returnable or reusable glass containers for beverages in inventory or with the trade as of the effective date of this Act, nor shall any regulation under this chapter preclude the orderly disposal of packages in inventory or with the trade as of the effective date of such regulation.

(Pub. L. 89-755, §6, Nov. 3, 1966, 80 Stat. 1299; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The effective date of this Act, referred to in subsec. (d), refers to the effective date of Pub. L. 89-755 which enacted this chapter to take effect July 1, 1967. See Effective Date note set out under section 1451 of this title.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **CHANGE OF NAME**

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" in subsec. (a), pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

## **§1456. Enforcement**

**(a) Misbranded consumer commodities**

Any consumer commodity which is a food, drug, device, or cosmetic, as each such term is defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), and which is introduced or delivered for introduction into commerce in violation of any of the provisions of this chapter, or the regulations issued pursuant to this chapter, shall be deemed to be misbranded within the meaning of chapter III of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 331 et seq.], but the provisions of section 303 of that Act (21 U.S.C. 333) shall have no application to any violation of section 1452 of this title.

**(b) Unfair or deceptive acts or practices in commerce**

Any violation of any of the provisions of this chapter, or the regulations issued pursuant to this chapter, with respect to any consumer commodity which is not a food, drug, device, or cosmetic, shall constitute an unfair or deceptive act or practice in commerce in violation of section 45(a) of this title and shall be subject to enforcement under section 45(b) of this title.

**(c) Imports**

In the case of any imports into the United States of any consumer commodity covered by this chapter, the provisions of sections 1453 and 1454 of this title shall be enforced by the Secretary of the Treasury pursuant to section 801(a) and (b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381).

(Pub. L. 89-755, §7, Nov. 3, 1966, 80 Stat. 1300.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (a) and (c), is act June 25, 1938, ch. 675, 52 Stat. 1040. Chapter III of the Act is classified generally to subchapter III (§331 et seq.) of chapter 9 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

**§1457. Omitted**

**EDITORIAL NOTES**

**CODIFICATION**

Section, Pub. L. 89-755, §8, Nov. 3, 1966, 80 Stat. 1300; Pub. L. 93-608, §3(2), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 97-375, title II, §§202(d), 206(b), Dec. 21, 1982, 96 Stat. 1822, 1823, which required officers and agencies required or authorized by this chapter to promulgate regulations, to transmit an annual report to Congress describing activities carried out for the administration and enforcement of 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, pages 54, 92, and 172 of House Document No. 103-7.

**§1458. Cooperation with State authorities; transmittal of regulations to States; noninterference with existing programs**

(a) A copy of each regulation promulgated under this chapter shall be transmitted promptly to the Secretary of Commerce, who shall (1) transmit copies thereof to all appropriate State officers and agencies, and (2) furnish to such State officers and agencies information and assistance to promote to the greatest practicable extent uniformity in State and Federal regulation of the labeling of consumer commodities.

(b) Nothing contained in this section shall be construed to impair or otherwise interfere with any program carried into effect by the Secretary of Health and Human Services under other provisions of

law in cooperation with State governments or agencies, instrumentalities, or political subdivisions thereof.

(Pub. L. 89-755, §9, Nov. 3, 1966, 80 Stat. 1301; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CHANGE OF NAME

"Secretary of Health and Human Services" substituted for "Secretary of Health, Education, and Welfare" in subsec. (b) pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

## §1459. Definitions

For the purpose of this chapter—

(a) The term "consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic (as those terms are defined by the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]), and any other article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. Such term does not include—

(1) any meat or meat product, poultry or poultry product, or tobacco or tobacco product;

(2) any commodity subject to packaging or labeling requirements imposed by the Secretary of Agriculture pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 [21 U.S.C. 151 et seq.], commonly known as the Virus-Serum-Toxin Act;

(3) any drug subject to the provisions of section 503(b)(1) or 506 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 353(b)(1) and 356];

(4) any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act [27 U.S.C. 201 et seq.]; or

(5) any commodity subject to the provisions of the Federal Seed Act [7 U.S.C. 1551 et seq.].

(b) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include—

(1) shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof;

(2) shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or

(3) containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231-233), or the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234-236).

(c) The term "label" means any written, printed, or graphic matter affixed to any consumer commodity or affixed to or appearing upon a package containing any consumer commodity.

(d) The term "person" includes any firm, corporation, or association.

(e) The term "commerce" means (1) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any place outside thereof, and (2) commerce within the District of Columbia or within any territory or

possession of the United States not organized with a legislative body, but shall not include exports to foreign countries.

(f) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(Pub. L. 89-755, §10, Nov. 3, 1966, 80 Stat. 1301; Pub. L. 90-628, §2, Oct. 22, 1968, 82 Stat. 1320.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Federal Food, Drug, and Cosmetic Act, referred to subsec. (a), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (a)(2), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Virus-Serum-Toxin Act, referred to in subsec. (a)(2), is the eighth paragraph under the heading "Bureau of Animal Industry" of act Mar. 4, 1913, ch. 145, 37 Stat. 832, which is classified generally to chapter 5 (§151 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 151 of Title 21 and Tables.

The Federal Alcohol Administration Act, referred to in subsec. (a)(4), is act Aug. 29, 1935, ch. 814, 49 Stat. 977, which is classified generally to chapter 8 (§201 et seq.) of Title 27, Intoxicating Liquors. For complete classification of this Act to the Code, see section 201 of Title 27 and Tables.

The Federal Seed Act, referred to in subsec. (a)(5), is act Aug. 9, 1939, ch. 615, 53 Stat. 1275, which is classified generally to chapter 37 (§1551 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1551 of Title 7 and Tables.

## **AMENDMENTS**

**1968**—Subsec. (b)(3). Pub. L. 90-628 struck out reference to the Act of August 31, 1916, and the Act of May 21, 1928.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1968 AMENDMENT**

Amendment by Pub. L. 90-628 effective 60 days after Oct. 22, 1968, see section 3 of Pub. L. 90-628, set out as a note under section 251 of this title.

## **§1460. Savings provisions**

Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede—

(a) the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or any statute defined therein as an antitrust Act;

(b) the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]; or

(c) the Federal Hazardous Substances Labeling Act [15 U.S.C. 1261 et seq.].

(Pub. L. 89-755, §11, Nov. 3, 1966, 80 Stat. 1302.)

## **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.

The Federal Food, Drug, and Cosmetic Act, referred to in text, is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete

classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Federal Hazardous Substances Labeling Act, referred to in text, is Pub. L. 86-613, July 12, 1960, 74 Stat. 372, which is classified generally to chapter 30 (§1261 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1261 of this title and Tables.

## **§1461. Effect upon State law**

It is hereby declared that it is the express intent of Congress to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this chapter which are less stringent than or require information different from the requirements of section 1453 of this title or regulations promulgated pursuant thereto.

(Pub. L. 89-755, §12, Nov. 3, 1966, 80 Stat. 1302.)

## **CHAPTER 39A—SPECIAL PACKAGING OF HOUSEHOLD SUBSTANCES FOR PROTECTION OF CHILDREN**

Sec.

- 1471. Definitions.
- 1472. Special packaging standards.
- 1472a. Special packaging for liquid nicotine containers.
- 1473. Conventional packages, marketing.
- 1474. Regulations for special packaging standards.
- 1475. Repealed.
- 1476. Preemption of Federal standards.
- 1477. Enforcement by State Attorneys General.

## **§1471. Definitions**

For the purpose of this Act—

(1) The term "Commission" means the Consumer Product Safety Commission.

(2) The term "household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is—

(A) a hazardous substance as that term is defined in section 1261(f) of this title;

(B) a food, drug, or cosmetic as those terms are defined in section 321 of title 21; or

(C) a substance intended for use as fuel when stored in a portable container and used in the heating, cooking, or refrigeration system of a house.

(3) The term "package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of section 1473(a)(2) of this title, also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include—

(A) any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof, or

(B) any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping.

(4) The term "special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use

properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time.

(5) The term "labeling" means all labels and other written, printed, or graphic matter (A) upon any household substance or its package, or (B) accompanying such substance.

(Pub. L. 91-601, §2, Dec. 30, 1970, 84 Stat. 1670; Pub. L. 92-516, §3(2), Oct. 21, 1972, 86 Stat. 998; Pub. L. 92-573, §30(a), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 94-284, §3(a), May 11, 1976, 90 Stat. 503.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This Act, referred to in text, means Pub. L. 91-601 which enacted this chapter, section 136(z)(2)(i) of Title 7, Agriculture, and sections 343(n), 352(p), and 362(f) of Title 21, Food and Drugs, amended section 1261(p) of this title and section 353(b)(2) of Title 21, and enacted provisions set out as a note under this section. For complete classification of this Act to the Code, see Short Title note below and Tables.

### **AMENDMENTS**

**1976**—Par. (2). Pub. L. 94-284 struck out subpar. (B) which included pesticide as defined in section 136(u) of Title 7 within meaning of "household substance", and redesignated subpars. (C) and (D) as (B) and (C), respectively.

**1972**—Par. (2)(B). Pub. L. 92-516 substituted "a pesticide" for "an economic poison".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 1972 AMENDMENT**

For effective date of amendment by Pub. L. 92-516, see section 4 of Pub. L. 92-516, set out as an Effective Date note under section 136 of Title 7, Agriculture.

### **EFFECTIVE DATE**

Pub. L. 91-601, §8, formerly §9, Dec. 30, 1970, 84 Stat. 1674, as amended by Pub. L. 92-573, §30(a), Oct. 27, 1972, 86 Stat. 1231, and renumbered by Pub. L. 97-35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716, provided that: "This Act [see Short Title note set out below] shall take effect on the date of its enactment [Dec. 30, 1970]. Each regulation establishing a special packaging standard shall specify the date such standard is to take effect which date shall not be sooner than one hundred and eighty days or later than one year from the date such regulation is final, unless the Commission, for good cause found, determines that an earlier effective date is in the public interest and publishes in the Federal Register his reason for such finding, in which case such earlier date shall apply. No such standard shall be effective as to household substances subject to this Act packaged prior to the effective date of such final regulation."

### **SHORT TITLE OF 2016 AMENDMENT**

Pub. L. 114-116, §1, Jan. 28, 2016, 130 Stat. 3, provided that: "This Act [enacting section 1472a of this title and provisions set out as a note under section 1472a of this title] may be cited as the 'Child Nicotine Poisoning Prevention Act of 2015'."

### **SHORT TITLE**

Pub. L. 91-601, §1, Dec. 30, 1970, 84 Stat. 1670, provided that: "This Act [enacting this chapter, section 135(z)(2)(i) of Title 7, Agriculture, and sections 343(n), 352(p), and 362(f) of Title 21, Food and Drugs, amending section 1261(p) of this title and section 353(b)(2) of Title 21, and enacting provisions set out as a note under this section] may be cited as the 'Poison Prevention Packaging Act of 1970'."

### **TRANSFER OF FUNCTIONS**

"Commission" substituted for "Secretary" and "Consumer Product Safety Commission" substituted for "Secretary of Health, Education, and Welfare" in par. (1) pursuant to section 30(a) of Pub. L. 92-573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

## **§1472. Special packaging standards**

### **(a) Establishment**

The Commission,<sup>1</sup> may establish in accordance with the provisions of this Act, by regulation, standards for the special packaging of any household substance if it finds that—

- (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance; and
- (2) the special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

### **(b) Considerations**

In establishing a standard under this section, the Commission shall consider—

- (1) the reasonableness of such standard;
- (2) available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;
- (3) the manufacturing practices of industries affected by this Act; and
- (4) the nature and use of the household substance.

### **(c) Publication of findings, reasons, and citation of statutory authorizations**

In carrying out this Act, the Commission shall publish its findings, its reasons therefor, and citation of the sections of statutes which authorize its action.

### **(d) Limitation**

Nothing in this Act shall authorize the Commission to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in section 1473(a)(2) of this title, labeling. In this case of a household substance for which special packaging is required pursuant to a regulation under this section, the Commission may in such regulation prohibit the packaging of such substance in packages which it determines are unnecessarily attractive to children.

### **(e) Cost-benefit analysis not required**

Nothing in this Act shall be construed to require the Consumer Product Safety Commission, in establishing a standard under this section, to prepare a comparison of the costs that would be incurred in complying with such standard with the benefits of such standard.

(Pub. L. 91-601, §3, Dec. 30, 1970, 84 Stat. 1670; Pub. L. 92-573, §30(a), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 97-414, §9(k), Jan. 4, 1983, 96 Stat. 2065; Pub. L. 110-314, title II, §233, Aug. 14, 2008, 122 Stat. 3073.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

For classification to the Code of "this Act", referred to in text, see References in Text note set out under section 1471 of this title.

## **AMENDMENTS**

**2008**—Subsec. (e). Pub. L. 110-314 added subsec. (e).

**1983**—Subsec. (a). Pub. L. 97-414 struck out ", after consultation with the technical advisory committee provided for in section 1475 of this title" after "The Commission".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **TRANSFER OF FUNCTIONS**

"Commission" substituted for "Secretary", "it" substituted for "he", and "its" substituted for "his" wherever appearing in subsecs. (a) to (d) pursuant to section 30(a) of Pub. L. 92-573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this

chapter to Consumer Product Safety Commission.

<sup>1</sup> [Comma retained in amendment by Pub. L. 97-414.](#)

## **§1472a. Special packaging for liquid nicotine containers**

### **(a) Requirement**

Notwithstanding section 1261(f)(2) of this title and section 2052(a)(5) of this title, any nicotine provided in a liquid nicotine container sold, offered for sale, manufactured for sale, distributed in commerce, or imported into the United States shall be packaged in accordance with the standards provided in section 1700.15 of title 16, Code of Federal Regulations, as determined through testing in accordance with the method described in section 1700.20 of title 16, Code of Federal Regulations, and any subsequent changes to such sections adopted by the Commission.

### **(b) Savings clause**

#### **(1) In general**

Nothing in this section shall be construed to limit or otherwise affect the authority of the Secretary of Health and Human Services to regulate, issue guidance, or take action regarding the manufacture, marketing, sale, distribution, importation, or packaging, including child-resistant packaging, of nicotine, liquid nicotine, liquid nicotine containers, electronic cigarettes, electronic nicotine delivery systems or other similar products that contain or dispense liquid nicotine, or any other nicotine-related products, including—

(A) authority under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and the Family Smoking Prevention and Tobacco Control Act (Public Law 111-31) and the amendments made by such Act; and

(B) authority for the rulemaking entitled "Deeming Tobacco Products to Be Subject to the Federal Food, Drug, and Cosmetic Act, as Amended by the Family Smoking Prevention and Tobacco Control Act; regulations on the Sale and Distribution of Tobacco Products and the Required Warning Statements for Tobacco Products" (April 2014) (FDA-2014-N-0189), the rulemaking entitled "Nicotine Exposure Warnings and Child-Resistant Packaging for Liquid Nicotine, Nicotine-Containing E-Liquid(s), and Other Tobacco Products" (June 2015) (FDA-2015-N-1514), and subsequent actions by the Secretary regarding packaging of liquid nicotine containers.

#### **(2) Consultation**

If the Secretary of Health and Human Services adopts, maintains, enforces, or imposes or continues in effect any packaging requirement for liquid nicotine containers, including a child-resistant packaging requirement, the Secretary shall consult with the Commission, taking into consideration the expertise of the Commission in implementing and enforcing this section and the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 et seq.).

### **(c) Applicability**

Notwithstanding section 2052(a)(5) of this title and section 1261(f)(2) of this title, the requirement of subsection (a) shall be treated as a standard for the special packaging of a household substance established under section 3(a) of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472(a)).

### **(d) Definitions**

In this section:

#### **(1) Commission**

The term "Commission" means the Consumer Product Safety Commission.

#### **(2) Liquid nicotine container**

##### **(A) In general**



Notwithstanding section 1261(f)(2) of this title and section 2052(a)(5) of this title, the term "liquid nicotine container" means a package (as defined in section 2 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471))—

- (i) from which nicotine in a solution or other form is accessible through normal and foreseeable use by a consumer; and
- (ii) that is used to hold soluble nicotine in any concentration.

### **(B) Exclusion**

The term "liquid nicotine container" does not include a sealed, pre-filled, and disposable container of nicotine in a solution or other form in which such container is inserted directly into an electronic cigarette, electronic nicotine delivery system, or other similar product, if the nicotine in the container is inaccessible through customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion or other contact by children.

### **(3) Nicotine**

The term "nicotine" means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived.

(Pub. L. 114–116, §2, Jan. 28, 2016, 130 Stat. 3.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(1), is act June 25, 1938, ch. 675, 52 Stat. 1040, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

The Family Smoking Prevention and Tobacco Control Act, referred to in subsec. (b)(1), is div. A of Pub. L. 111–31, June 22, 2009, 123 Stat. 1776. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 301 of Title 21, Food and Drugs, and Tables.

The Poison Prevention Packaging Act of 1970, referred to in subsec. (b)(2), is Pub. L. 91–601, Dec. 30, 1970, 84 Stat. 1670, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1471 of this title and Tables.

### **CODIFICATION**

Section was enacted as part of the Child Nicotine Poisoning Prevention Act of 2015, and not as part of the Poison Prevention Packaging Act of 1970 which comprises this chapter.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE**

Pub. L. 114–116, §3, Jan. 28, 2016, 130 Stat. 5, provided that: "This Act [see Short Title of 2016 Amendment note set out under section 1471 of this title] shall take effect on the date that is 180 days after the date of the enactment of this Act [Jan. 28, 2016]."

## **§1473. Conventional packages, marketing**

### **(a) Noncomplying packages for elderly or handicapped persons; labeling statements**

For the purpose of making any household substance which is subject to a standard established under section 1472 of this title readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if—

- (1) the manufacturer (or packer) also supplies such substance in packages which comply with such standard; and
- (2) the packages of such substance which do not meet such standard bear conspicuous labeling

stating: "This package for households without young children"; except that the Commission may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

**(b) Noncomplying packages for substances dispensed pursuant to orders of medical practitioners**

In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

**(c) Exclusive use of special packaging; necessary circumstances**

In the case of a household substance subject to such a standard which is packaged under subsection (a) in a noncomplying package, if the Commission determines that such substance is not also being supplied by a manufacturer (or packer) in popular size packages which comply with such standard, it may, after giving the manufacturer (or packer) an opportunity to comply with the purposes of this Act, by order require such substance to be packaged by such manufacturer (or packer) exclusively in special packaging complying with such standard if it finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this Act.

(Pub. L. 91-601, §4, Dec. 30, 1970, 84 Stat. 1671; Pub. L. 92-573, §30(a), Oct. 27, 1972, 86 Stat. 1231.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

For classification to the Code of "this Act", referred to in subsec. (c), see References in Text note set out under section 1471 of this title.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**TRANSFER OF FUNCTIONS**

"Commission" substituted for "Secretary" in subsecs. (a) and (c) and "it" substituted for "he" in subsec. (c) pursuant to section 30(a) of Pub. L. 92-573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

**§1474. Regulations for special packaging standards**

**(a) Rule making procedure; election and application of procedure under section 371 of title 21; publication of election and proposal**

Proceedings to issue, amend, or repeal a regulation prescribing a standard under section 1472 of this title shall be conducted in accordance with the procedures prescribed by section 553 (other than paragraph (3)(B) of the last sentence of subsection (b) of such section) of title 5 unless the Commission elects the procedures prescribed by subsection (e) of section 371 of title 21, in which event such subsection and subsections (f) and (g) of such section 371 shall apply to such proceedings. If the Commission makes such election, it shall publish that fact with the proposal required to be published under paragraph (1) of such subsection (e).

**(b) Judicial review; petition; record; additional evidence; jurisdiction of court of appeals; scope of review; relief pending review; finality of judgment; review by Supreme Court**

(1) In the case of any standard prescribed by a regulation issued in accordance with section 553 of title 5, any person who will be adversely affected by such a standard may, at any time prior to the

60th day after the regulation prescribing such standard is issued by the Commission, file a petition with the United States Court of Appeals for the circuit in which such person resides or has his principal place of business for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The Commission shall file in the court the record of the proceedings on which the Commission based its standard, as provided in section 2112 of title 28.

(2) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Commission in a hearing or in such other manner, and upon such terms and conditions, as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, and its recommendation, if any, for the modification or setting aside of its original standard, with the return of such additional evidence.

(3) Upon the filing of the petition under paragraph (1) of this subsection the court shall have jurisdiction to review the standard of the Commission in accordance with subparagraphs (A), (B), (C), and (D) of paragraph (2) of section 706 of title 5. If the court ordered additional evidence to be taken under paragraph (2) of this subsection, the court shall also review the Commission's standard to determine if, on the basis of the entire record before the court pursuant to paragraphs (1) and (2) of this subsection, it is supported by substantial evidence. If the court finds the standard is not so supported, the court may set it aside.

(4) With respect to any standard reviewed under this subsection, the court may grant appropriate relief pending conclusion of the review proceedings, as provided in section 705 of such title 5.

(5) The judgment of the court affirming or setting aside, in whole or in part, any such standard of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(Pub. L. 91-601, §5, Dec. 30, 1970, 84 Stat. 1671; Pub. L. 92-573, §30(a), Oct. 27, 1972, 86 Stat. 1231.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### TRANSFER OF FUNCTIONS

In subsec. (a), "Commission" substituted for "Secretary" and "it" substituted for "he"; in subsec. (b), "Commission" substituted for "Secretary", "it" substituted for "him" and "he", "its" substituted for "his", and "Commission's" substituted for "Secretary's" pursuant to section 30(a) of Pub. L. 92-573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

## **§1475. Repealed. Pub. L. 97-35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716**

Section, Pub. L. 91-601, §6, Dec. 30, 1970, 84 Stat. 1672, provided for appointment of a technical advisory committee to assist the Secretary in carrying out the purposes of the Poison Prevention Packaging Act of 1970.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 13, 1981, see section 1215 of Pub. L. 97-35, set out as an Effective Date of 1981 Amendment note under section 2052 of this title.

## **§1476. Preemption of Federal standards**

**(a) Exception for identical State standards**

Except as provided in subsections (b) and (c), whenever a standard established by the Commission under this Act applicable to a household substance is in effect, no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the standard established under section 1472 of this title (and any exemption therefrom and requirement related thereto) of this Act.

**(b) Federal or State standards which afford a higher degree of protection**

The Federal Government and the government of any State or political subdivision of a State may establish and continue in effect, with respect to a household substance for its own use, a standard for special packaging or related requirement which is designed to protect against a risk of illness or injury with respect to which a standard for special packaging or related requirement is in effect under this Act and which is not identical to such standard or requirement if the Federal, State, or political subdivision standard or requirement provides a higher degree of protection from such risk of illness or injury than the standard or requirement in effect under this Act.

**(c) Exemption for State standards; requirements; determination of burden on interstate commerce; notice and hearing**

(1) Upon application of a State or political subdivision of a State, the Commission may, by regulation promulgated in accordance with paragraph (2), exempt from subsection (a), under such conditions as may be prescribed in such regulation, any standard for special packaging or related requirement of such State or political subdivision applicable to a household substance subject to a standard or requirement in effect under this Act if—

(A) compliance with the State or political subdivision standard or requirement would not cause the household substance to be in violation of the standard or requirement in effect under this Act, and

(B) the State or political subdivision standard or requirement (i) provides a significantly higher degree of protection from the risk of illness or injury with respect to which the Federal standard or requirement is in effect, and (ii) does not unduly burden interstate commerce.

In determining the burden, if any, of a State or political subdivision standard or requirement on interstate commerce the Commission shall consider and make appropriate (as determined by the Commission in its discretion) findings on the technological and economic feasibility of complying with such standard or requirement, the cost of complying with such standard or requirement, the geographic distribution of the household substance to which the standard or requirement would apply, the probability of other States or political subdivisions applying for an exemption under this subsection for a similar standard or requirement, and the need for a national, uniform standard or requirement under this Act for such household substance.

(2) A regulation under paragraph (1) granting an exemption for a standard or requirement of a State or political subdivision of a State may be promulgated by the Commission only after it has provided, in accordance with section 553(b) of title 5 notice with respect to the promulgation of the regulation and has provided opportunity for the oral presentation of views respecting its promulgation.

(Pub. L. 91-601, §7, formerly §8, Dec. 30, 1970, 84 Stat. 1673; Pub. L. 92-573, §30(a), Oct. 27, 1972, 86 Stat. 1231; Pub. L. 94-284, §17(c), May 11, 1976, 90 Stat. 513; renumbered §7, Pub. L. 97-35, title XII, §1205(c), Aug. 13, 1981, 95 Stat. 716.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

For classification to the Code of "this Act", referred to in text, see References in Text note set out under section 1471 of this title.

## AMENDMENTS

**1976**—Pub. L. 94–284 substituted "(a) Except as provided in subsections (b) and (c), whenever" for "Whenever" in existing provision, and added subsecs. (b) and (c).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### TRANSFER OF FUNCTIONS

"Commission" substituted for "Secretary" in subsec. (a) pursuant to section 30(a) of Pub. L. 92–573, which is classified to section 2079(a) of this title and which transferred functions of Secretary of Health, Education, and Welfare under this chapter to Consumer Product Safety Commission.

### PREEMPTION

The provisions of this section establishing the extent to which the Poison Prevention Packaging Act of 1970 [15 U.S.C. 1471 et seq.] preempts, limits, or otherwise affects any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law not to be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation under the Poison Prevention Packaging Act of 1970, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation, see section 231 of Pub. L. 110–314, set out as a note under section 2051 of this title.

## §1477. Enforcement by State Attorneys General

The attorney general of a State, or other authorized State officer, alleging a violation of a standard or rule promulgated under section 1472 of this title 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 or transacts business to obtain appropriate injunctive relief. The procedural requirements of section 2073(b) of this title shall apply to any such action.

(Pub. L. 91–601, §9, as added Pub. L. 110–314, title II, §218(b)(1), Aug. 14, 2008, 122 Stat. 3062.)

## EDITORIAL NOTES

### PRIOR PROVISIONS

A prior section 9 of Pub. L. 91–601 was renumbered section 8 and is set out as a note under section 1471 of this title.

## CHAPTER 40—DEPARTMENT OF COMMERCE

Sec.

- 1501. Establishment of Department; Secretary; seal.
- 1502, 1503. Omitted.
- 1503a. Under Secretary of Commerce for Economic Affairs.
- 1503b. Under Secretary of Commerce for Oceans and Atmosphere; duties; appointment; compensation.
- 1504. Repealed.
- 1505. Additional Assistant Secretary; duties, rank of Assistant Secretaries.
- 1506. Additional Assistant Secretary; appointment; applicability of section 1505.
- 1507. Additional Assistant Secretary; appointment; compensation; duties.
- 1507a. Repealed.
- 1507b. Assistant Secretary of Commerce; appointment; compensation; duties.
- 1507c. Assistant Secretary of Commerce for Oceans and Atmosphere; duties; appointment; compensation.
- 1508. General Counsel.

- 1509. Designation of officer to sign routine papers.
- 1510. Clerical assistants.
- 1511. Bureaus in Department.
- 1511a. Repealed.
- 1511b. United States fishery trade officers.
- 1511c. Estuarine Programs Office.
- 1511d. Chesapeake Bay Office.
- 1511e. Repealed.
- 1512. Powers and duties of Department.
- 1513. Duties and powers vested in Department.
- 1513a. Cost estimates for National Oceanic and Atmospheric Administration programs included in Department budget justification.
- 1513b. Cost estimates for National Institute of Standards and Technology construction projects included in Department budget justification.
- 1514. Basic authority for performance of certain functions and activities of Department.
- 1515. Records, etc., of bureaus transferred to Department of Commerce.
- 1516. Statistical information.
- 1516a. Statistics relating to social, health, and economic conditions of Americans of Spanish origin or descent.
- 1517. Transfer of statistical or scientific work.
- 1518. Custody of buildings; officers transferred.
- 1519. Annual and special reports.
- 1519a, 1520. Repealed.
- 1521. Working capital fund; establishment; amount; uses; reimbursement.
- 1521a. Department of Commerce Nonrecurring Expenses Fund.
- 1522. Acceptance of gifts and bequests for purposes of the Department; separate fund; disbursements.
- 1523. Tax status of gifts and bequests of property.
- 1524. Investment and reinvestments of moneys; credit and disbursement of interest.
- 1525. Special studies; special compilations, lists, bulletins, or reports; clearinghouse for technical information; transcripts or copies; cost payments for special work; joint projects: cost apportionment, waiver.
- 1526. Receipts for work or services; deposit in special accounts; availability for payment of costs, repayment or advances to appropriations or funds, refunds, credits to working capital funds; appropriation limitation of annual expenditures from accounts.
- 1527. Fees or charges for services or publications under existing law unaffected.
- 1527a. Economics and Statistics Administration Revolving Fund.
- 1528. Transferred.
- 1529. Relinquishment of legislative jurisdiction over certain lands.
- 1530. Awarding of contracts for performance of commercial activity by National Oceanic and Atmospheric Administration.
- 1531. Buying Power Maintenance accounts for International Trade Administration, Export Administration, and United States Travel and Tourism Administration.
- 1532. Telecommunications; electromagnetic radiation; research, analysis, dissemination of information; other functions of Secretary.
- 1533. Repealed.
- 1534. Assessment of fees for access to environmental data.
- 1535. Repealed.
- 1536. Prohibition against fraudulent use of "Made in America" labels.
- 1537. Needs assessment for data management, archival, and distribution.
- 1538. Notice of reprogramming.
- 1539. Financial assistance.
- 1540. Cooperative agreements.

- 1541. Administrative Law Judges.
- 1542. Establishment of the Ernest F. Hollings Scholarship Program.
- 1543. Task force on job repatriation and manufacturing growth.
- 1544. Promotion of tourist travel.
- 1545. Cooperation with travel agencies; publication of information.
- 1546. United States Travel and Tourism Advisory Board.
- 1547. Rules and regulations; employees.
- 1548. Authorization of appropriations.

### **§1501. Establishment of Department; Secretary; seal**

There shall be at the seat of government an executive department to be known as the Department of Commerce, and a Secretary of Commerce, who shall be the head thereof, who shall be appointed by the President, by and with the advice and consent of the Senate, and whose term and tenure of office shall be like that of the heads of the other executive departments; and the provisions of title 4 of the Revised Statutes, including all amendments thereto, shall be applicable to said department. The said Secretary shall cause a seal of office to be made for the said department of such device as the President shall approve, and judicial notice shall be taken of the said seal.

(Feb. 14, 1903, ch. 552, §1, 32 Stat. 825; Feb. 17, 1909, ch. 137, §§1, 2, 35 Stat. 626; Mar. 4, 1909, ch. 297, §1, 35 Stat. 861; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Mar. 3, 1917, ch. 163, §1, 39 Stat. 1111; Mar. 4, 1925, ch. 549, §4, 43 Stat. 1301.)

### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

Title 4 of the Revised Statutes, referred to in text, was entitled "Provisions Applicable to All Executive Departments", and consisted of R.S. §§158 to 198. For provisions of the Code derived from such title 4, see sections 101, 301, 303, 304, 503, 2952, 3101, 3106, 3341, 3345 to 3349, 5535, 5536 of Title 5, Government Organization and Employees; section 207 of Title 18, Crimes and Criminal Procedure; sections 514, 520 of Title 28, Judiciary and Judicial Procedure; section 3321 of Title 31, Money and Finance.

#### **CODIFICATION**

Section was formerly classified to section 591 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **TRANSFER OF FUNCTIONS**

A Department of Labor, under charge of a Commissioner of Labor, was established by act June 13, 1888, ch. 380, 25 Stat. 182, and by section 9 of that act, the Bureau of Labor created under act June 27, 1884, ch. 127, 23 Stat. 60, was to cease on the organization of the Department. The Department of Commerce and Labor, as an Executive Department, with a Secretary of Commerce and Labor as the head thereof, was established by act Feb. 14, 1903, ch. 552, 32 Stat. 825, and by section 4 of that act, the Department of Labor was placed under the jurisdiction and made a part of the Department of Commerce and Labor with various other offices, bureaus, and branches of the public service also transferred to and placed under the jurisdiction of the Department so established. In subsequent appropriation and other acts, the Department of Labor was designated as the Bureau of Labor in that Department. But by act March 4, 1913, ch. 141, 37 Stat. 736, a new executive department was created, to be called "The Department of Labor," with a Secretary of Labor to be the head thereof, and the Department of Commerce and Labor was thereafter to be called the Department of Commerce, and the Secretary thereof to be called the Secretary of Commerce.

### **EXECUTIVE DOCUMENTS**

#### **TRANSFER OF FUNCTIONS**

Functions of all other officers of Department of Commerce and functions of all agencies and employees of

such Department, with a few exceptions, transferred to Secretary of Commerce, with power vested in him to authorize their performance or the performance of any of his functions by any such officers, agencies, and employees by Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out below.

### **DEPUTY SECRETARY OF COMMERCE**

For provisions directing the President to appoint a Deputy Secretary of Commerce, by and with the advice and consent of the Senate, with the Deputy Secretary to receive compensation at the rate payable for Level II of the Executive Schedule and with the Deputy Secretary to perform such duties and exercise such powers as the Secretary may from time to time prescribe, see section 2(b)(1) of 1979 Reorg. Plan No. 3, set out in the Appendix to Title 5, Government Organization and Employees.

Creation of the Office of Deputy Secretary of Commerce by section 2(b)(1) of 1979 Reorg. Plan. No. 3 effective Dec. 7, 1979, see Ex. Ord. 12175, set out as a note under section 2171 of Title 19, Customs Duties.

### **ORDER OF SUCCESSION**

For order of succession during any period when both Secretary and Deputy Secretary of Commerce are unable to perform functions and duties of office of Secretary, see Ex. Ord. No. 13242, Dec. 18, 2001, 66 F.R. 66260, listed in a table under section 3345 of Title 5, Government Organization and Employees.

### **REORGANIZATION PLAN NO. 5 OF 1950**

Eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, as amended July 2, 1954, ch. 456, title III, §304, 68 Stat. 430 Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. 901 et seq.].

### **DEPARTMENT OF COMMERCE**

#### **SECTION 1. TRANSFER OF FUNCTIONS TO THE SECRETARY**

(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Secretary of Commerce all functions of all other officers of the Department of Commerce and all functions of all agencies and employees of such Department.

(b) This section shall not apply to the functions vested by the Administrative Procedure Act (60 Stat. 237) [see 5 U.S.C. 551 et seq. and 701 et seq.] in hearing examiners employed by the Department of Commerce, nor to the functions of the Civil Aeronautics Board, of the Inland Waterways Corporation, or of the Advisory Board of the Inland Waterways Corporation.

#### **SEC. 2. PERFORMANCE OF FUNCTIONS OF SECRETARY**

The Secretary of Commerce may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of Commerce of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan.

#### **SEC. 3. ADMINISTRATIVE ASSISTANT SECRETARY**

[Repealed. July 2, 1954, ch. 456, title III, §304, 68 Stat. 430. Section authorized an Administrative Assistant Secretary of Commerce.]

#### **SEC. 4. INCIDENTAL TRANSFERS**

The Secretary of Commerce may from time to time effect such transfers within the Department of Commerce of any of the records, property, personnel, and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of such Department as he may deem necessary in order to carry out the provisions of this reorganization plan.

### **MESSAGE OF THE PRESIDENT**

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 5 of 1950, prepared in accordance with the Reorganization Act of 1949 and providing for reorganizations in the Department of Commerce. My reasons for transmitting this plan are stated in an accompanying general message.

After investigation I have found and hereby declare that each reorganization included in Reorganization Plan No. 5 of 1950 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949.



I have found and hereby declare that it is necessary to include in the accompanying reorganization plan, by reason of reorganizations made thereby, provisions for the appointment and compensation of an Administrative Assistant Secretary of Commerce. The rate of compensation fixed for this officer is that which I have found to prevail in respect to comparable officers in the executive branch of the Government.

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

HARRY S. TRUMAN.

THE WHITE HOUSE, March 13, 1950.

### **FEDERAL MARITIME BOARD, AND MARITIME FUNCTIONS OF SECRETARY OF COMMERCE**

Section 307 of Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, provided that the functions transferred by the provisions of that Plan should not be subject to the provisions of Reorg. Plan No. 5 of 1950, set out above. Said Reorg. Plan No. 21 of 1950 created, within the Department of Commerce, the Federal Maritime Board, and the Maritime Administration, the latter, with a Maritime Administrator at its head. It abolished the United States Maritime Commission, transferring some of its functions and some of the functions of its Chairman to said Federal Maritime Board. It transferred the remainder of the functions of that Commission and its Chairman to the Secretary of Commerce, with power vested in him to authorize their performance by said Maritime Administrator.

### **EXECUTIVE ORDER NO. 13339**

Ex. Ord. No. 13339, May 13, 2004, 69 F.R. 28037, as amended by Ex. Ord. No. 13403, §3, May 12, 2006, 71 F.R. 28543, which established in the Department of Commerce a President's Advisory Commission on Asian Americans and Pacific Islanders, was superseded by Ex. Ord. No. 13515, §4(a), Oct. 14, 2009, 74 F.R. 53638, formerly set out below, and by Ex. Ord. No. 14031, §4(a), May 28, 2021, 86 F.R. 29680, set out in a note under section 3501 of Title 42, The Public Health and Welfare.

### **EXECUTIVE ORDER NO. 13515**

Ex. Ord. No. 13515, Oct. 14, 2009, 74 F.R. 53635, as amended by Ex. Ord. No. 13585, §4, Sept. 30, 2011, 76 F.R. 62282; Ex. Ord. No. 13652, §8, Sept. 30, 2013, 78 F.R. 61819, which established the President's Advisory Commission on Asian Americans and Pacific Islanders and White House Initiative on Asian Americans and Pacific Islanders, was superseded by Ex. Ord. No. 13872, §4(a), May 13, 2019, 84 F.R. 22324, formerly set out below, and by Ex. Ord. No. 14031, §4(a), May 28, 2021, 86 F.R. 29680, set out in a note under section 3501 of Title 42, The Public Health and Welfare.

### **EXTENSION OF TERM OF COMMISSION ON ASIAN AMERICANS AND PACIFIC ISLANDERS**

Prior to revocation of Ex. Ord. No. 13515, term of Commission on Asian Americans and Pacific Islanders was extended until Sept. 30, 2019, by Ex. Ord. No. 13811, §1(s), Sept. 29, 2017, 82 F.R. 46363, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

Previous extensions of term of Commission on Asian Americans and Pacific Islanders were contained in the following prior Executive Orders:

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

Ex. Ord. No. 13652, Sept. 30, 2013, 78 F.R. 61817, extended term until Sept. 30, 2015.

Ex. Ord. No. 13585, Sept. 30, 2011, 76 F.R. 62281, extended term until Sept. 30, 2013.

### **EXECUTIVE ORDER NO. 13872**

Ex. Ord. No. 13872, May 13, 2019, 84 F.R. 22321, which established the President's Advisory Commission on Asian Americans and Pacific Islanders and the White House Initiative on Asian Americans and Pacific Islanders to promote the economic empowerment of Asian Americans and Pacific Islanders, was superseded by Ex. Ord. No. 14031, §4(a), May 28, 2021, 86 F.R. 29680, set out in a note under section 3501 of Title 42, The Public Health and Welfare.

### **EXTENSION OF TERM OF COMMISSION ON ASIAN AMERICANS AND PACIFIC ISLANDERS**

Term of Commission on Asian Americans and Pacific Islanders extended until Sept. 30, 2021, by Ex. Ord. No. 13889, Sept. 27, 2019, 84 F.R. 52743, formerly set out as a note under section 1013 of Title 5,

Government Organization and Employees.

## **§§1502, 1503. Omitted**

### **EDITORIAL NOTES**

#### **CODIFICATION**

Section 1502, act June 5, 1939, ch. 180, §1, 53 Stat. 808, established position of Under Secretary of Commerce. Position abolished by section 2(b)(2) of Reorg. Plan No. 3 of 1979, 44 F.R. 69273, 93 Stat. 1381, set out in the Appendix to Title 5, Government Organization and Employees.

Section 1503, act June 5, 1939, ch. 180, §2, 53 Stat. 808, provided for performance by Under Secretary of Commerce of Secretary's duties on latter's death, absence, etc.

### **EXECUTIVE DOCUMENTS**

#### **UNDER SECRETARY FOR INTERNATIONAL TRADE**

The additional office of Under Secretary for International Trade, in the Department of Commerce, was provided for by section 2(c) of Reorg. Plan No. 3 of 1979, 44 F.R. 69273, 93 Stat. 1381, set out in the Appendix to Title 5, Government Organization and Employees, to be appointed by the President, by and with the advice and consent of the Senate, to receive compensation at the rate payable for Level III of the Executive Schedule, and to perform such duties and exercise such powers as the Secretary of Commerce may from time to time prescribe.

#### **UNDER SECRETARY FOR TRANSPORTATION**

The additional office of "Under Secretary of Commerce for Transportation", in the Department of Commerce, was provided for by section 301 of Reorg. Plan No. 21 of 1950, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1273, set out in the Appendix to Title 5, Government Organization and Employees, to be appointed by the President, by and with the advice and consent of the Senate, to receive compensation at the rate prescribed by law for Under Secretaries of Executive departments, and to perform such duties as the Secretary of Commerce shall prescribe.

## **§1503a. Under Secretary of Commerce for Economic Affairs**

There shall be in the Department of Commerce an Under Secretary of Commerce for Economic Affairs who shall be appointed by the President by and with the advice and consent of the Senate. The Under Secretary shall perform such duties as the Secretary of Commerce shall prescribe. (Pub. L. 97-195, §1(a), June 16, 1982, 96 Stat. 115.)

## **§1503b. Under Secretary of Commerce for Oceans and Atmosphere; duties; appointment; compensation**

There shall be in the Department of Commerce an Under Secretary of Commerce for Oceans and Atmosphere who shall serve as the Administrator of the National Oceanic and Atmospheric Administration established by Reorganization Plan No. 4 of 1970 [5 U.S.C. App.] and perform such duties as the Secretary of Commerce shall prescribe. The Under Secretary shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

(Pub. L. 99-659, title IV, §407(a), Nov. 14, 1986, 100 Stat. 3739.)

### **EDITORIAL NOTES**

## REFERENCES IN TEXT

Reorganization Plan No. 4 of 1970, referred to in text, is set out under section 1511 of this title.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### SERVICE BY INCUMBENT ADMINISTRATOR AND DEPUTY ADMINISTRATOR OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Pub. L. 99-659, title IV, §407(c), Nov. 14, 1986, 100 Stat. 3739, provided that: "The individual serving on the date of enactment of this Act [Nov. 14, 1986]—

"(A) as the Administrator of the National Oceanic and Atmospheric Administration shall also serve as the Under Secretary of Commerce for Oceans and Atmosphere until such time as a successor is appointed under subsection (a) of this section [enacting this section]; and

"(B) as the Deputy Administrator of the National Oceanic and Atmospheric Administration shall also serve as the Assistant Secretary of Commerce for Oceans and Atmosphere until such time as a successor is appointed under subsection (b) of this section [enacting section 1507(c) of this title]."

### **§1504. Repealed. Pub. L. 97-195, §1(c)(1), June 16, 1982, 96 Stat. 115**

Section, acts Feb. 14, 1903, ch. 552, §2, 32 Stat. 826; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Mar. 3, 1917, ch. 163, §1, 39 Stat. 1111, provided for appointment by President of an Assistant Secretary of Commerce, who would perform such duties as prescribed by Secretary or required by law.

### **§1505. Additional Assistant Secretary; duties, rank of Assistant Secretaries**

There shall be in the Department of Commerce one additional Assistant Secretary of Commerce, who shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce may assign to his Assistant Secretaries such duties, including the direction of the Bureau of Foreign and Domestic Commerce, as he shall prescribe, or may be required by law. The Assistant Secretaries of Commerce shall be without numerical distinction of rank.

(July 15, 1947, ch. 251, 61 Stat. 326.)

## EDITORIAL NOTES

### CODIFICATION

Provisions of last sentence that fixed the compensation of the Assistant Secretaries of Commerce have been omitted as the positions are under the Executive Schedule under section 5315 of Title 5, Government Organization and Employees.

Section was formerly classified to section 592a of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

### PRIOR PROVISIONS

Prior provisions for an additional Assistant Secretary of Commerce were contained in act May 20, 1926, ch. 344, §8 (1st sentence), 44 Stat. 573, as amended June 23, 1938, ch. 601, §1107(k), 52 Stat. 1029. Said position was terminated by section 592a-1 of former Title 5, Executive Departments and Government Officers and Employees. Section 8 of act May 20, 1926, was subsequently repealed by Pub. L. 85-726, title XIV, §1401(a), Aug. 23, 1958, 72 Stat. 806, and Pub. L. 97-195, §1(c)(2), June 16, 1982, 96 Stat. 115.

## EXECUTIVE DOCUMENTS

### TRANSFER OF FUNCTIONS

Pursuant to powers transferred to Secretary of Commerce under Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title, Secretary has reassigned functions of Bureau of Foreign and Domestic Commerce to other officers of Department.

## ORDER OF SUCCESSION

For order of succession during any period when both Secretary and Deputy Secretary of Commerce are unable to perform functions and duties of office of Secretary, see Ex. Ord. No. 13242, Dec. 18, 2001, 66 F.R. 66260, listed in a table under section 3345 of Title 5, Government Organization and Employees.

### **§1506. Additional Assistant Secretary; appointment; applicability of section 1505**

There shall be on and after July 2, 1954 in the Department of Commerce, in addition to the Assistant Secretaries now provided for by law, one additional Assistant Secretary of Commerce, who shall be appointed by the President by and with the advice and consent of the Senate, and who shall be subject in all respects to the provisions of section 1505 of this title, relating to Assistant Secretaries of Commerce.

(July 2, 1954, ch. 456, title III, §304, 68 Stat. 430.)

## EDITORIAL NOTES

### CODIFICATION

Section constitutes the first sentence of section 304 of act July 2, 1954. The second sentence of such section 304 repealed section 3 of Reorg. Plan 5 of 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title, which established the position of Administrative Assistant Secretary of Commerce.

Section was formerly classified to section 592a-3 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

### **§1507. Additional Assistant Secretary; appointment; compensation; duties**

There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce who shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

(Pub. L. 87-405, Feb. 16, 1962, 76 Stat. 9.)

## EDITORIAL NOTES

### CODIFICATION

Section was formerly classified to section 592a-4 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

### **§1507a. Repealed. Pub. L. 97-31, §12(5), Aug. 6, 1981, 95 Stat. 154**

Section, Pub. L. 91-469, §42(a), Oct. 21, 1970, 84 Stat. 1038, related to appointment, compensation, and duties of the Assistant Secretary for Maritime Affairs.

### **§1507b. Assistant Secretary of Commerce; appointment; compensation; duties**

There shall be in the Department of Commerce, in addition to the Assistant Secretaries provided by law as of November 12, 1977, one additional Assistant Secretary of Commerce who shall be appointed by the President, by and with the advice and consent of the Senate. Such Assistant Secretary shall perform such duties as the Secretary of Commerce shall prescribe.

(Pub. L. 95-173, §9(a), Nov. 12, 1977, 91 Stat. 1360; Pub. L. 97-195, §1(c)(4), June 16, 1982, 96 Stat. 115.)

## EDITORIAL NOTES

### AMENDMENTS

**1982**—Pub. L. 97–195 substituted "Such Assistant Secretary shall perform such duties" for "Such Assistant Secretary shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties".

### **§1507c. Assistant Secretary of Commerce for Oceans and Atmosphere; duties; appointment; compensation**

There shall be in the Department of Commerce, in addition to the Assistant Secretaries of Commerce provided by law before November 14, 1986, one additional Assistant Secretary of Commerce who shall have the title Assistant Secretary of Commerce for Oceans and Atmosphere and shall serve as the Deputy Administrator of the National Oceanic and Atmospheric Administration established by Reorganization Plan No. 4 of 1970 [5 U.S.C. App.] and perform such duties and functions as the Under Secretary of Commerce for Oceans and Atmosphere shall prescribe. The Assistant Secretary for Oceans and Atmosphere shall be appointed by the President by and with the advice and consent of the Senate and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

(Pub. L. 99–659, title IV, §407(b), Nov. 14, 1986, 100 Stat. 3739.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Reorganization Plan No. 4 of 1970, referred to in text, is set out under section 1511 of this title.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### **SERVICE BY INCUMBENT ADMINISTRATOR AND DEPUTY ADMINISTRATOR OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

Individuals serving on Nov. 14, 1986, as Deputy Administrator of National Oceanic and Atmospheric Administration to also serve as Assistant Secretary of Commerce for Oceans and Atmosphere, until successor is appointed, see section 407(c)(B) of Pub. L. 99–659, set out as a note under section 1503b of this title.

### **§1508. General Counsel**

There shall be in the Department of Commerce a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate.

(Mar. 18, 1904, ch. 716, §1, 33 Stat. 135; July 17, 1952, ch. 932, §2, 66 Stat. 758; Aug. 20, 1954, ch. 776, 68 Stat. 753.)

## EDITORIAL NOTES

### CODIFICATION

Provisions of section that fixed the compensation of the General Counsel have been omitted as the position is under the Executive Schedule under section 5315 of Title 5, Government Organization and Employees.

Section was formerly classified to section 592b of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

### AMENDMENTS

**1954**—Act Aug. 20, 1954, amended section generally, establishing a General Counsel in the Department of

Commerce and a rate of compensation. See Codification note above.

**1952**—Act July 17, 1952, redesignated Solicitor as General Counsel and provided that "all laws and orders relating or referring to the Solicitor shall be deemed to relate or refer to the General Counsel".

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

### **ORDER OF SUCCESSION**

For order of succession during any period when both Secretary and Deputy Secretary of Commerce are unable to perform functions and duties of office of Secretary, see Ex. Ord. No. 13242, Dec. 18, 2001, 66 F.R. 66260, listed in a table under section 3345 of Title 5, Government Organization and Employees.

## **§1509. Designation of officer to sign routine papers**

The Secretary may designate an officer of the Department to sign minor routine official papers and documents during the temporary absence of the Secretary, the Under Secretary, and the Assistant Secretaries of the Department.

(May 21, 1945, ch. 129, title III, §301, 59 Stat. 188; July 15, 1947, ch. 251, 61 Stat. 326.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Assistant Secretary changed to Assistant Secretaries by act July 15, 1947, which provided for an additional Assistant Secretary. See section 1505 of this title.

Section was formerly classified to section 593a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

## **§1510. Clerical assistants**

There shall also be such clerical assistants as may from time to time be authorized by the Congress.

(Feb. 14, 1903, ch. 552, §2, 32 Stat. 826; July 16, 1952, ch. 878, §2, 66 Stat. 710.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Section was formerly classified to section 594 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

### **AMENDMENTS**

**1952**—Act July 16, 1952, provided for clerical assistants instead of a disbursing clerk.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### DISBURSEMENT CLERK

Section, act Feb. 14, 1903, ch. 552, §2, 32 Stat. 826, provided for a disbursing clerk in the Department of Commerce.

### EXECUTIVE DOCUMENTS

#### TRANSFER OF DISBURSEMENT AGENCIES

Division of Disbursement and certain other offices and agencies and their functions consolidated into Fiscal Service of Department of the Treasury by Reorg. Plan No. III of 1940, §1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees. See section 306 of Title 31, Money and Finance.

### §1511. Bureaus in Department

The following named bureaus, administrations, services, offices, and programs of the public service, and all that pertains thereto, shall be under the jurisdiction and subject to the control of the Secretary of Commerce:

- (1) National Oceanic and Atmospheric Administration;
- (2) United States Travel and Tourism Administration;
- (3) National Institute of Standards and Technology;
- (4) United States Patent and Trademark Office <sup>1</sup>
- (5) Bureau of the Census; and

(6) such other bureaus or other organizational units as the Secretary of Commerce may from time to time establish in accordance with law.

(Feb. 14, 1903, ch. 552, §§4, 12, 32 Stat. 826, 830; June 17, 1910, ch. 301, §4, 36 Stat. 537; Aug. 23, 1912, ch. 350, §1, 37 Stat. 407; Mar. 4, 1913, ch. 141, §3, 37 Stat. 737; Jan. 5, 1923, ch. 23, §1, 42 Stat. 1109; June 30, 1932, ch. 314, pt. II, title V, §501, 47 Stat. 415; Feb. 22, 1934, Ex. Ord. 6611; May 27, 1936, ch. 463, §1, 49 Stat. 1380; 1939 Reorg. Plan No. II, §§2(a), 4(e), 6, eff. July 1, 1936, 4 F.R. 2731, 53 Stat. 1432; 1940 Reorg. Plan No. IV, §§7, 8, eff. June 30, 1940, 5 F.R. 2422, 54 Stat. 1235, 1236; 1946 Reorg. Plan No. 3, §§101–104, eff. July 16, 1946, 11 F.R. 7875, 60 Stat. 1097; June 30, 1949, ch. 288, title I, §103(a), 63 Stat. 380; Aug. 4, 1949, ch. 393, §20, 63 Stat. 561; 1949 Reorg. Plan No. 7, §1, eff. Aug. 19, 1949, 14 F.R. 5228, 63 Stat. 1070; 1950 Reorg. Plan No. 21, §§101, 106, 201, 15 F.R. 3178, 64 Stat. 1273; Pub. L. 93–498, §23, Oct. 29, 1974, 88 Stat. 1549; Pub. L. 93–596, §3, Jan. 2, 1975, 88 Stat. 1949; Pub. L. 95–422, §2(c), Oct. 5, 1978, 92 Stat. 932; Pub. L. 97–31, §12(6), Aug. 6, 1981, 95 Stat. 154; Pub. L. 97–63, §4(a)(1), Oct. 16, 1981, 95 Stat. 1014; Pub. L. 100–418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 106–113, div. B, §1000(a)(9) [title IV, §4732(b)(6)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 106–503, title I, §110(b), Nov. 13, 2000, 114 Stat. 2302.)

### EDITORIAL NOTES

#### CODIFICATION

Section was formerly classified to section 597 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

Section was originally based on part of section 4 of act Feb. 14, 1903, which provided an initial list of offices and bureaus to be transferred to the Department of Commerce and Labor, and section 12 of the act, which authorized the President to transfer certain additional offices and bureaus to the Department. Section 12 of the act was amended generally by section 23 of Pub. L. 93–498, and the text enacted by that general amendment, along with subsequent amendments, now serves as the text of this section. See Amendment notes below. Section 12 of the 1903 act as originally enacted is set out as section 1517 of this title, and the rest of section 4 of the act is classified to sections 1515 and 1516 of this title. Explanation of laws cited as credits to this section prior to Pub. L. 93–498 can be found in various notes below.

## AMENDMENTS

**2000**—Pars. (6), (7). Pub. L. 106–503 redesignated par. (7) as (6) and struck out former par. (6) which read as follows: "United States Fire Administration; and".

**1999**—Pub. L. 106–113 redesignated pars. (a) to (g) as (1) to (7), respectively, realigned margins, and in par. (4) substituted "United States Patent and Trademark Office" for "Patent and Trademark Office;".

**1988**—Par. (c). Pub. L. 100–418 substituted "National Institute of Standards and Technology" for "National Bureau of Standards".

**1981**—Pars. (c) to (g). Pub. L. 97–31 redesignated pars. (d) to (h) as (c) to (g), respectively, and struck out former par. (c) which read as follows: "Maritime Administration;".

**1978**—Par. (g). Pub. L. 95–422 substituted "United States Fire Administration" for "National Fire Prevention and Control Administration".

**1974**—Pub. L. 93–498 amended section generally, substituting reference to Secretary of Commerce for Department of Commerce and substituting references to National Oceanic and Atmospheric Administration, United States Travel Service, Maritime Administration, National Bureau of Standards, Patent Office, Bureau of the Census, National Fire Prevention and Control Administration and such other bureaus or other organizational units as the Secretary of Commerce may from time to time establish in accordance with law, for references to The Bureau of Foreign and Domestic Commerce, The Bureau of Public Roads, The Civil Aeronautics Authority, The Census Office, The Coast and Geodetic Survey, The Federal Maritime Board, The Inland Waterways Corporation, The Maritime Administration, The National Bureau of Standards, The Patent Office, and The Weather Bureau.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CHANGE OF NAME

"United States Travel and Tourism Administration" substituted for "United States Travel Service" in par. (b) [now par. (2)], pursuant to section 4(a)(1) of Pub. L. 97–63, which established United States Travel and Tourism Administration in place of United States Travel Service, effective Oct. 1, 1981. See section 2124 of Title 22, Foreign Relations and Intercourse.

"Patent and Trademark Office" substituted for "Patent Office", in par. (d) [now par. (4)] pursuant to section 3 of Pub. L. 93–596, set out as a note under section 1 of Title 35, Patents. "Patent and Trademark Office" subsequently amended to read "United States Patent and Trademark Office" by Pub. L. 106–113. See 1999 Amendment note above.

### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, §4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### REPEALS

Act June 17, 1910, ch. 301, §4, 36 Stat. 537, cited as a credit to this section, was repealed by act Aug. 4, 1949, ch. 393, §20, 63 Stat. 561.

Act June 30, 1932, ch. 314, pt. II, title V, §501, 47 Stat. 415, cited as a credit to this section, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 648 and Pub. L. 97–258, §5(b), Sept. 13, 1982, 96 Stat. 1068, 1074.

Act May 27, 1936, ch. 463, §1, 49 Stat. 1380, cited as a credit to this section, was repealed by Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 649.

## ORGANIZATIONAL HISTORY AND TRANSFER OF FUNCTIONS

For transfer of certain functions, personnel, assets, and liabilities of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see former section 313(2) and sections 121(g)(3), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Functions of Secretary of Commerce, Department of Commerce, and officers and components of Department of Commerce as they related to or were utilized by Office of Energy Programs within Department of Commerce, but limited to industrial energy conservation programs, transferred to, and vested in, Secretary of Energy as part of creation of Department of Energy by Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565. See section 7157 of Title 42, The Public Health and Welfare.



For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

Public Roads Administration, which was redesignated Bureau of Public Roads and, with its functions, transferred from Federal Works Agency to General Services Administration by section 103(a) of act June 30, 1949 (see Historical and Revision Notes and 2006 Amendment note under section 303 of Title 40, Public Buildings, Property, and Works), was subsequently transferred to Department of Commerce, and then to Department of Transportation, by Reorg. Plan No. 7 of 1949, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Federal Maritime Board was created as an agency within Department of Commerce by Reorg. Plan No. 21 of 1950, §§101, 106, set out in the Appendix to Title 5, and sections 103 to 105 of the Plan transferred to Board and its chairman certain functions of former United States Maritime Commission and chairman thereof. Section 307 of the Plan provided that functions transferred to Federal Maritime Board and its chairman should not be subject to the provisions of Reorg. Plan No. 5 of 1950, also eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 1501 of this title, which, with a few additional exceptions, transferred functions of all officers, agencies, and employees of Department of Commerce to Secretary of Commerce, and authorized him to delegate any functions so transferred, or any of his other functions, to any of such officers, agencies and employees. Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished Federal Maritime Board, including offices of members of Board. Functions of Board transferred either to Federal Maritime Commission, which was established as an independent body, or to Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

Maritime Administration, with a Maritime Administrator at its head, was established in Department of Commerce by Reorg. Plan No. 21 of 1950, §201, set out in the Appendix to Title 5, and section 204 of the Plan transferred certain functions of former United States Maritime Commission and its Chairman to Secretary of Commerce, with power vested in Secretary to authorize their performance by Administrator. Section 307 of the Plan provided that functions transferred to Secretary by that Plan should not be subject to provisions of Reorg. Plan No. 5 of 1950, also eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in note under section 1501 of this title, which, with a few additional exceptions, transferred functions of all other officers, agencies, and employees of Department of Commerce to Secretary of Commerce, and authorized him to delegate any functions so transferred, or any of his other functions, to any of such officers, agencies, and employees.

Section 304 of Reorg. Plan No. 7 of 1961, eff. Aug. 12, 1961, 26 F.R. 7315, 75 Stat. 840, set out in the Appendix to Title 5, abolished Federal Maritime Board, including offices of members of Board. Functions of Board transferred either to Federal Maritime Commission, which was established as an independent body, or to Secretary of Commerce by sections 103 and 202 of Reorg. Plan No. 7 of 1961.

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

Community Relations Service transferred from Department of Commerce to Department of Justice by Reorg. Plan No. 1 of 1966, eff. Apr. 22, 1966, 31 F.R. 6187, 80 Stat. 1607, set out in the Appendix to Title 5.

Act Feb. 14, 1903, established the Department of Commerce and Labor. Act Mar. 4, 1913, renamed the Department of Commerce and Labor as the Department of Commerce and established the Department of Labor as a separate entity. The following agencies which were initially placed under the jurisdiction of the Department of Commerce and Labor either directly by statute or by presidential transfer were abolished or transferred as follows:

Office of United States Shipping Commissioner abolished by Reorg. Plan No. 3 of 1946, §§101 to 104, eff. July 16, 1946, which transferred functions to Commandant of Coast Guard and Commissioner of Customs. See Appendix to Title 5, Government Organization and Employees.

Bureau of Navigation and the Steamboat Inspection Service consolidated into Bureau of Navigation and Steamboat Inspection by act June 30, 1932, which name was changed to Bureau of Marine Inspection and Navigation by act May 27, 1936, cited to text. Bureau abolished and functions transferred to Commandant of Coast Guard and Commissioner of Customs by Reorg. Plan No. 3 of 1946. See Appendix to Title 5.

Bureau of Fisheries transferred to Department of the Interior by section 4(e) of Reorg. Plan No. II of 1939. Reorg. Plan No. II of 1939 is set out in the Appendix to Title 5.

Bureau of Immigration changed to Bureau of Immigration and Naturalization by act June 29, 1906, ch. 3592, §1, 34 Stat. 596. Commissioner General of Immigration, Commissioners of Immigration, and Bureau of

Immigration and Naturalization, transferred to Department of Labor by act Mar. 4, 1913. Subsequently, by Ex. Ord. No. 6166, §14 of June 10, 1933, and Reorg. Plan No. V of 1940, eff. June 14, 1940, 5 F.R. 2223, 54 Stat. 1238, Bureau of Immigration and Bureau of Naturalization consolidated to form Immigration and Naturalization Service and transferred to Department of Justice.

Light-House Board and Light-House Establishment consolidated under Bureau of Lighthouses by act June 17, 1910, ch. 301, §4, 36 Stat. 537. Bureau of Lighthouses transferred to Coast Guard in Department of the Treasury by Reorg. Plan No. II of 1939, §2(a). Reorg. Plan No. II of 1939 is set out in the Appendix to Title 5. Said section 4 of act June 17, 1910, was repealed by section 20 of act Aug. 4, 1949, section 1 of which reestablished Coast Guard by enacting Title 14, Coast Guard. Coast Guard transferred to Department of Transportation, and all functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89-670, §6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in former section 3 (now 103) of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

Bureau of Mines transferred from Department of the Interior to Department of Commerce by Ex. Ord. No. 4239 of June 4, 1925, eff. July 1, 1925, as authorized by section 12 of act Feb. 14, 1903 (see 15 U.S.C. 1517), and retransferred to Department of the Interior by Ex. Ord. No. 6611, Feb. 24, 1934. For provisions relating to closure and transfer of functions of the United States Bureau of Mines, see note set out under section 1 of Title 30, Mineral Lands and Mining.

The following agencies, which are or at one time have been under the jurisdiction of the Department of Commerce, acquired their status in the manner indicated:

Bureau of Foreign and Domestic Commerce resulted from a consolidation of Bureau of Manufactures and Bureau of Statistics by act Aug. 23, 1912.

Civil Aeronautics Authority [Civil Aeronautics Board] transferred to Department of Commerce by section 7 of Reorg. Plan No. IV of 1940, set out in the Appendix to Title 5. For transfer of functions of Civil Aeronautics Board see section 1551 et seq. and section 1655(d) of former Title 49, Transportation.

Inland Waterways Corporation transferred to Department of Commerce by section 6 of Reorg. Plan No. II of 1939. Reorg. Plan No. II of 1939 is set out in the Appendix of Title 5. Pub. L. 88-67, §2, July 19, 1963, 77 Stat. 81, provided generally for liquidation of affairs of Inland Waterways Corporation.

Patent Office transferred from Department of the Interior by Ex. Ord. No. 4175 of Mar. 17, 1925, eff. Apr. 1, 1925, as authorized by section 12 of act Feb. 14, 1903. See section 1517 of this title.

Environmental Science Services Administration in Department of Commerce, including offices of Administrator and Deputy Administrator thereof, abolished by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out below, which created National Oceanic and Atmospheric Administration in Department of Commerce and transferred personnel, property, records, and unexpended balances of funds of Environmental Science Services Administration to such newly created National Oceanic and Atmospheric Administration. Components of Environmental Science Services Administration thus transferred included Weather Bureau, Coast and Geodetic Survey, Environmental Data Service, National Environmental Satellite Center, and ESSA Research Laboratories.

Weather Bureau transferred from Department of Agriculture by section 8 of Reorg. Plan No. IV of 1940, which is set out in the Appendix to Title 5. Coast and Geodetic Survey and Weather Bureau consolidated to form a new agency in Department of Commerce known as Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 4443, set out in the Appendix to Title 5.

Functions, powers, and duties of Office of Audits and Investigations and Inspections Staff and that portion of office referred to as Office of Investigations and Security which had responsibility for investigation of alleged criminal violations and program abuse in Department of Commerce transferred to Office of Inspector General in Department of Commerce, as established by Pub. L. 95-452, §2, Oct. 12, 1978, 92 Stat. 1101, formerly set out in the Appendix to Title 5, Government Organization and Employees. See section 422(a)(1)(B) of Title 5.

## **EXECUTIVE DOCUMENTS**

### **CHANGE OF NAME**

In order to implement the provisions of Reorganization Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, as amended, set out below, the following organizational names appearing in chapter IX of subtitle B of Title 15, Code of Federal Regulations, which covers the administration of the National Oceanic and Atmospheric Administration, were changed by order of the Acting Associate Administrator, 35

F.R. 19249, Dec. 19, 1970, as follows: Environmental Science Services Administration to National Oceanic and Atmospheric Administration (ESSA to NOAA); Coast and Geodetic Survey to National Ocean Survey; and Weather Bureau to National Weather Service.

## **REORGANIZATION PLAN NO. 4 OF 1970**

EFF. OCT. 3, 1970, 35 F.R. 15627, 84 STAT. 2090, AS AMENDED PUB. L. 94-461, §4(C)(1), OCT. 8, 1976, 90 STAT. 1969; PUB. L. 95-219, §3(A)(1), DEC. 28, 1977, 91 STAT. 1613; PUB. L. 98-498, TITLE III, §320(C)(3), OCT. 19, 1984, 98 STAT. 2309; PUB. L. 99-659, TITLE IV, §407(D), NOV. 14, 1986, 100 STAT. 3739; PUB. L. 112-166, §2(B)(1), AUG. 10, 2012, 126 STAT. 1283

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, July 9, 1970, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

## **NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

### **SECTION 1. TRANSFERS TO SECRETARY OF COMMERCE**

The following are hereby transferred to the Secretary of Commerce:

(a) All functions vested by law in the Bureau of Commercial Fisheries of the Department of the Interior or in its head, together with all functions vested by law in the Secretary of the Interior or the Department of the Interior which are administered through that Bureau or are primarily related to the Bureau, exclusive of functions with respect to (1) Great Lakes fishery research and activities related to the Great Lakes Fisheries Commission, (2) Missouri River Reservoir research, (3) the Gulf Breeze Biological Laboratory of the said Bureau at Gulf Breeze, Florida, and (4) Trans-Alaska pipeline investigations.

(b) The functions vested in the Secretary of the Interior by the Act of September 22, 1959 (Public Law 86-359, 73 Stat. 642, 16 U.S.C. 760c [probably means 760e]-760g; relating to migratory marine species of game fish).

(c) The functions vested by law in the Secretary of the Interior, or in the Department of the Interior or in any officer or instrumentality of that Department, which are administered through the Marine Minerals Technology Center of the Bureau of Mines.

(d) All functions vested in the National Science Foundation by the National Sea Grant College and Program Act of 1966 (80 Stat. 988), as amended (33 U.S.C. 1121 et seq.).

(e) Those functions vested in the Secretary of Defense or in any officer, employee, or organizational entity of the Department of Defense by the provision of Public Law 91-144, 83 Stat. 326, under the heading "Operation and maintenance, general" with respect to "surveys and charting of northern and northwestern lakes and connecting waters," or by other law, which come under the mission assigned as of July 1, 1969, to the United States Army Engineer District, Lake Survey, Corps of Engineers, Department of the Army and relate to (1) the conduct of hydrographic surveys of the Great Lakes and their outflow rivers, Lake Champlain, New York State Barge Canals, and the Minnesota-Ontario border lakes, and the compilation and publication of navigation charts, including recreational aspects, and the Great Lakes Pilot for the benefit and use of the public, (2) the conception, planning, and conduct of basic research and development in the fields of water motion, water characteristics, water quantity, and ice and snow, and (3) the publication of data and the results of research projects in forms useful to the Corps of Engineers and the public, and the operation of a Regional Data Center for the collection, coordination, analysis, and the furnishing to interested agencies of data relating to water resources of the Great Lakes.

(f) So much of the functions of the transferor officers and agencies referred to in or affected by the foregoing provisions of this section as is incidental to or necessary for the performance by or under the Secretary of Commerce of the functions transferred by those provisions or relates primarily to those functions. The transfers to the Secretary of Commerce made by this section shall be deemed to include the transfer of authority, provided by law, to prescribe regulations relating primarily to the transferred functions.

### **SEC. 2. ESTABLISHMENT OF ADMINISTRATION**

(a) There is hereby established in the Department of Commerce an agency which shall be known as the National Oceanic and Atmospheric Administration, hereinafter referred to as the "Administration."

(b) There shall be at the head of the Administration the Administrator of the National Oceanic and Atmospheric Administration, hereinafter referred to as the "Administrator." The Administrator shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314).

(c) There shall be in the Administration a Deputy Administrator of the National Oceanic and Atmospheric Administration who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315). The Deputy Administrator shall perform such functions as the Administrator shall from time to time assign or delegate, and shall act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

(d) There shall be in the Administration a Chief Scientist of the National Oceanic and Atmospheric Administration who shall be appointed by the President and shall be compensated at the rate now or hereafter provided for Level V of the Executive Schedule Pay Rates (5 U.S.C. 5316). The Chief Scientist shall be the principal scientific adviser to the Administrator, and shall perform such other duties as the Administrator may direct. The Chief Scientist shall be an individual who is, by reason of scientific education and experience, knowledgeable in the principles of oceanic, atmospheric, or other scientific disciplines important to the work of the Administration. [As amended Pub. L. 94-461, §4(c)(1), Oct. 8, 1976, 90 Stat. 1969; Pub. L. 99-659, title IV, §407(d), Nov. 14, 1986, 100 Stat. 3739; Pub. L. 112-166, §2(b)(1), Aug. 10, 2012, 126 Stat. 1283.]

(e)(1) There shall be in the Administration a General Counsel and five Assistant Administrators, one of whom shall be the Assistant Administrator for Coastal Zone Management and one of whom shall be the Assistant Administrator for Fisheries. The General Counsel and each Assistant Administrator shall be appointed by the Secretary, subject to approval of the President, and shall be compensated at a rate now or hereafter provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(2) The General Counsel shall serve as the chief legal officer for all legal matters which may arise in connection with the conduct of the functions of the Administration.

(3) The Assistant Administrator for Coastal Zone Management shall be an individual who is, by reason of background and experience, especially qualified to direct the implementation and administration of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(4) The Assistant Administrator for Fisheries shall be responsible for all matters related to living marine resources which may arise in connection with the conduct of the functions of the Administration. [As amended Pub. L. 95-219, §3(a)(1), Dec. 28, 1977, 91 Stat. 1613.]

(f) The President may appoint in the Administration, by and with the advice and consent of the Senate, two commissioned officers to serve at any one time as the designated heads of two principal constituent organizational entities of the Administration, or the President may designate one such officer as the head of such an organizational entity and the other as the head of the commissioned corps of the Administration. Any such designation shall create a vacancy on the active list and the officer while serving under this subsection shall have the rank, pay, and allowances of a rear admiral (upper half).

(g) Any commissioned officer of the Administration who has served under (d) or (f) and is retired while so serving or is retired after the completion of such service while serving in a lower rank or grade, shall be retired with the rank, pay, and allowances authorized by law for the highest grade and rank held by him; but any such officer, upon termination of his appointment in a rank above that of captain, shall, unless appointed or assigned to some other position for which a higher rank or grade is provided, revert to the grade and number he would have occupied had he not served in a rank above that of captain and such officer shall be an extra number in that grade.

### **SEC. 3. PERFORMANCE OF TRANSFERRED FUNCTIONS**

The provisions of sections 2 and 4 of Reorganization Plan No. 5 of 1950 (64 Stat. 1263) shall be applicable to the functions transferred hereunder to the Secretary of Commerce.

### **SEC. 4. INCIDENTAL TRANSFERS**

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Secretary of Commerce by this reorganization plan as the Director of the Office of Management and Budget shall determine shall be transferred to the Department of Commerce at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Office of Management and Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

(c) The personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of the Environmental Science Services Administration shall become personnel, property, records, and unexpended balances of the National Oceanic and Atmospheric Administration or of such other organizational entity or entities of the Department of Commerce as the Secretary of Commerce shall determine.

(d) The Commissioned Officer Corps of the Environmental Science Services Administration shall become

the Commissioned Officer Corps of the National Oceanic and Atmospheric Administration. Members of the Corps, including those appointed hereafter, shall be entitled to all rights, privileges, and benefits heretofore available under any law to commissioned officers of the Environmental Science Services Administration, including those rights, privileges, and benefits heretofore accorded by law to commissioned officers of the former Coast and Geodetic Survey.

(e) Any personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of the Bureau of Commercial Fisheries not otherwise transferred shall become personnel, property, records, and unexpended balances of such organizational entity or entities of the Department of the Interior as the Secretary of the Interior shall determine.

## **SEC. 5. INTERIM OFFICERS**

(a) The President may authorize any person who immediately prior to the effective date of this reorganization plan held a position in the executive branch of the Government to act as Administrator until the office of Administrator is for the first time filled pursuant to provisions of this reorganization plan or by recess appointment, as the case may be.

(b) The President may similarly authorize any such person to act as Deputy Administrator and authorize any such person to act as Associate Administrator.

(c) The President may similarly authorize a member of the former Commissioned Officer Corps of the Environmental Science Services Administration to act as the head of one principal constituent organizational entity of the Administration.

(d) The President may authorize any person who serves in an acting capacity under the foregoing provisions of this section to receive the compensation attached to the office in respect of which he so serves. Such compensation, if authorized, shall be in lieu of, but not in addition to, other compensation from the United States to which such person may be entitled.

## **SEC. 6. ABOLITIONS**

(a) Subject to the provisions of this reorganization plan, the following, exclusive of any functions, are hereby abolished:

(1) The Environmental Science Services Administration in the Department of Commerce (established by Reorganization Plan No. 2 of 1965, 79 Stat. 1318), including the offices of Administrator of the Environmental Science Services Administration and Deputy Administrator of the Environmental Science Services Administration.

(2) The Bureau of Commercial Fisheries in the Department of the Interior (16 U.S.C. 742b), including the office of Director of the Bureau of Commercial Fisheries.

(b) Such provisions as may be necessary with respect to terminating any outstanding affairs shall be made by the Secretary of Commerce in the case of the Environmental Science Services Administration and by the Secretary of the Interior in the case of the Bureau of Commercial Fisheries.

## **MESSAGE OF THE PRESIDENT <sup>2</sup>**

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 4 of 1970, prepared in accordance with chapter 9 of title 5 of the United States Code. The plan would transfer to the Secretary of Commerce various functions relating to the oceans and atmosphere, including commercial fishery functions, and would establish a National Oceanic and Atmospheric Administration in the Department of Commerce. My reasons for transmitting this plan are stated in a more extended accompanying message.

After investigation, I have found and hereby declare that each reorganization included in Reorganization Plan No. 4 of 1970 is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code. In particular, the plan is responsive to section 901(a)(1), "to promote the better execution of the laws, the more effective management of the executive branch and of its agencies and functions, and the expeditious administration of the public business;" and section 901(a)(3), "to increase the efficiency of the operations of the Government to the fullest extent practicable."

The reorganizations provided for in the plan make necessary the appointment and compensation of new officers as specified in section 2 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for other officers in the executive branch who have similar responsibilities.

The reorganization plan should result in the more efficient operation of the Government. It is not practical, however, to itemize or aggregate the exact expenditure reductions which will result from this action.

**RICHARD NIXON.**

THE WHITE HOUSE, July 9, 1970.

**EXECUTIVE ORDER NO. 11567**

Ex. Ord. No. 11567, Nov. 16, 1970, 35 F.R. 17701, which prescribed the compensation of the Director and Deputy Director of the Bureau of Domestic Commerce, was superseded by Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, formerly set out below.

**EXECUTIVE ORDER NO. 11759**

Ex. Ord. No. 11759, Jan. 15, 1974, 39 F.R. 2077, which related to compensation of certain officials in the Domestic and International Business Administration, was superseded by Ex. Ord. No. 12096, Nov. 2, 1978, 43 F.R. 51597, formerly set out below.

**EXECUTIVE ORDER NO. 12096**

Ex. Ord. No. 12096, Nov. 2, 1978, 43 F.R. 51597, which related to compensation of certain officials in the Industry and Trade Administration, was revoked by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989, set out as a note under section 2171 of Title 19, Customs Duties.

<sup>1</sup> *So in original. Probably should be followed by a semicolon.*

<sup>2</sup> *For additional Message of the President see Reorganization Plan No. 3 of 1970, Title 5, Appendix, Government Officers and Employees.*

**§1511a. Repealed. Pub. L. 95–219, §3(a)(2), Dec. 28, 1977, 91 Stat. 1613**

Section, Pub. L. 94–370, §15(a), July 26, 1976, 90 Stat. 1032, authorized appointment and set forth compensation level for an Associate Administrator for Coastal Zone Management.

**§1511b. United States fishery trade officers**

**(a) Appointment**

For purposes of carrying out export promotion and other fishery development responsibilities, the Secretary of Commerce (hereinafter in this section referred to as the "Secretary") shall appoint not fewer than six officers who shall serve abroad to promote United States fishing interests. These officers shall be knowledgeable about the United States fishing industry, preferably with experience derived from the harvesting, processing, or marketing sectors of the industry or from the administration of fisheries programs. Such officers, who shall be employees of the Department of Commerce, shall have the designation of fishery trade officers.

**(b) Assignment**

Upon the request of the Secretary, the Secretary of State shall officially assign fishery trade officers to such diplomatic missions of the United States as the Secretary designates (three of which shall be those in Brussels, Belgium; Rome, Italy; and Tokyo, Japan) and shall obtain for them diplomatic privileges and immunities equivalent to those enjoyed by foreign service personnel of comparable rank and salary.

**(c) Functions of fishery trade officers**

The functions of fishery trade officers appointed under subsection (a) shall be—

(1) to increase the effectiveness of United States fishery export promotion efforts through such activities as the coordination of market development efforts and the provision of services and facilities for exporters of United States fishery products;

(2) to develop, maintain, and make available to interested persons listings of (A) trade, government, and other organizations that are concerned with, or have an interest in, international trade in United States fishery products, and (B) United States fishery products available for such trade;

(3) to prepare quarterly reports regarding (A) the supply, demand, and prices of each United States fishery product exported, or for which there may be export potential, to the foreign nation or area concerned, and (B) the trade barriers or incentives of such nation or area that affect imports of such products;

(4) to prepare weekly statements regarding the prices for each fishery product for which there may be United States export potential to the foreign nation or area concerned; and

(5) to carry out such other functions as the Secretary may require.

**(d) Administration**

The Secretary of State and the Secretary shall enter into cooperative arrangements concerning the provision of office space, equipment, facilities, clerical services, and such other administrative support as may be required for fishery trade officers and their families.

(Pub. L. 96-561, title II, §211, Dec. 22, 1980, 94 Stat. 3290.)

## **§1511c. Estuarine Programs Office**

**(a) Establishment**

The Administrator of the National Oceanic and Atmospheric Administration (hereinafter in this section referred to as the "Administrator") shall establish within the Administration an Estuarine Programs Office.

**(b) Functions**

The Estuarine Programs Office shall—

(1) develop and implement a national estuarine strategy for the Administration that integrates the research, regulatory, and trusteeship responsibilities of the Administration;

(2) coordinate the estuarine activities of the various organizations within the Administration, including activities in estuarine research and assessment, fisheries research, coastal management, and habitat conservation;

(3) coordinate the estuarine activities of the Administration with the activities of other Federal and State agencies; and

(4) provide technical assistance to the Administrator, to other Federal agencies, and to State and local government agencies in—

(A) assessing the condition of estuaries;

(B) identifying estuaries of critical national or regional importance;

(C) identifying technical and management alternatives for the restoration and protection of estuarine resources; and

(D) monitoring the implementation and effectiveness of estuarine management plans.

**(c) Authorization**

There are authorized to be appropriated to the Administration not to exceed \$500,000 for fiscal year 1987, \$530,000 for fiscal year 1988, \$560,000 for fiscal year 1989, and \$600,000 for fiscal year 1990 to carry out the provisions of this section.

(Pub. L. 99-659, title IV, §406, Nov. 14, 1986, 100 Stat. 3738.)

## **§1511d. Chesapeake Bay Office**

**(a) Establishment**

(1) The Secretary of Commerce shall establish, within the National Oceanic and Atmospheric Administration, an office to be known as the Chesapeake Bay Office (in this section referred to as the "Office").

(2) The Office shall be headed by a Director who shall be appointed by the Secretary of Commerce, in consultation with the Chesapeake Executive Council. Any individual appointed as

Director shall have knowledge and experience in research or resource management efforts in the Chesapeake Bay.

(3) The Director may appoint such additional personnel for the Office as the Director determines necessary to carry out this section.

**(b) Functions**

The Office, in consultation with the Chesapeake Executive Council, shall—

(1) provide technical assistance to the Administrator, to other Federal departments and agencies, and to State and local government agencies in—

(A) assessing the processes that shape the Chesapeake Bay system and affect its living resources;

(B) identifying technical and management alternatives for the restoration and protection of living resources and the habitats they depend upon; and

(C) monitoring the implementation and effectiveness of management plans;

(2) develop and implement a strategy for the National Oceanic and Atmospheric Administration that integrates the science, research, monitoring, data collection, regulatory, and management responsibilities of the Secretary of Commerce in such a manner as to assist the cooperative, intergovernmental Chesapeake Bay Program to meet the commitments of the Chesapeake Bay Agreement;

(3) coordinate the programs and activities of the various organizations within the National Oceanic and Atmospheric Administration, the Chesapeake Bay Regional Sea Grant Programs, and the Chesapeake Bay units of the National Estuarine Research Reserve System, including—

(A) programs and activities in—

(i) coastal and estuarine research, monitoring, and assessment;

(ii) fisheries research and stock assessments;

(iii) data management;

(iv) remote sensing;

(v) coastal management;

(vi) habitat conservation and restoration; and

(vii) atmospheric deposition; and

(B) programs and activities of the Cooperative Oxford Laboratory of the National Ocean Service with respect to—

(i) nonindigenous species;

(ii) estuarine and marine species pathology;

(iii) human pathogens in estuarine and marine environments; and

(iv) ecosystem health;

(4) coordinate the activities of the National Oceanic and Atmospheric Administration with the activities of the Environmental Protection Agency and other Federal, State, and local agencies;

(5) establish an effective mechanism which shall ensure that projects have undergone appropriate peer review and provide other appropriate means to determine that projects have acceptable scientific and technical merit for the purpose of achieving maximum utilization of available funds and resources to benefit the Chesapeake Bay area;

(6) remain cognizant of ongoing research, monitoring, and management projects and assist in the dissemination of the results and findings of those projects; and

(7) submit a biennial report to the Congress and the Secretary of Commerce with respect to the activities of the Office and on the progress made in protecting and restoring the living resources and habitat of the Chesapeake Bay, which report shall include an action plan consisting of—

(A) a list of recommended research, monitoring, and data collection activities necessary to continue implementation of the strategy described in paragraph (2); and

(B) proposals for—

(i) continuing any new National Oceanic and Atmospheric Administration activities in the



Chesapeake Bay; and

(ii) the integration of those activities with the activities of the partners in the Chesapeake Bay Program to meet the commitments of the Chesapeake 2000 agreement and subsequent agreements.

**(c) Chesapeake Bay fishery and habitat restoration small watershed grants program**

**(1) In general**

The Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration (in this section referred to as the "Director"), in cooperation with the Chesapeake Executive Council, shall carry out a community-based fishery and habitat restoration small grants and technical assistance program in the Chesapeake Bay watershed.

**(2) Projects**

**(A) Support**

The Director shall make grants under this subsection to pay the Federal share of the cost of projects that are carried out by entities eligible under paragraph (3) for the restoration of fisheries and habitats in the Chesapeake Bay.

**(B) Federal share**

The Federal share under subparagraph (A) shall not exceed 75 percent.

**(C) Types of projects**

Projects for which grants may be made under this subsection include—

- (i) the improvement of fish passageways;
- (ii) the creation of natural or artificial reefs or substrata for habitats;
- (iii) the restoration of wetland or sea grass;
- (iv) the production of oysters for restoration projects; and
- (v) the prevention, identification, and control of nonindigenous species.

**(3) Eligible entities**

The following entities are eligible to receive grants under this subsection:

(A) The government of a political subdivision of a State in the Chesapeake Bay watershed, and the government of the District of Columbia.

(B) An organization in the Chesapeake Bay watershed (such as an educational institution or a community organization)—

- (i) that is described in section 501(c) of title 26 and is exempt from taxation under section 501(a) of that title; and
- (ii) that will administer such grants in coordination with a government referred to in subparagraph (A).

**(4) Additional requirements**

The Director may prescribe any additional requirements, including procedures, that the Director considers necessary to carry out the program under this subsection.

**(d) Chesapeake Executive Council**

For purposes of this section, "Chesapeake Executive Council" means the representatives from the Commonwealth of Virginia, the State of Maryland, the Commonwealth of Pennsylvania, the Environmental Protection Agency, the District of Columbia, and the Chesapeake Bay Commission, who are signatories to the Chesapeake Bay Agreement, and any future signatories to that Agreement.

**(e) Authorization of appropriations**

There is authorized to be appropriated to the Department of Commerce for the Chesapeake Bay Office \$6,000,000 for each of fiscal years 2002 through 2006.

(Pub. L. 102–567, title III, §307, Oct. 29, 1992, 106 Stat. 4284; Pub. L. 107–372, title IV, §401(a), Dec. 19, 2002, 116 Stat. 3096.)

## EDITORIAL NOTES

### AMENDMENTS

**2002**—Pub. L. 107–372 substituted "Chesapeake Bay Office" for "Chesapeake Bay Estuarine Resources Office" in section catchline and amended text generally, substituting provisions establishing Office, describing functions, establishing habitat restoration small watershed grants program, and authorizing appropriations, for provisions establishing Office, describing functions, and requiring identification of funding request in President's annual budget.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### MULTIPLE SPECIES MANAGEMENT STRATEGY

Pub. L. 107–372, title IV, §401(c), Dec. 19, 2002, 116 Stat. 3099, provided that:

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 19, 2002], the Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration shall begin a 5-year study, in cooperation with the scientific community of the Chesapeake Bay, appropriate State and interstate resource management entities, and appropriate Federal agencies—

"(A) to determine and expand the understanding of the role and response of living resources in the Chesapeake Bay ecosystem; and

"(B) to develop a multiple species management strategy for the Chesapeake Bay.

"(2) REQUIRED ELEMENTS OF STUDY.—In order to improve the understanding necessary for the development of the strategy under paragraph (1)(B), the study shall—

"(A) determine the current status and trends of fish and shellfish that live in the Chesapeake Bay and its tributaries and are selected for study;

"(B) evaluate and assess interactions among the fish and shellfish referred to in subparagraph (A) and other living resources, with particular attention to the impact of changes within and among trophic levels; and

"(C) recommend management actions to optimize the return of a healthy and balanced ecosystem for the Chesapeake Bay."

### **§1511e. Repealed. Pub. L. 111–314, §6, Dec. 18, 2010, 124 Stat. 3444**

Section, Pub. L. 105–309, §8, Oct. 30, 1998, 112 Stat. 2937; Pub. L. 107–305, §14, Nov. 27, 2002, 116 Stat. 2380; Pub. L. 108–447, div. B, title II, Dec. 8, 2004, 118 Stat. 2878, related to Office of Space Commercialization. See section 50702 of Title 51, National and Commercial Space Programs.

### **§1512. Powers and duties of Department**

It shall be the province and duty of said Department to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, and fishery industries of the United States; and to this end it shall be vested with jurisdiction and control of the departments, bureaus, offices, and branches of the public service hereinafter specified, and with such other powers and duties as may be prescribed by law.

(Feb. 14, 1903, ch. 552, §3, 32 Stat. 826; Pub. L. 97–31, §12(7), Aug. 6, 1981, 95 Stat. 154.)

## EDITORIAL NOTES

### CODIFICATION

Section was formerly classified to section 596 of Title 5 prior to the general revision and enactment of Title 5 by Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 378.

### AMENDMENTS

**1981**—Pub. L. 97–31 struck out references to shipping and transportation facilities.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### MANUFACTURING.GOV HUB

Pub. L. 117–328, div. BB, title I, §101, Dec. 29, 2022, 136 Stat. 5551, provided that:

"(a) DEFINITION.—In this section, the term 'Secretary' means the Secretary of Commerce.

"(b) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act [Dec. 29, 2022], the Secretary, in coordination with the Chief Information Officer of the Department of Commerce, shall modify the manufacturing.gov website by establishing a section of the website to be known as the 'manufacturing.gov hub'.

"(c) FUNCTIONS.—The manufacturing.gov hub established under subsection (b) shall—

"(1) serve as the primary hub for information relating to every Federal manufacturing program, including the programs identified in the report of the Government Accountability Office entitled 'U.S. Manufacturing' (GAO 17–240), published on March 28, 2017;

"(2) provide the contact information of relevant program offices carrying out the Federal manufacturing programs described in paragraph (1);

"(3) provide an avenue for public input and feedback relating to—

"(A) the functionality of the website of the Department of Commerce;

"(B) the Federal manufacturing programs described in paragraph (1); and

"(C) any other manufacturing-related challenges experienced by manufacturers in the United

States;

"(4) establish web pages within the hub that shall focus on—

"(A) technology and research and development;

"(B) trade;

"(C) workforce development and training;

"(D) industrial commons and supply chains; and

"(E) small and medium manufacturers; and

"(5) use machine learning to—

"(A) identify frequently asked questions; and

"(B) disseminate to the public answers to the questions identified under subparagraph (A).

"(d) NO ADDITIONAL FUNDS.—No additional funds are authorized to be appropriated for the purpose of carrying out this section."

### ASSISTANCE TO FISHERY PARTICIPANTS

Pub. L. 116–136, div. B, title II, §12005, Mar. 27, 2020, 134 Stat. 518, provided that:

"(a) IN GENERAL.—The Secretary of Commerce is authorized to provide assistance to Tribal, subsistence, commercial, and charter fishery participants affected by the novel coronavirus (COVID–19), which may include direct relief payments.

"(b) FISHERY PARTICIPANTS.—For the purposes of this section, 'fishery participants' include Tribes, persons, fishing communities, aquaculture businesses not otherwise eligible for assistance under part 1416 of title 7 of the Code of Federal Regulations for losses related to COVID–19, processors, or other fishery-related businesses, who have incurred, as a direct or indirect result of the coronavirus pandemic—

"(1) economic revenue losses greater than 35 percent as compared to the prior 5-year average revenue; or

"(2) any negative impacts to subsistence, cultural, or ceremonial fisheries.

"(c) ROLLING BASIS.—Funds may be awarded under this section on a rolling basis, and within a fishing season, to ensure rapid delivery of funds during the COVID–19 pandemic.

"(d) APPROPRIATIONS.—In addition to funds that are otherwise made available to assist fishery participants under this Act [div. B of Pub. L. 116–136, see Tables for classification], there are authorized to be appropriated, and there are appropriated, \$300,000,000, to remain available until September 30, 2021, to carry out this section, of which up to 2 percent may be used for administration and oversight activities.

"(e) EMERGENCY REQUIREMENT.—The amount provided by this section is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 901(b)(2)(A)(i)]."

[For definition of "coronavirus" as used in section 12005 of Pub. L. 116–136, set out above, see section 23005 of Pub. L. 116–136, set out as a note under section 162b of Title 2, The Congress.]

## EXECUTIVE DOCUMENTS

### EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Commerce, see Parts 1, 2, and 4 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of Title 42, The Public Health and Welfare.

### EXECUTIVE ORDER NO. 12864

Ex. Ord. No. 12864, Sept. 15, 1993, 58 F.R. 48773, as amended by Ex. Ord. No. 12890, Dec. 30, 1993, 59 F.R. 499; Ex. Ord. No. 12921, June 13, 1994, 59 F.R. 30667; Ex. Ord. No. 12970, Sept. 14, 1995, 60 F.R. 48359, which established the United States Advisory Council on the National Information Infrastructure, was revoked by Ex. Ord. No. 13062, §3(d), Sept. 29, 1997, 62 F.R. 51756, formerly set out as a note under section 1013 of Title 5, Government Organization and Employees.

### EX. ORD. NO. 13577. ESTABLISHMENT OF THE SELECTUSA INITIATIVE

Ex. Ord. No. 13577, June 15, 2011, 76 F.R. 35715, 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 support private-sector job creation and enhance economic growth by encouraging and supporting business investment in the United States, it is hereby ordered as follows:

**SECTION 1. *Policy.*** Business investment in the United States by both domestic and foreign firms, whether in the form of new equipment or facilities or the expansion of existing facilities, is a major engine of economic growth and job creation. In an era of global capital mobility, the United States faces increasing competition for retaining and attracting industries of the future and the jobs they create. My Administration is committed to enhancing the efforts of the United States to win the growing global competition for business investment by leveraging our advantages as the premier business location in the world.

As a place to do business, the United States offers a hardworking, diverse, and educated workforce, strong protection of intellectual property rights, a predictable and transparent legal system, relatively low taxes, highly developed infrastructure, and access to the world's most lucrative consumer market. We welcome both domestic and foreign businesses to invest across the broad spectrum of the U.S. market.

The Federal Government lacks the centralized investment promotion infrastructure and resources to attract business investment that is often found in other industrialized countries. Currently, States and cities are competing against foreign governments to attract business investment. Our Nation needs to retain business investment and pursue and win new investment in the United States by better marketing our strengths, providing clear, complete, and consistent information, and removing unnecessary obstacles to investment.

**SEC. 2. *SelectUSA Initiative.*** (a) *Establishment.* There is established the SelectUSA Initiative (Initiative), a Government-wide initiative to attract and retain investment in the American economy. The Initiative is to be housed in the Department of Commerce. The mission of this Initiative shall be to facilitate business investment in the United States in order to create jobs, spur economic growth, and promote American competitiveness. The Initiative will provide enhanced coordination of Federal activities in order to increase the impact of Federal resources that support both domestic and foreign investment in the United States. In providing assistance, the Initiative shall work to maximize impact on business investment, job creation, and economic growth. The Initiative shall work on behalf of the entire Nation and shall exercise strict neutrality with regard to specific locations within the United States.

(b) *Functions.*

(i) The Initiative shall coordinate outreach and engagement by the Federal Government to promote the United States as the premier location to operate a business.

(ii) The Initiative shall serve as an ombudsman that facilitates the resolution of issues involving Federal programs or activities related to pending investments.

(iii) The Initiative shall provide information to domestic and foreign firms on: the investment climate in the United States; Federal programs and incentives available to investors; and State and local economic development organizations.

(iv) The Initiative shall report quarterly to the President through the National Economic Council, the Domestic Policy Council, and the National Security Staff, describing its outreach activities, requests for information received, and efforts to resolve issues.

(c) *Administration.* The Department of Commerce shall provide funding and administrative support for the Initiative through resources and staff assigned to work on the Initiative, to the extent permitted by law and within existing appropriations. The Secretary of Commerce shall designate a senior staff member as the

Executive Director to lead the Initiative. The Executive Director shall coordinate activities both within the Department of Commerce and with other executive departments and agencies that have activities relating to business investment decisions.

(d) *Federal Interagency Investment Working Group.*

(i) There is established the Federal Interagency Investment Working Group (Working Group), which will be convened and chaired by the Initiative's Executive Director, in coordination with the Director of the National Economic Council.

(ii) The Working Group shall consist of senior officials from the Departments of State, the Treasury, Defense, Justice, the Interior, Agriculture, Commerce, Labor, Veterans Affairs, Health and Human Services, Housing and Urban Development, Transportation, Energy, Education, and Homeland Security, the Environmental Protection Agency, the Small Business Administration, the Export-Import Bank of the United States, the Office of the United States Trade Representative, the Domestic Policy Council, the National Economic Council, the National Security Staff, the Office of Management and Budget, and the Council of Economic Advisers, as well as such additional executive departments, agencies, and offices as the Secretary of Commerce may designate. Senior officials shall be designated by and report to the Deputy Secretary or official at the equivalent level of their respective offices, departments, and agencies.

(iii) The Working Group shall coordinate activities to promote business investment and respond to specific issues that affect business investment decisions.

(iv) The Department of Commerce shall provide funding and administrative support for the Working Group to the extent permitted by law and within existing appropriations.

(e) *Department and Agency Participation.* All executive departments and agencies that have activities relating to business investment decisions shall cooperate with the Initiative, as requested by the Initiative's Executive Director, to support its objectives.

SEC. 3. *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.

[Reference to the National Security Staff deemed to be a reference to the National Security Council Staff, see Ex. Ord. No. 13657, set out as a note under section 3021 of Title 50, War and National Defense.]

**EX. ORD. NO. 13731. GLOBAL ENTREPRENEURSHIP**

Ex. Ord. No. 13731, June 24, 2016, 81 F.R. 42221, 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. *Policy.* The American spirit of entrepreneurship is one of our most admired values around the world, and the United States has produced many of the world's most respected businesses and inspiring business creators. At a time when many societies confront extremism, unemployment, and slow economic growth, entrepreneurship holds out the promise of opportunity, prosperity, and security.

It is in the national interest for the Federal Government to support innovation, global entrepreneurship, and the American private sector. Linking entrepreneurs with capital, new networks, and markets and providing skills and training will allow them to grow their businesses and positively impact their communities. It is also necessary that we help enable our global partners to invest in the tools and infrastructure that make this possible, including high-speed broadband; business incubators and accelerators; regional economic development programs and extension services; international people-to-people exchange programs; and the technical, export, and business assistance and mentoring that entrepreneurs need worldwide in order to drive economic growth and job creation.

This order sets forth the administration and goals of several programs designed to connect American and foreign entrepreneurs with the Federal Government and promote entrepreneurship across the United States and around the world by sharing the knowledge, experience, and connectivity necessary to help develop the next generation of entrepreneurs.

SEC. 2. *Administration of the Presidential Ambassadors for Global Entrepreneurship Program.* (a) The Secretary of Commerce (Secretary) shall administer the Presidential Ambassadors for Global Entrepreneurship Program (PAGE Program) to enable individuals who exemplify the spirit of American entrepreneurship and who have proven track records to use their networks, platforms, and voices to support aspiring entrepreneurs and advance public policies that encourage entrepreneurship in the United States and around the globe. Individuals selected for participation in the PAGE Program shall be known as PAGE Members.

(b) The PAGE Program shall be administered by a Director, appointed by the Secretary under authorities of the Department of Commerce (Commerce). Commerce shall provide necessary staff, resources, and administrative support for the PAGE Program to the extent permitted by law and within existing appropriations.

SEC. 3. *PAGE Advisory Board.* (a) The Secretary shall establish an Advisory Board to advise the Secretary by recommending such priorities, standards, and partnerships as may be beneficial to fulfill the goals of the PAGE Program and to identify potential opportunities for PAGE Members to support the PAGE Program.

(b) The Secretary shall serve as Chair of the Advisory Board. In addition to the Chair, the membership of the Advisory Board shall include the Secretary of State, the Administrator of the United States Agency for International Development (USAID), the Administrator of the Small Business Administration (SBA), and the Administrator of the National Aeronautics and Space Administration (NASA), or their designees, and such other representatives of executive departments and agencies (agencies) as may be designated by the Secretary. Consistent with law, the Advisory Board may consult with industry, academia, and other non-federal entities to ensure that the PAGE Program is continually identifying opportunities to apply innovative practices in effective ways to promote entrepreneurship.

SEC. 4. *Selection of PAGE Members.* (a) The Secretary, in accordance with applicable law, shall prescribe appropriate procedures for the selection of PAGE Members. PAGE Members will total no more than 25 at any given time.

(b) PAGE Members may participate in the PAGE Program for periods of 2 years, and may be selected to participate for additional periods at the discretion of the Secretary.

SEC. 5. *Responsibilities of Agencies.* The Department of State (State), USAID, and SBA are encouraged to work with the Secretary and the Advisory Board to maximize the PAGE Program's benefits to innovation, global entrepreneurship, and the American private sector through the identification of opportunities for entrepreneurs to access capital, education, mentorships, and other services that will help to grow their businesses.

SEC. 6. *Global Entrepreneurship Summit.* (a) The Secretary of State shall coordinate the Federal Government's participation in the Global Entrepreneurship Summit (GES), which will focus on connecting entrepreneurs around the world and empowering them to expand their enterprises and build lasting relationships with the United States; increasing global economic prosperity; building secure communities; promoting responsible business conduct, including business practices to encourage greater representation of all people, including women, youth, and minorities; and using innovation to solve pressing global challenges.

(b) State shall coordinate with Commerce, USAID, and SBA to identify and carry out programs and activities that will further the goals of the GES to the extent permitted by law and within existing appropriations.

SEC. 7. *Accelerating Entrepreneurship and Economic Opportunity by Expanding Internet Access Globally.* State, in coordination with other agencies, multilateral institutions, foreign countries, and stakeholders, shall work to actively promote global Internet connectivity. Specifically, the Global Connect Initiative shall focus on encouraging foreign countries to prioritize Internet connectivity in development plans, promoting the formation of region-specific multi-sector working groups to ensure technical and regulatory best practices, and encouraging the development of digital literacy programs in developing nations.

SEC. 8. *Global Connect International Connectivity Steering Group.* (a) In order to ensure a coordinated and consistent approach in agency implementation of the goals set forth in section 7 of this order, there is hereby established a Global Connect International Connectivity Steering Group (Steering Group), chaired by State.

(b) The Steering Group shall be composed of a representative from each of the following agencies:

- (i) the Department of State;
- (ii) the Department of the Treasury;
- (iii) the Department of Defense;
- (iv) the Department of Commerce;
- (v) the Department of Transportation;
- (vi) the United States Trade Representative;
- (vii) the Small Business Administration;

- (viii) the United States Trade and Development Agency;
  - (ix) the Millennium Challenge Corporation;
  - (x) the Overseas Private Investment Corporation [now the United States International Development Finance Corporation];
  - (xi) the Export-Import Bank of the United States; and
  - (xii) the United States Agency for International Development.
- (c) The Chair shall invite a representative from the Federal Communications Commission, and may invite a representative from any other department, agency, component, or office the Chair deems appropriate, to participate as a member of the Steering Group.
- (d) The Chair shall consult with the following entities in setting the agenda of the Steering Group and ensuring coordination with other Administration policies:
- (i) the National Economic Council;
  - (ii) the National Security Council Staff; and
  - (iii) the Office of Science and Technology Policy.
- (e) Not later than 6 months after the date of this order, the Steering Group shall report to the Secretary of State. In this report, the Steering Group shall:
- (i) describe the current state of agency procedures, requirements, programs, and policies related to the goals of the Global Connect Initiative; and
  - (ii) provide updates on the strategy and the evaluation criteria for Federal contributions to the Global Connect Initiative.
- (f) The Secretary of State may request a periodic update of this report every 12 months thereafter, through 2020, on progress that has been made in achieving the goals of the Global Connect Initiative.
- SEC. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:
- (i) the authority granted by law to a 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.

BARACK OBAMA.

## **§1513. Duties and powers vested in Department**

All duties performed and all power and authority possessed or exercised by the head of any executive department in and over any bureau, office, officer, board, branch, or division of the public service transferred to the Department of Commerce, or any business arising therefrom or pertaining thereto, or in relation to the duties performed by and authority conferred by law upon such bureau, officer, office, board, branch, or division of the public service, whether of an appellate or revisory character or otherwise, shall be vested in and exercised by the Secretary of Commerce.

(Feb. 14, 1903, ch. 552, §10, 32 Stat. 829.)

### **EDITORIAL NOTES**

#### **CODIFICATION**

Section was formerly classified to section 599 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 378.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **CHANGE OF NAME**

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that the Department of Commerce and Labor and Secretary of Commerce and Labor were to be thereafter called the Department of Commerce and Secretary of Commerce and that the act creating the Department of Commerce and Labor (act Feb. 14, 1903) was amended

accordingly.

## **GOVERNMENT INTEREST IN PATENTS**

For duties and powers of Secretary of Commerce with respect to interest of Government in patents, see executive orders set out as notes under section 266 of Title 35, Patents.

## **EXECUTIVE DOCUMENTS**

### **TRANSFER OF FUNCTIONS**

For transfer of functions of other officers, employees, and agencies of Department of Commerce, with certain exceptions, to Secretary of Commerce, with power to delegate, see Reorg. Plan No. 5 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out as a note under section 1501 of this title.

## **§1513a. Cost estimates for National Oceanic and Atmospheric Administration programs included in Department budget justification**

Beginning in fiscal year 2007 and for each fiscal year thereafter, the Secretary of Commerce shall include in the budget justification materials that the Secretary submits to Congress in support of the Department of Commerce budget (as submitted with the budget of the President under section 1105(a) of title 31) an estimate for each National Oceanic and Atmospheric Administration procurement, acquisition and construction program having a total multiyear program cost of more than \$5,000,000 and an estimate of the budgetary requirements for each such program for each of the five subsequent fiscal years.

(Pub. L. 109–108, title II, Nov. 22, 2005, 119 Stat. 2312.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Section is from the Department of Commerce and Related Agencies Appropriations Act, 2006, which is title II of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **SIMILAR PROVISIONS**

Similar provisions were contained in the following appropriation acts:

Pub. L. 118–42, div. C, title I, Mar. 9, 2024, 138 Stat. 128.  
Pub. L. 117–328, div. B, title I, Dec. 29, 2022, 136 Stat. 4517.  
Pub. L. 117–103, div. B, title I, Mar. 15, 2022, 136 Stat. 108.  
Pub. L. 116–260, div. B, title I, Dec. 27, 2020, 134 Stat. 1241.  
Pub. L. 116–93, div. B, title I, Dec. 20, 2019, 133 Stat. 2392.  
Pub. L. 116–6, div. C, title I, Feb. 15, 2019, 133 Stat. 98.  
Pub. L. 115–141, div. B, title I, Mar. 23, 2018, 132 Stat. 406.  
Pub. L. 115–31, div. B, title I, May 5, 2017, 131 Stat. 188.  
Pub. L. 114–113, div. B, title I, Dec. 18, 2015, 129 Stat. 2292.  
Pub. L. 113–235, div. B, title I, Dec. 16, 2014, 128 Stat. 2179.  
Pub. L. 113–76, div. B, title I, Jan. 17, 2014, 128 Stat. 49.  
Pub. L. 113–6, div. B, title I, Mar. 26, 2013, 127 Stat. 239.  
Pub. L. 112–55, div. B, title I, Nov. 18, 2011, 125 Stat. 597.  
Pub. L. 111–117, div. B, title I, Dec. 16, 2009, 123 Stat. 3119.  
Pub. L. 108–447, div. B, title II, Dec. 8, 2004, 118 Stat. 2881.

## **§1513b. Cost estimates for National Institute of Standards and Technology construction projects included in Department budget justification**



Beginning in fiscal year 2007 and for each fiscal year thereafter, the Secretary of Commerce shall include in the budget justification materials that the Secretary submits to Congress in support of the Department of Commerce budget (as submitted with the budget of the President under section 1105(a) of title 31) an estimate for each National Institute of Standards and Technology construction project having a total multiyear program cost of more than \$5,000,000 and simultaneously the budget justification materials shall include an estimate of the budgetary requirements for each such project for each of the five subsequent fiscal years.

(Pub. L. 109–108, title II, Nov. 22, 2005, 119 Stat. 2311.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Section is from the Department of Commerce and Related Agencies Appropriations Act, 2006, which is title II of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **SIMILAR PROVISIONS**

Similar provisions were contained in the following appropriation acts:

Pub. L. 118–42, div. C, title I, Mar. 9, 2024, 138 Stat. 127.  
Pub. L. 117–328, div. B, title I, Dec. 29, 2022, 136 Stat. 4516.  
Pub. L. 117–103, div. B, title I, Mar. 15, 2022, 136 Stat. 107.  
Pub. L. 116–260, div. B, title I, Dec. 27, 2020, 134 Stat. 1240.  
Pub. L. 116–93, div. B, title I, Dec. 20, 2019, 133 Stat. 2390.  
Pub. L. 116–6, div. C, title I, Feb. 15, 2019, 133 Stat. 96.  
Pub. L. 115–141, div. B, title I, Mar. 23, 2018, 132 Stat. 405.  
Pub. L. 115–31, div. B, title I, May 5, 2017, 131 Stat. 187.  
Pub. L. 114–113, div. B, title I, Dec. 18, 2015, 129 Stat. 2291.  
Pub. L. 113–235, div. B, title I, Dec. 16, 2014, 128 Stat. 2177.  
Pub. L. 113–76, div. B, title I, Jan. 17, 2014, 128 Stat. 47.  
Pub. L. 113–6, div. B, title I, Mar. 26, 2013, 127 Stat. 238.  
Pub. L. 112–55, div. B, title I, Nov. 18, 2011, 125 Stat. 596.  
Pub. L. 111–117, div. B, title I, Dec. 16, 2009, 123 Stat. 3117.  
Pub. L. 111–8, div. B, title I, Mar. 11, 2009, 123 Stat. 564.  
Pub. L. 110–161, div. B, title I, Dec. 26, 2007, 121 Stat. 1889.

## **§1514. Basic authority for performance of certain functions and activities of Department**

Appropriations are authorized for the following activities of the Department of Commerce:

(a) furnishing to employees of the Department of Commerce and other Federal agencies (including Army, Navy, and Air Force personnel where Army, Navy, or Air Force facilities or supplies are not available and upon request of the service concerned), and their dependents, in Alaska and other points outside the continental United States, free emergency medical services by contract or otherwise and free emergency medical supplies, where in the judgment of the Secretary furnishing of such supplies and services is necessary;

(b) when deemed necessary by the Secretary of Commerce, purchasing, transporting, storing, and distributing food and other subsistence supplies for resale to employees of the Department of Commerce and other Federal agencies (including Army, Navy, and Air Force personnel where Army, Navy, or Air Force facilities or supplies are not available and upon request of the service concerned), and their dependents, in Alaska and other points outside the continental United States at a reasonable value as determined by the Secretary of Commerce, the proceeds from such resales to be credited to the appropriation from which the expenditure was made;

(c) when deemed necessary by the Secretary of Commerce, the establishment, maintenance, and operation of messing facilities, by contract or otherwise, in Alaska and other points outside the continental United States where suitable family facilities are not available, such service to be furnished to employees of the Department of Commerce and other Federal agencies (including Army, Navy, and Air Force personnel where Army, Navy, or Air Force facilities are not available and upon request of the service concerned), and their dependents, in accordance with regulations established by the Secretary of Commerce, and at a reasonable value determined in accordance therewith, the proceeds from the furnishing of such services to be credited to the appropriation from which the expenditures are made;

(d) reimbursement, under regulations prescribed by the Secretary, of officers and employees in or under the Department of Commerce, for food, clothing, medicines, and other supplies furnished by them in emergencies for the temporary relief of distressed persons in remote localities;

(e) providing motion-picture equipment and film for recreation of crews of vessels of the National Ocean Survey, for recreation of employees in remote localities where such facilities are not available, and for training purposes;

(f) erecting, altering, repairing, equipping, furnishing, and maintaining, by contract or otherwise, such living and working quarters and facilities as may be necessary to carry out its authorized work at remote localities not on foreign soil where such living and working accommodations are not otherwise available.

(Oct. 26, 1949, ch. 733, 63 Stat. 907; Aug. 30, 1954, ch. 1076, §1(11), 68 Stat. 967; Pub. L. 93-608, §1(3), Jan. 2, 1975, 88 Stat. 1967.)

## EDITORIAL NOTES

### CODIFICATION

Section was formerly classified to section 596a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

### AMENDMENTS

**1975**—Subsec. (b). Pub. L. 93-608 struck out proviso requiring an annual report to Congress of the total expenditures made for such supplies and total proceeds from resales.

**1954**—Subsec. (c). Act Aug. 30, 1954, struck out proviso requiring the Secretary of Commerce to submit annually to Congress a report showing the expenditures for the establishment, maintenance, and operation of messing facilities in Alaska and other points outside the continental United States.

## EXECUTIVE DOCUMENTS

### CHANGE OF NAME

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318. Environmental Science Services Administration abolished in 1970 and its personnel, property, records, etc., transferred to National Oceanic and Atmospheric Administration by Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out as a note under section 1511 of this title. By order of Acting Associate Administrator of National Oceanic and Atmospheric Administration, 35 F.R. 19249, Dec. 19, 1970, Coast and Geodetic Survey redesignated National Ocean Survey. See notes under section 311 of this title.

## **§1515. Records, etc., of bureaus transferred to Department of Commerce**

The official records and papers on file in and pertaining exclusively to the business of any bureau, office, department, or branch of the public service transferred to the Department of Commerce, together with the furniture in use in such bureau, office, department, or branch of the public service, are transferred to the Department of Commerce.

(Feb. 14, 1903, ch. 552, §4 (part), 32 Stat. 826.)

## EDITORIAL NOTES

### CODIFICATION

Section was formerly classified to section 598 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

Section is based on the second par. of section 4 of act Feb. 14, 1903. The first par. of section 4 is classified to sections 1511 and 1516 of this title.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that the Department of Commerce and Labor and Secretary of Commerce and Labor were to be thereafter called the Department of Commerce and Secretary of Commerce and that the act creating the Department of Commerce and Labor (act Feb. 14, 1903) was amended accordingly.

### **§1516. Statistical information**

The Secretary of Commerce shall have control of the work of gathering and distributing statistical information naturally relating to the subjects confided to his department; and he shall have the power and authority to rearrange the statistical work of the bureaus and offices confided to the Department of Commerce, and to consolidate any of the statistical bureaus and offices above described. He shall also have authority to call upon other departments of the Government for statistical data and results obtained by them; and he may collate, arrange, and publish such statistical information so obtained in such manner as to him may seem wise.

(Feb. 14, 1903, ch. 552, §4 (part), 32 Stat. 826.)

## EDITORIAL NOTES

### CODIFICATION

Section was formerly classified to section 601 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

Section is based on part of the first par. of section 4 of act Feb. 14, 1903. The rest of the first par. and the second par. of section 4 are classified to sections 1511 and 1515 of this title, respectively.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### CHANGE OF NAME

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that the Department of Commerce and Labor and Secretary of Commerce and Labor were to be thereafter called the Department of Commerce and Secretary of Commerce and that the act creating the Department of Commerce and Labor (act Feb. 14, 1903) was amended accordingly.

### **§1516a. Statistics relating to social, health, and economic conditions of Americans of Spanish origin or descent**

The Department of Commerce, the Department of Labor, the Department of Health and Human Services, and the Department of Agriculture shall each collect, and publish regularly, statistics which indicate the social, health, and economic condition of Americans of Spanish origin or descent.

(Pub. L. 94-311, §2, June 16, 1976, 90 Stat. 688; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **CHANGE OF NAME**

"Department of Health and Human Services" substituted for "Department of Health, Education, and Welfare" pursuant to section 509(b) of Pub. L. 96-88, which is classified to section 3508(b) of Title 20, Education.

### **DEVELOPMENT OF PROGRAM FOR THE COLLECTION, ANALYSIS AND PUBLICATION OF DATA**

Pub. L. 94-311, §3, June 16, 1976, 90 Stat. 688, provided that: "The Director of the Office of Management and Budget, in cooperation with the Secretary of Commerce and with the heads of other data-gathering Federal agencies, shall develop a Government-wide program for the collection, analysis, and publication of data with respect to Americans of Spanish origin or descent."

### **§1517. Transfer of statistical or scientific work**

The President is authorized, by order in writing, to transfer at any time the whole or any part of any office, bureau, division, or other branch of the public service engaged in statistical or scientific work, from the Department of State, the Department of the Treasury, the Department of Defense, the Department of Justice, the United States Postal Service, or the Department of the Interior, to the Department of Commerce; and in every such case the duties and authority performed by and conferred by law upon such office, bureau, division, or other branch of the public service, or the part thereof so transferred, shall be thereby transferred with such office, bureau, division, or other branch of the public service, or the part thereof which is so transferred. All power and authority conferred by law, both supervisory and appellate, upon the department from which such transfer is made, or the Secretary thereof, in relation to the said office, bureau, division, or other branch of the public service, or the part thereof so transferred, shall immediately, when such transfer is so ordered by the President, be fully conferred upon and vested in the Department of Commerce, or the Secretary thereof, as the case may be, as to the whole or part of such office, bureau, division, or other branch of the public service so transferred.

(Feb. 14, 1903, ch. 552, §12, 32 Stat. 830; July 26, 1947, ch. 343, title II, §201(a), 61 Stat. 499; Aug. 10, 1949, ch. 412, §4, 63 Stat. 579; Pub. L. 91-375, §§4(a), 6(o), Aug. 12, 1970, 84 Stat. 773, 783.)

### **EDITORIAL NOTES**

#### **CODIFICATION**

Section was formerly classified to section 602 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

Section is based on section 12 of act Feb. 14, 1903, as originally enacted. Section 12 of the act was amended generally by Pub. L. 93-498, §23, Oct. 29, 1974, 88 Stat. 1549, and forms the basis of section 1511 of this title.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **CHANGE OF NAME**

"United States Postal Service" substituted for "Post Office Department" in text pursuant to Pub. L. 91-375, §§4(a), 6(o), Aug. 12, 1970, 84 Stat. 773, 783, which are set out as notes preceding section 101 of Title 39, Postal Service, and under section 201 of Title 39, respectively, which abolished Post Office Department, transferred its functions to United States Postal Service, and provided that references in other laws to Post Office Department shall be considered a reference to United States Postal Service.

Department of Defense substituted for Departments of the Army and Navy by act July 26, 1947, as amended Aug. 10, 1949.

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that the Department of Commerce and Labor and

Secretary of Commerce and Labor were to be thereafter called the Department of Commerce and Secretary of Commerce and that the act creating the Department of Commerce and Labor (act Feb. 14, 1903) was amended accordingly.

**METEOROLOGICAL SATELLITE (METSAT) AND ASSOCIATED GROUND SYSTEMS;  
EXPENDITURE OF FUNDS TO DEVELOP PROPOSALS TO TRANSFER OWNERSHIP TO  
PRIVATE ENTITIES PROHIBITED**

Pub. L. 98-166, title I, §101, Nov. 28, 1983, 97 Stat. 1076, provided that: "No funds made available by this Act, or any other Act, may be used—

"(1) by the Source Evaluation Board for Civil Space Remote Sensing as established by the Secretary of Commerce to develop or issue a request for proposal to transfer the ownership or lease the use of any meteorological satellite (METSAT) or associated ground system to any private entity; or

"(2) by the National Oceanic and Atmospheric Administration to transfer the ownership of any meteorological satellite (METSAT) or associated ground system to any private entity."

**CIVIL LAND REMOTE SENSING SATELLITE SYSTEM; TERMINATION**

Pub. L. 98-52, title II, §202, July 15, 1983, 97 Stat. 285, as amended by Pub. L. 103-437, §5(b)(1), Nov. 2, 1994, 108 Stat. 4582, provided that: "Notwithstanding title II of the National Aeronautics and Space Administration Authorization Act, 1983 [Pub. L. 97-324, set out as a note below], the Secretary of Commerce shall not transfer the ownership or management of any civil land, meteorological, or ocean remote sensing space satellite system and associated ground system equipment unless, in addition to any other requirement of law—

"(1) the Secretary of Commerce or his designee has presented, in writing, to the Speaker of the House of Representatives and the President of the Senate, and to the Committee on Science, Space, and Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a comprehensive statement of recommended policies, procedures, conditions, and limitations to which any transfer should be subject; and

"(2) the Congress thereafter enacts a law which contains such policies, procedures, conditions, or limitations (or a combination thereof) as it deems appropriate for any such transfer."

Pub. L. 97-324, title II, §201, Oct. 15, 1982, 96 Stat. 1601, as amended by Pub. L. 98-365, title VI, §608, July 17, 1984, 98 Stat. 466; Pub. L. 103-437, §5(b)(2), Nov. 2, 1994, 108 Stat. 4582, provided that:

"(a) The Secretary of Commerce is authorized to plan and provide for the management and operation of civil remote-sensing space systems, which may include the Landsat 4 and 5 satellites and associated ground system equipment transferred from the National Aeronautics and Space Administration; to provide for user fees; and to plan for the transfer of the operation of civil remote-sensing space systems to the private sector when in the national interest.

"(b)(1) As part of his planning for the transfer of the ownership and operation of civil operational land remote sensing satellite systems to the private sector the Secretary shall—

"(A) Conduct a study to define the current, projected, and potential needs of the government for land remote sensing data.

"(B) Determine and describe the equipment, software, and data inventory that could be transferred to the private sector.

"(C) Compare various feasible financial and organizational approaches for such a transfer. Criteria for the comparison should include considerations such as: maintenance of data continuity; maintenance of United States leadership; national security; international obligations; potential for market growth; marketing ability; sunk and projected cost to the Government; independence of subsidy or financial guarantee from the Government; potential of financial return to the Government; and price of data to users. The following institutional alternatives should be compared: (i) wholly private ownership and operation of the system by an entity competitively selected; (ii) phased-in Government/private ownership and operation; (iii) a legislatively chartered privately owned corporation; and (iv) continued ownership and operation by the Federal Government.

The Secretary shall complete these studies and report on them to the Congress by February 1, 1983.

"(2) In addition to the studies and comparisons called for in section 201(b)(1) the Secretary shall fund at least two parallel studies outside the government independently to assess the alternatives called for in section 201(b)(1)(C). These studies should be submitted to the Congress by April 1, 1983.

"(c) There is authorized to be appropriated \$14,955,000 for the fiscal year 1983, for the purpose of carrying out the provisions of this title [this note].

"(d) No moneys authorized by this title [this note] shall be used to transfer to the private sector the

ownership or management of any civil land remote sensing space satellite system and associated ground system equipment unless (A) a period of thirty days has passed after the receipt by the Speaker of the House of Representatives, the President of the Senate, the House Committee on Science, Space, and Technology, and the Senate Committee on Commerce, Science, and Transportation, of a message from the Secretary of Commerce or his designee containing a full and complete plan for the action proposed to be taken together with the reasons therefor and expected funding impacts, or (B) each such committee before the expiration of such period has transmitted to the Secretary written notice to the effect that such committee has no objection to the proposed action."

## EXECUTIVE DOCUMENTS

### EX. ORD. NO. 11564. TRANSFER OF CERTAIN PROGRAMS AND ACTIVITIES TO SECRETARY OF COMMERCE

Ex. Ord. No. 11564, Oct. 6, 1970, 35 F.R. 15801, provided:

By virtue of the authority vested in me by section 12 of the Act of February 14, 1903, as amended (15 U.S.C. 1517) [this section] and section 12(d) of the Act of October 15, 1966 (49 U.S.C. 1651 note), as President of the United States, and in further implementation of Reorganization Plan No. 4 of 1970 [set out as a note under section 1511 of this title] transferring certain functions to the Secretary of Commerce and establishing the National Oceanic and Atmospheric Administration in the Department of Commerce, it is ordered as follows:

SECTION 1. (a) The following programs and activities are hereby transferred to the Secretary of Commerce:

(1) The National Oceanographic Instrumentation Center of the Department of the Navy, Department of Defense.

(2) The National Oceanographic Data Center of the Department of the Navy, Department of Defense.

(3) The Ocean Station Vessel Meteorological Program of the Department of the Navy, Department of Defense.

(4) The Trust Territories Upper Air Observation Program of the Department of the Navy, Department of Defense.

(5) The Hydroclimatic Network Program of the Corps of Engineers of the Department of the Army, Department of Defense.

(6) The National Data Buoy Development Project of the Coast Guard, Department of Transportation.

(b) All of the power and authority of the transferor Departments conferred by law which is related to or incidental to, in support of, or necessary for, the operation of the programs and activities transferred by subsection (a) above, may be utilized by the Secretary of Commerce for the operation of those programs and activities.

SEC. 2. (a) Such personnel and positions and so much of the property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, authorized, affected, available, or to be made available in connection with the operation of the programs and activities transferred by section 1 hereof from the Department of Defense and the Department of Transportation as the Director of the Office of Management and Budget shall determine shall be transferred from those Departments to the Department of Commerce at such time or times as the Director shall direct.

(b) Subject to the direction of the Director of the Office of Management and Budget, the appropriate officers of the Government shall make necessary administrative arrangements for the assumption by the Secretary of Commerce of the programs and activities so transferred.

RICHARD NIXON.

### §1518. Custody of buildings; officers transferred

The Secretary of Commerce shall have charge, in the buildings or premises occupied by or appropriated to the Department of Commerce, of the library, furniture, fixtures, records, and other property pertaining to it or acquired for use in its business; and he shall be allowed to expend for periodicals and the purposes of the library, and for the rental of appropriate quarters for the accommodation of the Department of Commerce within the District of Columbia, and for all other incidental expenses, such sums as Congress may provide from time to time. Where any office, bureau, or branch of the public service transferred to the Department of Commerce is occupying

rented buildings or premises, it may still continue to do so until other suitable quarters are provided for its use. All officers, clerks, and employees employed on February 14, 1903, in or by any of the bureaus, offices, departments, or branches of the public service transferred to the Department of Commerce are each and all transferred to said department, except where otherwise provided by law. All laws prescribing the work and defining the duties of the several bureaus, offices, departments, or branches of the public service transferred to and made a part of the Department of Commerce shall, so far as the same are not in conflict with the provisions of this Act, remain in full force and effect until otherwise provided by law.

(Feb. 14, 1903, ch. 552, §9, 32 Stat. 829.)

#### **EDITORIAL NOTES**

#### **REFERENCES IN TEXT**

This Act, referred to in text, is act Feb. 14, 1903, ch. 552, 32 Stat. 825, which is classified to sections 175, 1501, 1504, 1510, 1511, 1512, 1513, 1515, 1516, 1517 to 1519 of this title.

#### **CODIFICATION**

Section was formerly classified to section 603 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **CHANGE OF NAME**

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that the Department of Commerce and Labor and Secretary of Commerce and Labor were to be thereafter called the Department of Commerce and Secretary of Commerce and that the act creating the Department of Commerce and Labor (act Feb. 14, 1903) was amended accordingly.

### **§1519. Annual and special reports**

The Secretary of Commerce shall annually, at the close of each fiscal year, make a report in writing to Congress, giving an account of all moneys received and disbursed by him and his Department, and describing the work done by the Department in fostering, promoting, and developing the foreign and domestic commerce, the mining, manufacturing, and fishery industries; of the United States, and making such recommendations as he shall deem necessary for the effective performance of the duties and purposes of the Department. He shall also from time to time make such special investigations and reports as he may be required to do by the President, or by either House of Congress, or which he himself may deem necessary and urgent.

(Feb. 14, 1903, ch. 552, §8, 32 Stat. 829; Pub. L. 97-31, §12(7), Aug. 6, 1981, 95 Stat. 154.)

#### **EDITORIAL NOTES**

#### **CODIFICATION**

Section was formerly classified to section 604 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

#### **AMENDMENTS**

**1981**—Pub. L. 97-31 struck out references to shipping and transportation facilities.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **CHANGE OF NAME**

Act Mar. 4, 1913, ch. 141, 37 Stat. 736, provided that the Department of Commerce and Labor and

Secretary of Commerce and Labor were to be thereafter called the Department of Commerce and Secretary of Commerce and that the act creating the Department of Commerce and Labor (act Feb. 14, 1903) was amended accordingly.

**§1519a. Repealed. Pub. L. 97–449, §7(b), Jan. 12, 1983, 96 Stat. 2443**

Section, Pub. L. 96–371, §2, Oct. 3, 1980, 94 Stat. 1362; Pub. L. 97–31, §12(8), Aug. 6, 1981, 95 Stat. 154, required an annual report to Congress by the Secretary of Transportation respecting conditions of the public ports of the United States. See section 308(b) of Title 49, Transportation.

**§1520. Repealed. Pub. L. 91–412, §3(d), Sept. 25, 1970, 84 Stat. 864**

Section, act Dec. 19, 1942, ch. 780, 56 Stat. 1067, authorized Secretary of Commerce to establish schedule of fees or charges for services or publications furnished by Department of Commerce, excepting Federal and State governments, provided for covering proceeds thereof into the Treasury as miscellaneous receipts, and specified that its provisions shall not alter, amend, modify, or repeal any existing law for prescription of fees or charges. See sections 1525 to 1527 of this title.

**§1521. Working capital fund; establishment; amount; uses; reimbursement**

There is established a working capital fund of \$100,000, without fiscal year limitation, for the payment of salaries and other expenses necessary to the maintenance and operation of (1) central duplicating, photographic, drafting, and photostating services and (2) such other services as the Secretary, with the approval of the Director of the Office of Management and Budget, determines may be performed more advantageously as central services; said fund to be reimbursed from applicable funds of bureaus, offices, and agencies for which services are performed on the basis of rates which shall include estimated or actual charges for personal services, materials, equipment (including maintenance, repairs, and depreciation) and other expenses: *Provided*, That such central services shall, to the fullest extent practicable, be used to make unnecessary the maintenance of separate like services in the bureaus, offices, and agencies of the Department: *Provided further*, That a separate schedule of expenditures and reimbursements, and a statement of the current assets and liabilities of the working capital fund as of the close of the last completed fiscal year, shall be included in the annual Budget.

(June 28, 1944, ch. 294, title III, §301, 58 Stat. 415; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

**EDITORIAL NOTES**

**CODIFICATION**

Section was formerly classified to section 607 of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

**EXECUTIVE DOCUMENTS**

**TRANSFER OF FUNCTIONS**

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget.

**§1521a. Department of Commerce Nonrecurring Expenses Fund**



(a) There is hereby established in the Treasury of the United States a fund to be known as the "Department of Commerce Nonrecurring Expenses Fund" (the Fund): *Provided*, That unobligated balances of expired discretionary funds appropriated for this or any succeeding fiscal year from the General Fund of the Treasury to the Department of Commerce by this or any other Act may be transferred (not later than the end of the fifth fiscal year after the last fiscal year for which such funds are available for the purposes for which appropriated) into the Fund: *Provided further*, That amounts deposited in the Fund shall be available until expended, and in addition to such other funds as may be available for such purposes, for information and business technology system modernization and facilities infrastructure improvements necessary for the operation of the Department, subject to approval by the Office of Management and Budget: *Provided further*, That amounts in the Fund may be obligated only after the Committees on Appropriations of the House of Representatives and the Senate are notified at least 15 days in advance of the planned use of funds.

(b) In addition to amounts otherwise made available by this Act, there is appropriated \$20,000,000, to remain available until September 30, 2022, to the Fund for necessary expenses for a business application system modernization.

(Pub. L. 116–93, div. B, title I, §111, Dec. 20, 2019, 133 Stat. 2395.)

#### EDITORIAL NOTES

#### REFERENCES IN TEXT

This Act, referred to in text, is div. B of Pub. L. 116–93, Dec. 20, 2019, 133 Stat. 2385, known as the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2020. For complete classification of this Act to the Code, see Tables.

### **§1522. Acceptance of gifts and bequests for purposes of the Department; separate fund; disbursements**

The Secretary of Commerce is hereby authorized to accept, hold, administer, and utilize gifts and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Department of Commerce. Gifts and bequests of money and the proceeds from sales of other property received as gifts or bequests shall be deposited in the Treasury in a separate fund and shall be disbursed upon order of the Secretary of Commerce. Property accepted pursuant to this provision, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift or bequest.

(Pub. L. 88–611, §1, Oct. 2, 1964, 78 Stat. 991.)

#### EDITORIAL NOTES

#### CODIFICATION

Section was formerly classified to section 608a of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

#### STATUTORY NOTES AND RELATED SUBSIDIARIES

#### TRANSFER OF FUNDS

Pub. L. 88–611, §4(b), Oct. 2, 1964, 78 Stat. 991, provided that: "All gifts and bequests received under the provisions of law repealed by subsection (a) of this section [which repealed section 278a of this title, section 883g of Title 33, Navigation and Navigable Waters, and section 1126(g) of former Title 46, Shipping] and all funds held on the date of enactment of this Act [Oct. 2, 1964] in the United States Merchant Marine Academy general gift fund, established by subsection (g) of section 216 of the Merchant Marine Act, 1936 [section 1126(g) of former Title 46], shall be transferred to the fund authorized by this Act [sections 1522 to 1524 of this title] and shall be administered in accordance with the provisions of this Act [sections 1522 to 1524 of this title]."

### **§1523. Tax status of gifts and bequests of property**

For the purpose of Federal income, estate, and gift taxes, property accepted under section 1522 of this title shall be considered as a gift or bequest to or for the use of the United States.

(Pub. L. 88-611, §2, Oct. 2, 1964, 78 Stat. 991.)

#### **EDITORIAL NOTES**

##### **CODIFICATION**

Section was formerly classified to section 608b of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

### **§1524. Investment and reinvestments of moneys; credit and disbursement of interest**

Upon the request of the Secretary of Commerce, the Secretary of the Treasury may invest and reinvest in securities of the United States or in securities guaranteed as to principal and interest by the United States any moneys contained in the fund authorized herein. Income accruing from such securities, and from any other property accepted pursuant to section 1522 of this title, shall be deposited to the credit of the fund authorized herein, and shall be disbursed upon order of the Secretary of Commerce.

(Pub. L. 88-611, §3, Oct. 2, 1964, 78 Stat. 991.)

#### **EDITORIAL NOTES**

##### **CODIFICATION**

Section was formerly classified to section 608c of Title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89-554, §1, Sept. 6, 1966, 80 Stat. 378.

### **§1525. Special studies; special compilations, lists, bulletins, or reports; clearinghouse for technical information; transcripts or copies; cost payments for special work; joint projects: cost apportionment, waiver**

The Secretary of Commerce is authorized, upon the request of any person, firm, organization, or others, public or private, to make special studies on matters within the authority of the Department of Commerce; to prepare from its records special compilations, lists, bulletins, or reports; to perform the functions authorized by section 1152 of this title; and to furnish transcripts or copies of its studies, compilations, and other records; upon the payment of the actual or estimated cost of such special work.

In the case of nonprofit organizations, research organizations, or public organizations or agencies, the Secretary may engage in joint projects, or perform services, on matters of mutual interest, the cost of which shall be apportioned equitably, as determined by the Secretary, who may, however, waive payment of any portion of such costs by others, when authorized to do so under regulations approved by the Office of Management and Budget.

(Pub. L. 91-412, §1, Sept. 25, 1970, 84 Stat. 864; 1970 Reorg. Plan No. 2, §102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085.)

#### **EXECUTIVE DOCUMENTS**

## TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget.

### **§1526. Receipts for work or services; deposit in special accounts; availability for payment of costs, repayment or advances to appropriations or funds, refunds, credits to working capital funds; appropriation limitation of annual expenditures from accounts**

All payments for work or services performed or to be performed under this Act shall be deposited in a separate account or accounts which may be used to pay directly the costs of such work or services, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs, or to refund excess sums when necessary: *Provided*, That said receipts may be credited to a working capital fund otherwise established by law, and used under the law governing said funds, if the fund is available for use by the agency of the Department of Commerce which is responsible for performing the work or services for which payment is received. Acts appropriating funds to the Department of Commerce may include provisions limiting annual expenditure from said account or accounts.

(Pub. L. 91-412, §2, Sept. 25, 1970, 84 Stat. 864.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 91-412, which enacted sections 1525 to 1527, amended section 1153, and repealed sections 189, 189a, 192, 192a, 1153a, and 1520 of this title.

### **§1527. Fees or charges for services or publications under existing law unaffected**

Except as to those laws expressly repealed herein, nothing in this Act shall alter, amend, modify, or repeal any existing law prescribing fees or charges or authorizing the prescribing of fees or charges for services performed or for any publication furnished by the Department of Commerce, or any of its several bureaus or offices.

(Pub. L. 91-412, §4, Sept. 25, 1970, 84 Stat. 865.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 91-412, which enacted sections 1525 to 1527, amended section 1153, and repealed sections 189, 189a, 192, 192a, 1153a, and 1520 of this title.

Laws expressly repealed herein, referred to in text, means amendment of section 1153 and repeal of sections 189, 189a, 192, 192a, 1153a, and 1520 of this title, as heretofore noted.

### **§1527a. Economics and Statistics Administration Revolving Fund**

There is hereby established the Economics and Statistics Administration Revolving Fund which shall be available without fiscal year limitation. For initial capitalization, there is appropriated \$1,677,000 to the Fund: *Provided*, That the Secretary of Commerce is authorized to disseminate economic and statistical data products as authorized by sections 1525 to 1527 of this title and, notwithstanding section 4912 of this title, charge fees necessary to recover the full costs incurred in

their production. Notwithstanding section 3302 of title 31, receipts received from these data dissemination activities shall be credited to this account as offsetting collections, to be available for carrying out these purposes without further appropriation.

(Pub. L. 103–317, title II, Aug. 26, 1994, 108 Stat. 1744.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **DISSEMINATION OF ECONOMIC AND STATISTICAL DATA PRODUCTS; FEES**

Pub. L. 105–119, title II, Nov. 26, 1997, 111 Stat. 2474, provided in part that: "The Secretary of Commerce is authorized to disseminate economic and statistical data products as authorized by sections 1, 2, and 4 of Public Law 91–412 (15 U.S.C. 1525–1527) and, notwithstanding section 5412 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4912), charge fees necessary to recover the full costs incurred in their production. Notwithstanding 31 U.S.C. 3302, receipts received from these data dissemination activities shall be credited to this account, to be available for carrying out these purposes without further appropriation."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 104–208, div. A, title I, §101(a) [title II], Sept. 30, 1996, 110 Stat. 3009, 3009–34.

Pub. L. 104–134, title I, §101[(a)] [title II], Apr. 26, 1996, 110 Stat. 1321, 1321–25; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.

## **§1528. Transferred**

## **EDITORIAL NOTES**

### **CODIFICATION**

Section, act Feb. 28, 1920, ch. 91, §500, 41 Stat. 499; 1939 Reorg. Plan No. II, §6, eff. July 1, 1939, 4 F.R. 2732, 53 Stat. 1434; Aug. 6, 1981, Pub. L. 97–31, §12(9), 95 Stat. 154, relating to a policy of development of water transportation, was transferred to section 142 of former Title 49, Transportation, and was repealed by Pub. L. 103–272, §7(b), July 5, 1994, 108 Stat. 1379, and reenacted by section 4(j)(6)(A) thereof as section 303a of Title 49, Transportation.

## **§1529. Relinquishment of legislative jurisdiction over certain lands**

Notwithstanding any other law, the Secretary of Commerce, whenever the Secretary considers it desirable, may relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under the Secretary's control in that State, Commonwealth, territory, or possession. Relinquishment of legislative jurisdiction under this section may be accomplished—

(1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance of the notice; or

(2) as required by the laws of the State, Commonwealth, territory, or possession.

(Pub. L. 98–623, title IV, §406, Nov. 8, 1984, 98 Stat. 3409.)

## **§1530. Awarding of contracts for performance of commercial activity by National Oceanic and Atmospheric Administration**

The Administration may not award any contract for the performance of any "commercial activity", as defined by paragraph 6.a. of the Office of Management and Budget Circular Memorandum A–76, which is performed by Administration employees until at least 30 calendar days after the Administrator of the Administration has presented, in writing, to the President of the Senate, the Speaker of the House of Representatives, the Committee on Commerce, Science, and Transportation

of the Senate, and the Committee on Merchant Marine and Fisheries and the Committee on Science, Space, and Technology of the House of Representatives, a full and complete description of such proposed contract, together with supporting documentation. Such documentation shall include—

- (1) a comparison of the cost of such activity as performed by employees of the Administration and the cost of such activity as performed under the proposed contract;
- (2) a comparison of the services performed by employees of the Administration and the services to be performed under the proposed contract; and
- (3) an assessment of the benefits to the Federal Government of proceeding with the proposed contract.

(Pub. L. 99–272, title VI, §6083, Apr. 7, 1986, 100 Stat. 135; Pub. L. 103–437, §5(b)(3), Nov. 2, 1994, 108 Stat. 4582.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1994**—Pub. L. 103–437 in introductory provisions substituted "Committee on Science, Space, and Technology" for "Committee on Science and Technology" before "of the House".

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES**

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

## **§1531. Buying Power Maintenance accounts for International Trade**

### **Administration, Export Administration, and United States Travel and Tourism Administration**

In order to maintain overseas program activity for the Department of Commerce provided for each fiscal year at the appropriated program levels, the Secretary may establish Buying Power Maintenance accounts for the International Trade Administration, the Export Administration, and the United States Travel and Tourism Administration. There are authorized to be appropriated for such accounts such sums as may be necessary to offset adverse fluctuations in foreign currency exchange rates, or unbudgeted overseas wage and price changes. To eliminate substantial gains to the approved levels of overseas operations, the Secretary shall transfer to a Buying Power Maintenance account such amounts determined to be excessive to the needs of the approved level of overseas operations because of fluctuations in foreign currency exchange rates or changes in unbudgeted overseas wages and prices, including unobligated balances associated with the overseas program. To offset adverse fluctuations in foreign currency exchange rates or unbudgeted overseas wage and price changes, the Secretary may transfer from a Buying Power Maintenance account such amounts determined to be necessary to maintain the approved level of overseas operations under an appropriation account. Funds transferred by the Secretary to or from a Buying Power Maintenance account to another account shall be merged with and be available for the same purpose, and for the same time period, as the funds in the account into which transferred. Any restriction contained in an appropriation Act or other provision of law limiting the amounts available for the Department of Commerce that may be obligated or expended shall be deemed to be adjusted to the extent necessary to offset the net effect of fluctuations in foreign currency exchange rates or unbudgeted overseas wage and price changes in order to maintain approved levels.

(Pub. L. 100–202, §101(a) [title I, §108], Dec. 22, 1987, 101 Stat. 1329, 1329–7.)

## **§1532. Telecommunications; electromagnetic radiation; research, analysis, dissemination of information; other functions of Secretary**

The Secretary of Commerce is authorized to—

(1) conduct research on all of the telecommunications sciences, including wave propagation and reception, the conditions which affect electromagnetic wave propagation and reception, electromagnetic noise and interference, radio system characteristics, operating techniques affecting the use of the electromagnetic spectrum, and methods for improving the use of the electromagnetic spectrum for telecommunications purposes;

(2) prepare and issue predictions of electromagnetic wave propagation conditions and warnings of disturbances in such conditions;

(3) investigate conditions which affect the transmission of radio waves from their source to a receiver and the compilation and distribution of information on such transmission of radio waves as a basis for choice of frequencies to be used in radio operations;

(4) conduct research and analysis in the general field of telecommunications sciences in support of assigned functions and in support of other Government agencies;

(5) investigate nonionizing electromagnetic radiation and its uses, as well as methods and procedures for measuring and assessing electromagnetic environments, for the purpose of developing and coordinating policies and procedures affecting Federal Government use of the electromagnetic spectrum for telecommunications purposes;

(6) compile, evaluate, publish, and otherwise disseminate general scientific and technical data resulting from the performance of the functions specified in this section or from other sources when such data are important to science, engineering, or industry, or to the general public, and are not available elsewhere; and

(7) undertake such other activities similar to those specified in this subsection as the Secretary of Commerce determines appropriate.

(Pub. L. 100–418, title V, §5112(b), Aug. 23, 1988, 102 Stat. 1430.)

## **§1533. Repealed. Pub. L. 111–358, title IV, §407(c), Jan. 4, 2011, 124 Stat. 4004**

Section, Pub. L. 100–418, title V, §5163(d), Aug. 23, 1988, 102 Stat. 1451, established the Commerce, Science, and Technology Fellowship Program within the Department of Commerce.

### **EDITORIAL NOTES**

#### **CODIFICATION**

Pub. L. 111–358, §407(c), which directed the repeal of section 5163(d) of the Omnibus Trade and Competition Act of 1988, was executed by repealing this section, which was section 5163(d) of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), to reflect the probable intent of Congress.

## **§1534. Assessment of fees for access to environmental data**

### **(a) Basis of assessment**

Except as otherwise provided in this section, the Secretary is authorized to assess fees, based on fair market value, for access to environmental data and information and products derived therefrom collected and/or archived by the National Oceanic and Atmospheric Administration.

### **(b) Eligible recipients; waiver of fees in cases of foreign governments and international organizations**

(1) The Secretary shall provide data, information, and products described in subsection (a) to Federal, State, and local government agencies, to universities, and to other nonprofit institutions at the cost of reproduction and transmission, if such data, information, and products are to be used for

research and not for commercial purposes.

(2) The Secretary shall waive the assessment of fees under subsection (a) as necessary to continue to provide data, information, or products to foreign governments and international organizations on a basis of exchanging such data, information, and products or as otherwise provided by international agreement.

(3) The Secretary shall waive the assessment of fees authorized by subsection (a) as necessary to continue to provide weather warnings, watches, and similar products and services essential to the mission of the National Oceanic Atmospheric <sup>1</sup> Administration.

**(c) Publication of fee schedules in Federal Register; initial schedule effective for three-year period**

The initial schedule of any fees assessed under this section, and any subsequent amendment to such schedule, shall be published by the Secretary in the Federal Register at least 30 days before such fees will take effect. The initial schedule shall remain in effect without amendment for the three-year period beginning on the date that fees under the schedule take effect.

**(d) Effective date of assessments; progressive increments**

Any assessment of fees under this section by the National Environmental Satellite, Data, and Information Service for archived data shall meet the following requirements:

(1) The initial schedule of fees established by the National Environmental Satellite, Data, and Information Service for archived data shall remain in effect for the 3-year period beginning on the date that the fees under that schedule take effect.

(2) With respect to the first one-year period during which the initial fee schedule is in effect, fees shall be assessed at no more than one-third of the fair market value specified in subsection (a).

(3) With respect to the second one-year period during which the initial fee schedule is in effect, fees shall be assessed at not more than two-thirds of such fair market value.

(4) With respect to the third one-year period during which the initial fee schedule is in effect, and with respect to any period thereafter, fees shall be assessed at no more than the full amount of such fair market value.

**(e) Data archive center operations; availability of fees for expenses of centers**

Fees collected under this section by the National Environmental Satellite, Data, and Information Service for archived data shall be available to the National Environmental Satellite, Data, and Information Service for expenses incurred in the operation of its data archive centers.

**(f) Report to Congressional committees**

The Secretary shall, not later than 90 days after November 17, 1988, 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 which sets forth—

(1) any plan of the Secretary for assessing fees under this section by the National Environmental Satellite, Data, and Information Service for archived data, including the methodology and bases by which the amount of such fees shall be determined, and the estimated revenues therefrom; and

(2) any plan of the Secretary for using revenues generated from such fees, as well as other resources, to improve the capability of the National Environmental Satellite, Data, and Information Service to collect, manage, process, archive, and disseminate the increasing amounts of data generated from satellites, radars, and other technologies.

**(g) Other assessment authorities unaffected**

The authority of the Secretary to assess fees under this section shall be in addition to, and shall not be construed to limit, the authority under any other law to assess fees relating to the environmental data activities of the National Oceanic and Atmospheric Administration, including the authority of the Secretary pursuant to section 1307 of title 44. Nothing in this section shall be construed to authorize the Secretary to assess fees for nautical and aeronautical products of the National Oceanic and Atmospheric Administration in addition to those fees authorized under section 1307 of title 44.

(Pub. L. 100-685, title IV, §409, Nov. 17, 1988, 102 Stat. 4100; Pub. L. 101-508, title X, §10201(a), Nov. 5, 1990, 104 Stat. 1388-392.)

## EDITORIAL NOTES

### AMENDMENTS

**1990**—Subsec. (a). Pub. L. 101-508, §10201(a)(1), substituted "and information and products derived therefrom collected and/or archived by the National Oceanic and Atmospheric Administration" for "data archived by the National Environmental Satellite, Data, and Information Service of the National Oceanic and Atmospheric Administration".

Subsec. (b)(1). Pub. L. 101-508, §10201(a)(2), inserted ", information, and products" after "provide data" and substituted "data, information, and products are" for "data is".

Subsec. (b)(2). Pub. L. 101-508, §10201(a)(3), inserted ", information, or products" after "provide data" and substituted "basis of exchanging such data, information, and products" for "data exchange basis".

Subsec. (b)(3). Pub. L. 101-508, §10201(a)(4), added par. (3).

Subsec. (d). Pub. L. 101-508, §10201(a)(6), inserted "by the National Environmental Satellite, Data, and Information Service for archived data" after "under this section" in introductory provisions.

Subsec. (d)(1). Pub. L. 101-508, §10201(a)(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "No fees shall be assessed under this section until after September 30, 1989."

Subsecs. (e), (f)(1). Pub. L. 101-508, §10201(a)(6), inserted "by the National Environmental Satellite, Data, and Information Service for archived data" after "under this section".

Subsec. (g). Pub. L. 101-508, §10201(a)(7), inserted before period at end ", including the authority of the Secretary pursuant to section 1307 of title 44. Nothing in this section shall be construed to authorize the Secretary to assess fees for nautical and aeronautical products of the National Oceanic and Atmospheric Administration in addition to those fees authorized under section 1307 of title 44".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECT OF AMENDMENTS

Pub. L. 101-508, title X, §10201(b), Nov. 5, 1990, 104 Stat. 1388-393, provided that:

"(1) The increase in revenues to the United States attributable to the amendments made by subsection (a) [amending this section] shall not exceed—

"(A) \$2,000,000 for each of the fiscal years 1991, 1992, and 1993; and

"(B) \$3,000,000 for each of the fiscal years 1994 and 1995.

"(2) Increases in revenues to the United States described in paragraph (1) shall be achieved by the Secretary of Commerce through fair and equitable increases in fees for services offered by the various programs of the National Oceanic and Atmospheric Administration.

"(3) The Secretary of Commerce shall notify the Congress of any changes in fee schedules under section 409 of the Act of November 17, 1988 (15 U.S.C. 1534), before such changes take effect."

*<sup>1</sup> So in original. Probably should be preceded by "and".*

## **§1535. Repealed. Pub. L. 111-314, §6, Dec. 18, 2010, 124 Stat. 3444**

Section, Pub. L. 101-611, title I, §115(b), Nov. 16, 1990, 104 Stat. 3201, related to annual reports of activities of the Office of Space Commerce. See section 50703 of Title 51, National and Commercial Space Programs.

## **§1536. Prohibition against fraudulent use of "Made in America" labels**

If it has been finally determined by a court or a Federal agency that any person intentionally affixed a label bearing a "Made in America" inscription, or an inscription with the same meaning, to any product sold in or shipped to the United States that is not made in the United States, that person shall be ineligible to receive any contract or subcontract from the Department of Commerce,



pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

(Pub. L. 102-245, title I, §111(b), Feb. 14, 1992, 106 Stat. 14.)

### **§1537. Needs assessment for data management, archival, and distribution**

(1) Not later than 12 months after October 29, 1992, and at least biennially thereafter, the Secretary of Commerce shall complete an assessment of the adequacy of the environmental data and information systems of the National Oceanic and Atmospheric Administration. In conducting such an assessment, the Secretary shall take into consideration the need to—

(A) provide adequate capacity to manage, archive, and disseminate environmental data and information collected and processed, or expected to be collected and processed, by the National Oceanic and Atmospheric Administration and other appropriate departments and agencies;

(B) establish, develop, and maintain information bases, including necessary management systems, which will promote consistent, efficient, and compatible transfer and use of data;

(C) develop effective interfaces among the environmental data and information systems of the National Oceanic and Atmospheric Administration and other appropriate departments and agencies;

(D) develop and use nationally accepted formats and standards for data collected by various national and international sources; and

(E) integrate and interpret data from different sources to produce information that can be used by decisionmakers in developing policies that effectively respond to national and global environmental concerns.

(2) Not later than 12 months after October 29, 1992, and biennially thereafter, the Secretary of Commerce shall develop 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 comprehensive plan, based on the assessment under paragraph (1), to modernize and improve the environmental data and information systems of the National Oceanic and Atmospheric Administration. The report shall—

(A) set forth modernization and improvement objectives for the 10-year period beginning with the year in which the plan is submitted, including facility requirements and critical new technological components that would be necessary to meet the objectives set forth;

(B) propose specific agency programs and activities for implementing the plan;

(C) identify the data and information management, archival, and distribution responsibilities of the National Oceanic and Atmospheric Administration with respect to other Federal departments and agencies and international organizations, including the role of the National Oceanic and Atmospheric Administration with respect to large data systems like the Earth Observing System Data and Information System; and

(D) provide an implementation schedule and estimate funding levels necessary to achieve modernization and improvement objectives.

(Pub. L. 102-567, title I, §106(c), Oct. 29, 1992, 106 Stat. 4274.)

### **§1538. Notice of reprogramming**

#### **(a) In general**

The Secretary of Commerce shall provide notice to the Committee on Commerce, Science, and Transportation and Committee on Appropriations of the Senate and to the Committee on Merchant Marine and Fisheries, Committee on Science, Space, and Technology, and Committee on Appropriations of the House of Representatives, not less than 15 days before reprogramming funds available for a program, project, or activity of the National Oceanic and Atmospheric Administration

in an amount greater than the lesser of \$250,000 or 5 percent of the total funding of such program, project, or activity if the reprogramming—

- (1) augments an existing program, project, or activity;
- (2) reduces by 5 percent or more (A) the funding for an existing program, project, or activity or (B) the numbers of personnel therefor as approved by Congress; or
- (3) results from any general savings from a reduction in personnel which would result in a change in an existing program, project, or activity.

**(b) Notice of reorganization**

The Secretary of Commerce shall provide notice to the Committees on Merchant Marine and Fisheries, Science, Space, and Technology, and Appropriations of the House of Representatives, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate not later than 15 days before any major reorganization of any program, project, or activity of the National Oceanic and Atmospheric Administration.

(Pub. L. 102–567, title IV, §403, Oct. 29, 1992, 106 Stat. 4291.)

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES**

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

**§1539. Financial assistance**

**(a) Processing of applications**

Within 12 months after October 29, 1992, the Secretary of Commerce shall develop and, after notice and opportunity for public comment, promulgate regulations or guidelines to ensure that a completed application for a grant, contract, or other financial assistance under a nondiscretionary assistance program shall be processed and approved or disapproved within 75 days after submission of the application to the responsible program office of the National Oceanic and Atmospheric Administration.

**(b) Notification of applicant**

Not later than 14 days after the date on which the Secretary of Commerce receives an application for a contract, grant, or other financial assistance provided under a nondiscretionary assistance program administered by the National Oceanic and Atmospheric Administration, the Secretary shall indicate in writing to the applicant whether or not the application is complete and, if not complete, shall specify the additional material that the applicant must provide to complete the application.

**(c) Exemption**

In the case of a program for which the recipient of a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, a State or an interstate fishery commission, such financial assistance may be provided by the Secretary to that recipient on a sole-source basis, notwithstanding any other provision of law.

**(d) "Nondiscretionary assistance program" defined**

In this section, the term "nondiscretionary assistance program" means any program for providing financial assistance—

- (1) under which the amount of funding for, and the intended recipient of, the financial assistance is specified by Congress; or
- (2) the recipients of which have customarily been a State or an interstate fishery commission.

(Pub. L. 102–567, title IV, §404, Oct. 29, 1992, 106 Stat. 4292.)

## **§1540. Cooperative agreements**

The Secretary of Commerce, acting through the Under Secretary of Commerce for Oceans and Atmosphere, may enter into cooperative agreements and other financial agreements with any nonprofit organization to—

- (1) aid and promote scientific and educational activities to foster public understanding of the National Oceanic and Atmospheric Administration or its programs; and
- (2) solicit private donations for the support of such activities.

(Pub. L. 102–567, title IV, §406, Oct. 29, 1992, 106 Stat. 4293.)

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **COOPERATIVE AGREEMENTS FOR RESEARCH, EDUCATION, TRAINING, AND OUTREACH**

Pub. L. 108–199, div. B, title II, Jan. 23, 2004, 118 Stat. 71, provided in part: "That, hereafter, the Secretary of Commerce may enter into cooperative agreements with the Joint and Cooperative Institutes as designated by the Secretary to use the personnel, services, or facilities of such organizations for research, education, training, and outreach".

Similar provisions were contained in Pub. L. 108–7, div. B, title II, Feb. 20, 2003, 117 Stat. 74.

## **§1541. Administrative Law Judges**

Notwithstanding section 559 of title 5, with respect to any marine resource conservation law or regulation administered by the Secretary of Commerce acting through the National Oceanic and Atmospheric Administration, all adjudicatory functions which are required by chapter 5 of title 5 to be performed by an Administrative Law Judge may be performed by another Federal agency on a reimbursable basis. Should another Federal agency require the detail of an Administrative Law Judge to perform any of these functions, it may request such temporary or occasional assistance from the Office of Personnel Management pursuant to section 3344 of title 5.

(Pub. L. 105–160, §10, Mar. 6, 1998, 112 Stat. 27; Pub. L. 114–327, title I, §122, Dec. 16, 2016, 130 Stat. 1985.)

### **EDITORIAL NOTES**

#### **AMENDMENTS**

**2016**—Pub. L. 114–327 substituted "another Federal agency" for "the United States Coast Guard" in two places.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **TRANSFER OF FUNCTIONS**

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

## **§1542. Establishment of the Ernest F. Hollings Scholarship Program**

### **(a) Establishment**

The Administrator of the National Oceanic and Atmospheric Administration shall establish and

administer the Ernest F. Hollings Scholarship Program. Under the program, the Administrator shall award scholarships in oceanic and atmospheric science, research, technology, and education to be known as Ernest F. Hollings Scholarships.

**(b) Purposes**

The purposes of the Ernest F. Hollings Scholarships Program are—

- (1) to increase undergraduate training in oceanic and atmospheric science, research, technology, and education and foster multidisciplinary training opportunities;
- (2) to increase public understanding and support for stewardship of the ocean and atmosphere and improve environmental literacy;
- (3) to recruit and prepare students for public service careers with the National Oceanic and Atmospheric Administration and other natural resource and science agencies at the Federal, State and Local levels of government; and
- (4) to recruit and prepare students for careers as teachers and educators in oceanic and atmospheric science and to improve scientific and environmental education in the United States.

**(c) Award**

Each Ernest F. Hollings Scholarship—

- (1) shall be used to support undergraduate studies in oceanic and atmospheric science, research, technology, and education that support the purposes of the programs and missions of the National Oceanic and Atmospheric Administration;
- (2) shall recognize outstanding scholarship and ability;
- (3) shall promote participation by groups underrepresented in oceanic and atmospheric science and technology; and
- (4) shall be awarded competitively in accordance with guidelines issued by the Administrator and published in the Federal Register.

**(d) Eligibility**

In order to be eligible to participate in the program, an individual must—

- (1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education (as defined in section 1001(a) of title 20) in an academic field or discipline described in subsection (c);
- (2) be a United States citizen;
- (3) not have received a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver; and
- (4) submit an application at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

**(e) Distribution of funds**

The amount of each Ernest F. Hollings Scholarship shall be provided directly to a recipient selected by the Administrator upon receipt of certification that the recipient will adhere to a specific and detailed plan of study and research approved by an institution of higher education.

**(f) Funding**

Of the total amount appropriated for fiscal year 2005 and annually hereafter to the National Oceanic and Atmospheric Administration, the Administrator shall make available for the Ernest F. Hollings Scholarship program one-tenth of 1 percent of such appropriations.

**(g) Scholarship repayment requirement**

The Administrator shall require an individual receiving a scholarship under this section to repay the full amount of the scholarship to the National Oceanic and Atmospheric Administration if the Administrator determines that the individual, in obtaining or using the scholarship, engaged in fraudulent conduct or failed to comply with any term or condition of the scholarship. Such repayments shall be deposited in the NOAA Operations, Research, and Facilities Appropriations Account and treated as an offsetting collection and only be available for financing additional scholarships.

(Pub. L. 108–447, div. B, title II, §214, Dec. 8, 2004, 118 Stat. 2884.)

### **§1543. Task force on job repatriation and manufacturing growth**

The Secretary of Commerce shall maintain a task force on job repatriation and manufacturing growth and shall produce an annual report on related incentive strategies, implementation plans and program results.

(Pub. L. 113–235, div. B, title I, Dec. 16, 2014, 128 Stat. 2180.)

#### **EDITORIAL NOTES**

#### **CODIFICATION**

Section is from the appropriation act cited as the credit to this section.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **SIMILAR PROVISIONS**

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 113–76, div. B, title I, Jan. 17, 2014, 128 Stat. 50.

Pub. L. 113–6, div. B, title I, Mar. 26, 2013, 127 Stat. 240.

### **§1544. Promotion of tourist travel**

The Secretary of Commerce shall encourage, promote, and develop travel within the United States, including any Commonwealth, territory, and possession thereof, through activities which are in the public interest and which do not compete with activities of any State, city, or private agency.

(July 19, 1940, ch. 642, §1, 54 Stat. 773; Pub. L. 93–193, §2, Dec. 19, 1973, 87 Stat. 765; Pub. L. 94–55, §2(b), July 9, 1975, 89 Stat. 262.)

#### **EDITORIAL NOTES**

#### **CODIFICATION**

Section was formerly classified to section 18 of Title 16, Conservation.

#### **AMENDMENTS**

**1975**—Pub. L. 94–55 substituted "shall encourage, promote, and develop travel within the United States, including any Commonwealth, territory, and possession thereof, through activities which are in the public interest and which do not compete with activities of any State, city, or private agency" for "is authorized and directed to encourage, promote, and develop travel within the United States, its Territories and possessions, providing such activities do not compete with the activities of private agencies; and to administer all existing travel promotion functions of the Department of Commerce".

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **TRANSFER OF FUNCTIONS**

Pub. L. 93–193, §2, Dec. 19, 1973, 87 Stat. 765, provided that:

"(a) There are hereby transferred to and vested in the Secretary of Commerce all functions, powers, and duties of the Secretary of the Interior and other offices and officers of the Department of the Interior under the Act of July 19, 1940 (54 Stat. 773; 16 U.S.C. 18–18d) [now 15 U.S.C. 1544–1548].

"(b) The assets, liabilities, contracts, property, records, authorizations, and allocations, employed, held, used, rising from, available or to be made available in connection with the functions, powers, and duties transferred by subsection (a) of this section are hereby transferred to the Secretary of Commerce."

## **§1545. Cooperation with travel agencies; publication of information**

In carrying out the purposes of sections 1544 to 1548 of this title, the Secretary is authorized to cooperate with public and private tourist, travel, and other agencies in the display of exhibits, and in the collection, publication, and dissemination of information with respect to places of interest, routes, transportation facilities, accommodations, and such other matters as he deems advisable and advantageous for the purpose of encouraging, promoting, or developing such travel. Nothing in said sections shall prohibit the preparation of graphic materials in foreign languages, designed to call attention to the attractions and places of interest in the United States and to encourage the use of American registered ships and planes. The existing facilities of the United States Government in foreign countries are authorized to assist in the distribution of this material. The Secretary may enter into contracts with private publishers for such printing and binding as he may deem advisable in carrying out the purposes of said sections. The Secretary is also authorized to make charges for any publications made available to the public pursuant to said sections; and any proceeds from the sale of publications produced by the expenditure of contributed funds shall continue to be available for printing and binding as aforesaid.

(July 19, 1940, ch. 642, §2, 54 Stat. 773.)

### **EDITORIAL NOTES**

#### **CODIFICATION**

Section was formerly classified to section 18a of Title 16, Conservation.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **TRANSFER OF FUNCTIONS**

For transfer of functions of Secretary of the Interior to Secretary of Commerce, see Transfer of Functions note set out under section 1544 of this title.

## **§1546. United States Travel and Tourism Advisory Board**

### **(a) In general**

There is established the United States Travel and Tourism Advisory Board (referred to in this section as the "Board"), the members of which shall be appointed by the Secretary of Commerce for 2-year terms from companies and organizations in the travel and tourism industry.

### **(b) Executive Director**

The Assistant Secretary of Commerce for Travel and Tourism shall serve as the Executive Director of the Board.

### **(c) Executive Secretariat**

The National Travel and Tourism Office of the International Trade Administration shall serve as the Executive Secretariat for the Board.

### **(d) Functions**

The Board's Charter shall specify that the Board will—

- (1) serve as the advisory body to the Secretary of Commerce on matters relating to the travel and tourism industry in the United States;
- (2) advise the Secretary of Commerce on government policies and programs that affect the United States travel and tourism industry;
- (3) offer counsel on current and emerging issues;
- (4) provide a forum for discussing and proposing solutions to problems related to the travel and tourism industry; and

(5) provide advice regarding the domestic travel and tourism industry as an economic engine.

**(e) Recovery strategies**

The Board shall assist the Assistant Secretary of Commerce for Travel and Tourism in the development and implementation of the recovery strategies required under section 9803(e)(1) of this title.

(July 19, 1940, ch. 642, §3, 54 Stat. 773; Pub. L. 97–31, §12(10), Aug. 6, 1981, 95 Stat. 154; Pub. L. 98–443, §9(o), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 117–328, div. BB, title VI, §607, Dec. 29, 2022, 136 Stat. 5569.)

**EDITORIAL NOTES**

**CODIFICATION**

Section was formerly classified to section 18b of Title 16, Conservation.

**AMENDMENTS**

**2022**—Pub. L. 117–328 amended section generally. Prior to amendment, section authorized creation of an advisory committee for promotion of tourist travel.

**1984**—Pub. L. 98–443 struck out "the Civil Aeronautics Authority," after "the Interstate Commerce Commission,".

**1981**—Pub. L. 97–31 substituted "Department of Transportation" for "United States Maritime Commission".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 1984 AMENDMENT**

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

**§1547. Rules and regulations; employees**

In the performance of his functions and duties under the provisions of sections 1544 to 1548 of this title, the Secretary of Commerce is authorized—

(a) To prescribe, amend, and repeal such rules and regulations as he may deem necessary, and to accept contributions for carrying out the purposes of said sections; and

(b) To employ, subject to chapter 51 and subchapter III of chapter 53 of title 5, one special assistant and not to exceed five artists and illustrators.

(July 19, 1940, ch. 642, §4, 54 Stat. 774; Oct. 28, 1949, ch. 782, title XI, §1106(a), 63 Stat. 972; Pub. L. 93–193, §2, Dec. 19, 1973, 87 Stat. 765.)

**EDITORIAL NOTES**

**CODIFICATION**

Section was formerly classified to section 18c of Title 16, Conservation.

Provisions of par. (b) authorizing the Secretary of the Interior to employ "without regard to the civil-service laws" were omitted as such employment is subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5, Government Organization and Employees.

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

## AMENDMENTS

**1949**—Par. (b). Act Oct. 28, 1949, substituted "Classification Act of 1949" for "Classification Act of 1923".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### REPEALS

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

### TRANSFER OF FUNCTIONS

Secretary of Commerce substituted for Secretary of the Interior in view of transfer of functions to Secretary of Commerce from Secretary of the Interior by section 2 of Pub. L. 93–193. See Transfer of Functions note set out under section 1544 of this title.

## §1548. Authorization of appropriations

For the purpose of carrying out the provisions of sections 1544 to 1548 of this title, there are authorized to be appropriated not to exceed \$2,500,000 for the fiscal year ending June 30, 1976; \$625,000 for the transition period of July 1, 1976, through September 30, 1976; \$2,500,000 for the fiscal year ending September 30, 1977, and \$2,500,000 for the fiscal year ending September 30, 1978.

(July 19, 1940, ch. 642, §5, 54 Stat. 774; Pub. L. 91–549, Dec. 14, 1970, 84 Stat. 1437; Pub. L. 94–55, §2(a), July 9, 1975, 89 Stat. 262.)

## EDITORIAL NOTES

### CODIFICATION

Section was formerly classified to section 18d of Title 16, Conservation.

## AMENDMENTS

**1975**—Pub. L. 94–55 substituted provisions authorizing appropriations not to exceed \$2,500,000 for fiscal year ending June 30, 1976, \$625,000 for the transition period of July 1, 1976 through Sept. 30, 1976, \$2,500,000 for fiscal year ending Sept. 30, 1977, and \$2,500,000 for fiscal year ending Sept. 30, 1978, for provisions authorizing appropriations not to exceed \$250,000 for fiscal year 1971 and \$750,000 for fiscal year 1972.

**1970**—Pub. L. 91–549 substituted provisions authorizing appropriations of not more than \$250,000 for fiscal year 1971 and not more than \$750,000 for fiscal year 1972, for provisions which authorized appropriations of not more than \$100,000 annually.

## CHAPTER 41—CONSUMER CREDIT PROTECTION

### SUBCHAPTER I—CONSUMER CREDIT COST DISCLOSURE

#### PART A—GENERAL PROVISIONS

Sec.

- 1601. Congressional findings and declaration of purpose.
- 1602. Definitions and rules of construction.
- 1603. Exempted transactions.
- 1604. Disclosure guidelines.
- 1605. Determination of finance charge.
- 1606. Determination of annual percentage rate.
- 1607. Administrative enforcement.



- 1608. Views of other agencies.
- 1609. Repealed.
- 1610. Effect on other laws.
- 1611. Criminal liability for willful and knowing violation.
- 1612. Effect on government agencies.
- 1613. Annual reports to Congress by Bureau.
- 1614. Repealed.
- 1615. Prohibition on use of "Rule of 78's" in connection with mortgage refinancings and other consumer loans.
- 1616. Board review of consumer credit plans and regulations.

**PART B—CREDIT TRANSACTIONS**

- 1631. Disclosure requirements.
- 1632. Form of disclosure; additional information.
- 1633. Exemption for State-regulated transactions.
- 1634. Effect of subsequent occurrence.
- 1635. Right of rescission as to certain transactions.
- 1636. Repealed.
- 1637. Open end consumer credit plans.
- 1637a. Disclosure requirements for open end consumer credit plans secured by consumer's principal dwelling.
- 1638. Transactions other than under an open end credit plan.
- 1638a. Reset of hybrid adjustable rate mortgages.
- 1639. Requirements for certain mortgages.
- 1639a. Duty of servicers of residential mortgages.
- 1639b. Residential mortgage loan origination.
- 1639c. Minimum standards for residential mortgage loans.
- 1639d. Escrow or impound accounts relating to certain consumer credit transactions.
- 1639e. Appraisal independence requirements.
- 1639f. Requirements for prompt crediting of home loan payments.
- 1639g. Requests for payoff amounts of home loan.
- 1639h. Property appraisal requirements.
- 1640. Civil liability.
- 1641. Liability of assignees.
- 1642. Issuance of credit cards.
- 1643. Liability of holder of credit card.
- 1644. Fraudulent use of credit cards; penalties.
- 1645. Business credit cards; limits on liability of employees.
- 1646. Dissemination of annual percentage rates; implementation, etc.
- 1647. Home equity plans.
- 1648. Reverse mortgages.
- 1649. Certain limitations on liability.
- 1650. Preventing unfair and deceptive private educational lending practices and eliminating conflicts of interest.

- 1651. Procedure for timely settlement of estates of decedent obligors.

**PART C—CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES**

- 1661. Catalogs and multiple-page advertisements.
- 1662. Advertising of downpayments and installments.
- 1663. Advertising of open end credit plans.
- 1664. Advertising of credit other than open end plans.
- 1665. Nonliability of advertising media.
- 1665a. Use of annual percentage rate in oral disclosures; exceptions.
- 1665b. Advertising of open end consumer credit plans secured by consumer's principal dwelling.

- 1665c. Interest rate reduction on open end consumer credit plans.
- 1665d. Reasonable penalty fees on open end consumer credit plans.
- 1665e. Consideration of ability to repay.

**PART D—CREDIT BILLING**

- 1666. Correction of billing errors.
- 1666a. Regulation of credit reports.
- 1666b. Timing of payments.
- 1666c. Prompt and fair crediting of payments.
- 1666d. Treatment of credit balances.
- 1666e. Notification of credit card issuer by seller of return of goods, etc., by obligor; credit for account of obligor.
- 1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; finance charge for sales transactions involving cash discounts.
- 1666g. Tie-in services prohibited for issuance of credit card.
- 1666h. Offset of cardholder's indebtedness by issuer of credit card with funds deposited with issuer by cardholder; remedies of creditors under State law not affected.
- 1666i. Assertion by cardholder against card issuer of claims and defenses arising out of credit card transaction; prerequisites; limitation on amount of claims or defenses.
- 1666i-1. Limits on interest rate, fee, and finance charge increases applicable to outstanding balances.
- 1666i-2. Additional limits on interest rate increases.
- 1666j. Applicability of State laws.

**PART E—CONSUMER LEASES**

- 1667. Definitions.
- 1667a. Consumer lease disclosures.
- 1667b. Lessee's liability on expiration or termination of lease.
- 1667c. Consumer lease advertising; liability of advertising media.
- 1667d. Civil liability of lessors.
- 1667e. Applicability of State laws; exemptions by Bureau from leasing requirements.
- 1667f. Regulations.

**SUBCHAPTER II—RESTRICTIONS ON GARNISHMENT**

- 1671. Congressional findings and declaration of purpose.
- 1672. Definitions.
- 1673. Restriction on garnishment.
- 1674. Restriction on discharge from employment by reason of garnishment.
- 1675. Exemption for State-regulated garnishments.
- 1676. Enforcement by Secretary of Labor.
- 1677. Effect on State laws.

**SUBCHAPTER II-A—CREDIT REPAIR ORGANIZATIONS**

- 1679. Findings and purposes.
- 1679a. Definitions.
- 1679b. Prohibited practices.
- 1679c. Disclosures.
- 1679d. Credit repair organizations contracts.
- 1679e. Right to cancel contract.
- 1679f. Noncompliance with this subchapter.
- 1679g. Civil liability.
- 1679h. Administrative enforcement.
- 1679i. Statute of limitations.
- 1679j. Relation to State law.

**SUBCHAPTER III—CREDIT REPORTING AGENCIES**

- 1681. Congressional findings and statement of purpose.
- 1681a. Definitions; rules of construction.

- 1681b. Permissible purposes of consumer reports.
- 1681c. Requirements relating to information contained in consumer reports.
- 1681c-1. Identity theft prevention; fraud alerts and active duty alerts.
- 1681c-2. Block of information resulting from identity theft.
- 1681c-3. Adverse information in cases of trafficking.
- 1681d. Disclosure of investigative consumer reports.
- 1681e. Compliance procedures.
- 1681f. Disclosures to governmental agencies.
- 1681g. Disclosures to consumers.
- 1681h. Conditions and form of disclosure to consumers.
- 1681i. Procedure in case of disputed accuracy.
- 1681j. Charges for certain disclosures.
- 1681k. Public record information for employment purposes.
- 1681l. Restrictions on investigative consumer reports.
- 1681m. Requirements on users of consumer reports.
- 1681n. Civil liability for willful noncompliance.
- 1681o. Civil liability for negligent noncompliance.
- 1681p. Jurisdiction of courts; limitation of actions.
- 1681q. Obtaining information under false pretenses.
- 1681r. Unauthorized disclosures by officers or employees.
- 1681s. Administrative enforcement.
- 1681s-1. Information on overdue child support obligations.
- 1681s-2. Responsibilities of furnishers of information to consumer reporting agencies.
- 1681s-3. Affiliate sharing.
- 1681t. Relation to State laws.
- 1681u. Disclosures to FBI for counterintelligence purposes.
- 1681v. Disclosures to governmental agencies for counterterrorism purposes.
- 1681w. Disposal of records.
- 1681x. Corporate and technological circumvention prohibited.

#### SUBCHAPTER IV—EQUAL CREDIT OPPORTUNITY

- 1691. Scope of prohibition.
- 1691a. Definitions; rules of construction.
- 1691b. Promulgation of regulations by the Bureau.
- 1691c. Administrative enforcement.
- 1691c-1. Incentives for self-testing and self-correction.
- 1691c-2. Small business loan data collection.
- 1691d. Applicability of other laws.
- 1691e. Civil liability.
- 1691f. Annual reports to Congress; contents.

#### SUBCHAPTER V—DEBT COLLECTION PRACTICES

- 1692. Congressional findings and declaration of purpose.
- 1692a. Definitions.
- 1692b. Acquisition of location information.
- 1692c. Communication in connection with debt collection.
- 1692d. Harassment or abuse.
- 1692e. False or misleading representations.
- 1692f. Unfair practices.
- 1692g. Validation of debts.
- 1692h. Multiple debts.
- 1692i. Legal actions by debt collectors.
- 1692j. Furnishing certain deceptive forms.
- 1692k. Civil liability.
- 1692l. Administrative enforcement.

- 1692m. Reports to Congress by the Bureau; views of other Federal agencies.
- 1692n. Relation to State laws.
- 1692o. Exemption for State regulation.
- 1692p. Exception for certain bad check enforcement programs operated by private entities.

#### SUBCHAPTER VI—ELECTRONIC FUND TRANSFERS

- 1693. Congressional findings and declaration of purpose.
- 1693a. Definitions.
- 1693b. Regulations.
- 1693c. Terms and conditions of transfers.
- 1693d. Documentation of transfers.
- 1693e. Preauthorized transfers.
- 1693f. Error resolution.
- 1693g. Consumer liability.
- 1693h. Liability of financial institutions.
- 1693i. Issuance of cards or other means of access.
- 1693j. Suspension of obligations.
- 1693k. Compulsory use of electronic fund transfers.
- 1693l. Waiver of rights.
- 1693l–1. General-use prepaid cards, gift certificates, and store gift cards.
- 1693m. Civil liability.
- 1693n. Criminal liability.
- 1693o. Administrative enforcement.
- 1693o–1. Remittance transfers.
- 1693o–2. Reasonable fees and rules for payment card transactions.
- 1693p. Reports to Congress.
- 1693q. Relation to State laws.
- 1693r. Exemption for State regulation.

#### SUBCHAPTER I—CONSUMER CREDIT COST DISCLOSURE

### PART A—GENERAL PROVISIONS

#### **§1601. Congressional findings and declaration of purpose**

##### **(a) Informed use of credit**

The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this subchapter to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

##### **(b) Terms of personal property leases**

The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this subchapter to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him,

limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements.

(Pub. L. 90–321, title I, §102, May 29, 1968, 82 Stat. 146; Pub. L. 93–495, title III, §302, Oct. 28, 1974, 88 Stat. 1511; Pub. L. 94–240, §2, Mar. 23, 1976, 90 Stat. 257.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**1976**—Pub. L. 94–240 designated existing provisions as subsec. (a) and added subsec. (b).

**1974**—Pub. L. 93–495 inserted provisions expanding purposes of subchapter to include protection of consumer against inaccurate and unfair credit billing and credit card practices.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Pub. L. 111–203, title XIV, §1400(c), July 21, 2010, 124 Stat. 2136, provided that:

"(1) REGULATIONS.—The regulations required to be prescribed under this title [see Tables for classification] or the amendments made by this title shall—

"(A) be prescribed in final form before the end of the 18-month period beginning on the designated transfer date; and

"(B) take effect not later than 12 months after the date of issuance of the regulations in final form.

"(2) EFFECTIVE DATE ESTABLISHED BY RULE.—Except as provided in paragraph (3), a section, or provision thereof, of this title shall take effect on the date on which the final regulations implementing such section, or provision, take effect.

"(3) EFFECTIVE DATE.—A section of this title for which regulations have not been issued on the date that is 18 months after the designated transfer date shall take effect on such date."

### **EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94–240 effective on expiration of one year after Mar. 23, 1976, see section 6 of Pub. L. 94–240, set out as an Effective Date note under section 1667 of this title.

### **EFFECTIVE DATE OF 1974 AMENDMENT**

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

### **EFFECTIVE DATE**

Pub. L. 90–321, title V, §504(a), May 29, 1968, 82 Stat. 167, provided that: "Except as otherwise specified, the provisions of this Act [see Short Title note set out below] take effect upon enactment [May 29, 1968]."

### **SHORT TITLE OF 2018 AMENDMENT**

Pub. L. 115–174, §1(a), May 24, 2018, 132 Stat. 1296, provided that: "This Act [see Tables for classification] may be cited as the 'Economic Growth, Regulatory Relief, and Consumer Protection Act'."

### **SHORT TITLE OF 2015 AMENDMENT**

Pub. L. 114–94, div. G, title LXXXIX, §89001, Dec. 4, 2015, 129 Stat. 1799, provided that: "This title [amending sections 1639c and 1639d of this title and enacting provisions set out as a note under section 5512 of Title 12, Banks and Banking] may be cited as the 'Helping Expand Lending Practices in Rural Communities Act of 2015' or the 'HELP Rural Communities Act of 2015'."

### **SHORT TITLE OF 2010 AMENDMENT**

Pub. L. 111–319, §1, Dec. 18, 2010, 124 Stat. 3457, provided that: "This Act [amending section 1681m of this title and enacting provisions set out as a note under section 1681m of this title] may be cited as the 'Red Flag Program Clarification Act of 2010'."

Pub. L. 111–203, title XIV, §1400(a), July 21, 2010, 124 Stat. 2136, provided that: "This title [see Tables for classification] may be cited as the 'Mortgage Reform and Anti-Predatory Lending Act'."

### **SHORT TITLE OF 2009 AMENDMENT**

Pub. L. 111–93, §1, Nov. 6, 2009, 123 Stat. 2998, provided that: "This Act [amending section 1666b of this title] may be cited as the 'Credit CARD Technical Corrections Act of 2009'."

Pub. L. 111–24, §1(a), May 22, 2009, 123 Stat. 1734, provided that: "This Act [enacting sections 1616, 1651, 1665c to 1665e, 1666i–1, 1666i–2, and 1693l–1 of this title and section 1a–7b of Title 16, Conservation, amending sections 1602, 1632, 1637, 1640, 1650, 1666b, 1666c, 1666j, 1681b, 1681j, and 1693m to 1693r of this title, enacting provisions set out as notes under sections 1602, 1637, 1638, 1666b, 1681j, and 1693l–1 of this title and section 5311 of Title 31, Money and Finance, and amending provisions set out as notes under sections 1638 and 1693 of this title] may be cited as the 'Credit Card Accountability Responsibility and Disclosure Act of 2009' or the 'Credit CARD Act of 2009'."

#### **SHORT TITLE OF 2008 AMENDMENT**

Pub. L. 110–315, title X, §1001, Aug. 14, 2008, 122 Stat. 3478, provided that: "This title [enacting section 1650 of this title and sections 1019d and 9709 of Title 20, Education, amending sections 1602, 1603, 1638, and 1640 of this title, section 2903 of Title 12, Banks and Banking, and section 1092 of Title 20, and enacting provisions set out as notes under sections 1638 and 1640 of this title, section 2903 of Title 12, and section 9709 of Title 20] may be cited as the 'Private Student Loan Transparency and Improvement Act of 2008'."

Pub. L. 110–289, div. B, title V, §2501, July 30, 2008, 122 Stat. 2855, provided that: "This title [amending sections 1638 and 1640 of this title and sections 24 and 338a of Title 12, Banks and Banking, and enacting provisions set out as a note under section 1638 of this title] may be cited as the 'Mortgage Disclosure Improvement Act of 2008'."

Pub. L. 110–241, §1, June 3, 2008, 122 Stat. 1565, provided that: "This Act [amending section 1681n of this title and enacting provisions set out as notes under section 1681n of this title] may be cited as the 'Credit and Debit Card Receipt Clarification Act of 2007'."

#### **SHORT TITLE OF 2003 AMENDMENT**

Pub. L. 108–159, §1(a), Dec. 4, 2003, 117 Stat. 1952, provided that: "This Act [enacting sections 1681c–1, 1681c–2, 1681s–3, 1681w, and 1681x of this title and sections 9701 to 9708 of Title 20, Education, amending sections 1681a, 1681b, 1681c, 1681g, 1681i, 1681j, 1681m, 1681o, 1681p, 1681s, 1681s–2, 1681t, 1681u, and 1681v of this title and section 5318 of Title 31, Money and Finance, enacting provisions set out as notes under this section, sections 1681, 1681a, 1681b, 1681c, 1681c–1, 1681i, 1681j, 1681m, 1681n, 1681s–2, 1681s–3 of this title, and section 9701 of Title 20, and amending provisions set out as a note under this section] may be cited as the 'Fair and Accurate Credit Transactions Act of 2003'."

#### **SHORT TITLE OF 1999 AMENDMENT**

Pub. L. 106–102, title VII, §701, Nov. 12, 1999, 113 Stat. 1463, provided that: "This subtitle [subtitle A (§§701–705) of title VII of Pub. L. 106–102, amending sections 1693b, 1693c, and 1693h of this title] may be cited as the 'ATM Fee Reform Act of 1999'."

#### **SHORT TITLE OF 1998 AMENDMENT**

Pub. L. 105–347, §1, Nov. 2, 1998, 112 Stat. 3208, provided that: "This Act [amending sections 1681a to 1681c, 1681g, 1681i, 1681k, and 1681s of this title and enacting provisions set out as a note under section 1681a of this title] may be cited as the 'Consumer Reporting Employment Clarification Act of 1998'."

#### **SHORT TITLE OF 1996 AMENDMENT**

Pub. L. 104–208, div. A, title II, §2401, Sept. 30, 1996, 110 Stat. 3009–426, provided that: "This chapter [chapter 1 (§§2401–2422) of subtitle D of title II of div. A of Pub. L. 104–208, enacting section 1681s–2 of this title, amending sections 1681a to 1681e, 1681g to 1681j, 1681m to 1681o, 1681q to 1681s, and 1681t of this title, and enacting provisions set out as notes under sections 1681a, 1681b, and 1681g of this title] may be cited as the 'Consumer Credit Reporting Reform Act of 1996'."

#### **SHORT TITLE OF 1995 AMENDMENTS**

Pub. L. 104–29, §1, Sept. 30, 1995, 109 Stat. 271, provided that: "This Act [enacting section 1649 of this title, amending sections 1605, 1631, 1635, 1640, and 1641 of this title, and enacting provisions set out as notes under section 1605 of this title] may be cited as the 'Truth in Lending Act Amendments of 1995'."

Pub. L. 104–12, §1, May 18, 1995, 109 Stat. 161, provided that: "This Act [amending section 1640 of this title] may be cited as the 'Truth in Lending Class Action Relief Act of 1995'."

#### **SHORT TITLE OF 1994 AMENDMENT**

Pub. L. 103–325, title I, §151, Sept. 23, 1994, 108 Stat. 2190, provided that: "This subtitle [subtitle B

(§§151–158) of title I of Pub. L. 103–325, enacting sections 1639 and 1648 of this title, amending sections 1602, 1604, 1610, 1640, 1641, and 1647 of this title, and enacting provisions set out as notes under this section and section 1602 of this title] may be cited as the 'Home Ownership and Equity Protection Act of 1994'."

#### **SHORT TITLE OF 1992 AMENDMENT**

Pub. L. 102–537, §1, Oct. 27, 1992, 106 Stat. 3531, provided that: "This Act [enacting section 1681s–1 of this title, amending section 1681a of this title, and enacting provisions set out as a note under section 1681a of this title] may be cited as the 'Ted Weiss Child Support Enforcement Act of 1992'."

#### **SHORT TITLE OF 1988 AMENDMENTS**

Pub. L. 100–709, §1, Nov. 23, 1988, 102 Stat. 4725, provided that: "This Act [enacting sections 1637a, 1647, and 1665b of this title, amending sections 1632 and 1637 of this title, and enacting provisions set out as notes under section 1637a of this title] may be cited as the 'Home Equity Loan Consumer Protection Act of 1988'."

Pub. L. 100–583, §1, Nov. 3, 1988, 102 Stat. 2960, provided that: "This Act [amending sections 1610, 1632, 1637, 1640, and 1646 of this title and enacting provisions set out as a note under section 1637 of this title] may be cited as the 'Fair Credit and Charge Card Disclosure Act of 1988'."

#### **SHORT TITLE OF 1981 AMENDMENT**

Pub. L. 97–25, §1, July 27, 1981, 95 Stat. 144, provided: "That this Act [amending sections 1602 and 1666f of this title, section 29 of Title 12, Banks and Banking, and sections 205 and 212 of Title 42, The Public Health and Welfare; enacting provisions set out as notes under this section and sections 1602 and 1666f of this title; and amending provisions set out as notes under sections 1602 and 1666f of this title] may be cited as the 'Cash Discount Act'."

#### **SHORT TITLE OF 1980 AMENDMENT**

Pub. L. 96–221, title VI, §601, Mar. 31, 1980, 94 Stat. 168, provided that: "This title [enacting section 1646 of this title, amending sections 57a, 1602 to 1607, 1610, 1612, 1613, 1631, 1632, 1635, 1637, 1638, 1640, 1641, 1643, 1663, 1664, 1665a, 1666, 1666d, 1667d, and 1691f of this title, repealing sections 1614, 1636, and 1639 of this title, and enacting provisions set out as notes under sections 1602 and 1607 of this title] may be cited as the 'Truth in Lending Simplification and Reform Act'."

#### **SHORT TITLE OF 1976 AMENDMENTS**

Pub. L. 94–240, §1, Mar. 23, 1976, 90 Stat. 257, provided that: "This Act [enacting sections 1667 to 1667e of this title, amending this section and section 1640 of this title, and enacting provisions set out as a note under section 1667 of this title] may be cited as the 'Consumer Leasing Act of 1976'."

Pub. L. 94–239, §1(a), Mar. 23, 1976, 90 Stat. 251, provided that: "This Act [enacting section 1691f of this title, amending this section and sections 1691b, 1691c, 1691d, 1691e of this title, repealing section 1609 of this title, enacting provisions set out as notes under this section, and repealing provision set out as a note under this section] may be cited as the 'Equal Credit Opportunity Act Amendments of 1976'."

#### **SHORT TITLE OF 1974 AMENDMENT**

Pub. L. 93–495, title III, §301, Oct. 28, 1974, 88 Stat. 1511, provided that: "This title [enacting sections 1666 to 1666j of this title, amending this section and sections 1602, 1610, 1631, 1632, and 1637 of this title, and enacting provision set out as a note under section 1666 of this title] may be cited as the 'Fair Credit Billing Act'."

Pub. L. 93–495, title V, §501, Oct. 28, 1974, 88 Stat. 1521, which provided that title V of Pub. L. 93–495 (enacting subchapter IV of this chapter and notes set out under section 1691 of this title) could be cited as the "Equal Credit Opportunity Act", was repealed by Pub. L. 94–239, §1(c), Mar. 23, 1976, 90 Stat. 251.

#### **SHORT TITLE**

Pub. L. 90–321, §1, May 29, 1968, 82 Stat. 146, provided that: "This Act [enacting this chapter, sections 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18] may be cited as the 'Consumer Credit Protection Act'."

Pub. L. 90–321, title I, §101, May 29, 1968, 82 Stat. 146, provided that: "This title [enacting this subchapter] may be cited as the 'Truth in Lending Act'."

Pub. L. 90–321, title IV, §401, as added by Pub. L. 104–208, div. A, title II, §2451, Sept. 30, 1996, 110

Stat. 3009–454, provided that: "This title [enacting subchapter II–A of this chapter] may be cited as the 'Credit Repair Organizations Act'."

Pub. L. 90–321, title VI, §601, as added by Pub. L. 91–508, title VI, §601, Oct. 26, 1970, 84 Stat. 1128, as amended by Pub. L. 108–159, title VIII, §811(a), Dec. 4, 2003, 117 Stat. 2011, provided that: "This title [enacting subchapter III of this chapter] may be cited as the 'Fair Credit Reporting Act'."

Pub. L. 90–321, title VII, §709, as added by Pub. L. 94–239, §1(b), Mar. 23, 1976, 90 Stat. 251, provided that: "This title [enacting subchapter IV of this chapter and notes set out under section 1691 of this title] may be cited as the 'Equal Credit Opportunity Act'."

Pub. L. 90–321, title VIII, §801, as added by Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 874, provided that: "This title [enacting subchapter V of this chapter] may be cited as the 'Fair Debt Collection Practices Act'."

Pub. L. 90–321, title IX, §901, as added by Pub. L. 95–630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728, provided that: "This title [enacting subchapter VI of this chapter] may be cited as the 'Electronic Fund Transfer Act'."

## **SEVERABILITY**

Pub. L. 90–321, title V, §501, May 29, 1968, 82 Stat. 167, provided that: "If a provision enacted by this Act [see Short Title note above], is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications."

## **EXEMPTION OR MODIFICATION OF MORTGAGE DISCLOSURE REQUIREMENTS**

Pub. L. 111–203, title XIV, §1405(b), July 21, 2010, 124 Stat. 2142, provided that: "Notwithstanding any other provision of this title [see Tables for classification], in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Board may, by rule, exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Board determines that such exemption or modification is in the interest of consumers and in the public interest."

## **ANALYSIS OF FURTHER RESTRICTIONS ON OFFERS OF CREDIT OR INSURANCE**

Pub. L. 108–159, title II, §213(e), Dec. 4, 2003, 117 Stat. 1979, provided that:

"(1) IN GENERAL.—The Board shall conduct a study of—

"(A) the ability of consumers to avoid receiving written offers of credit or insurance in connection with transactions not initiated by the consumer; and

"(B) the potential impact that any further restrictions on providing consumers with such written offers of credit or insurance would have on consumers.

"(2) REPORT.—The Board shall submit a report summarizing the results of the study required under paragraph (1) to the Congress not later than 12 months after the date of enactment of this Act [Dec. 4, 2003], together with such recommendations for legislative or administrative action as the Board may determine to be appropriate.

"(3) CONTENT OF REPORT.—The report described in paragraph (2) shall address the following issues:

"(A) The current statutory or voluntary mechanisms that are available to a consumer to notify lenders and insurance providers that the consumer does not wish to receive written offers of credit or insurance.

"(B) The extent to which consumers are currently utilizing existing statutory and voluntary mechanisms to avoid receiving offers of credit or insurance.

"(C) The benefits provided to consumers as a result of receiving written offers of credit or insurance.

"(D) Whether consumers incur significant costs or are otherwise adversely affected by the receipt of written offers of credit or insurance.

"(E) Whether further restricting the ability of lenders and insurers to provide written offers of credit or insurance to consumers would affect—

"(i) the cost consumers pay to obtain credit or insurance;

"(ii) the availability of credit or insurance;

"(iii) consumers' knowledge about new or alternative products and services;

"(iv) the ability of lenders or insurers to compete with one another; and

"(v) the ability to offer credit or insurance products to consumers who have been traditionally underserved."

[For definitions of terms used in section 213(e) of Pub. L. 108–159, set out above, see section 2 of Pub. L. 108–159, set out as a Definitions note under section 1681 of this title.]



## **FEDERAL RESERVE STUDY OF HOME EQUITY LENDING AND APPROPRIATE INTEREST RATE INDEX**

Pub. L. 103–325, title I, §157, Sept. 23, 1994, 108 Stat. 2197, provided that during the period beginning 180 days after Sept. 23, 1994, and ending 2 years after that date, the Board of Governors of the Federal Reserve System was to conduct a study and submit to the Congress a report, including recommendations for any appropriate legislation, regarding whether consumers engaging in open end credit transactions as defined in section 1602 of this title secured by principal dwellings have adequate Federal protection and whether a more appropriate interest rate index existed for purposes of section 1602(bb)(1)(A) of this title than the yield on Treasury securities.

### **HEARINGS ON HOME EQUITY LENDING**

Pub. L. 103–325, title I, §158, Sept. 23, 1994, 108 Stat. 2197, as amended by Pub. L. 111–203, title X, §1096, July 21, 2010, 124 Stat. 2102, provided that:

"(a) **HEARINGS.**—Not less than once during the 3-year period beginning on the date of enactment of this Act [Sept. 23, 1994], and regularly thereafter, the Bureau, in consultation with the Advisory Board to the Bureau, shall conduct a public hearing to examine the home equity loan market and the adequacy of existing regulatory and legislative provisions and the provisions of this subtitle [see Short Title of 1994 Amendment note above] in protecting the interests of consumers, and low-income consumers in particular.

"(b) **PARTICIPATION.**—In conducting hearings required by subsection (a), the Bureau shall solicit participation from consumers, representatives of consumers, lenders, and other interested parties."

### **STUDY BY FEDERAL RESERVE BOARD OF GOVERNORS COVERING EFFECT OF CHARGE CARD TRANSACTIONS UPON CARD ISSUERS, MERCHANTS, AND CONSUMERS**

Pub. L. 97–25, title II, §202, July 27, 1981, 95 Stat. 145, directed Board of Governors of Federal Reserve System, not later than 2 years after July 27, 1981, to prepare a study and submit its findings to Congress on the effect of charge card transactions upon card issuers, merchants, and consumers.

### **INFERENCE OF LEGISLATIVE INTENT IN SECTION CAPTIONS AND CATCHLINES**

Pub. L. 90–321, title V, §502, May 29, 1968, 82 Stat. 167, provided that: "Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the legislative intent with respect to any provision enacted by this Act [enacting this chapter, section 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18] may be drawn from them."

### **GRAMMATICAL USAGES**

Pub. L. 90–321, title V, §503, May 30, 1968, 82 Stat. 167, provided that: "In this Act [enacting this chapter, sections 891 to 896 of Title 18, Crimes and Criminal Procedure, and provisions set out as notes under this section, sections 1631 and 1671 of this title, and section 891 of Title 18]:

- "(1) The word 'may' is used to indicate that an action either is authorized or is permitted.
- "(2) The word 'shall' is used to indicate that an action is both authorized and required.
- "(3) The phrase 'may not' is used to indicate that an action is both unauthorized and forbidden.
- "(4) Rules of law are stated in the indicative mood."

### **DEFINITION**

Pub. L. 111–203, title XIV, §1495, July 21, 2010, 124 Stat. 2207, provided that: "For purposes of this title [see Tables for classification], the term 'designated transfer date' means the date established under section 1062 of this Act [12 U.S.C. 5582]."

## **§1602. Definitions and rules of construction**

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) **BUREAU.**—The term "Bureau" means the Bureau of Consumer Financial Protection.

(c) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(d) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(e) The term "person" means a natural person or an organization.

(f) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(g) The term "creditor" refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under part D of this subchapter and sections 1637(a)(5), 1637(a)(6), 1637(a)(7), 1637(b)(1), 1637(b)(2), 1637(b)(3), 1637(b)(8), and 1637(b)(10) of this title, the term "creditor" shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Bureau shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans. Any person who originates 2 or more mortgages referred to in subsection (aa) in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this subchapter. The term "creditor" includes a private educational lender (as that term is defined in section 1650 of this title) for purposes of this subchapter.

(h) The term "credit sale" refers to any sale in which the seller is a creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(i) The adjective "consumer", used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

(j) The terms "open end credit plan" and "open end consumer credit plan" mean a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan or open end consumer credit plan which is an open end credit plan or open end consumer credit plan within the meaning of the preceding sentence is an open end credit plan or open end consumer credit plan even if credit information is verified from time to time.

(k) The term "adequate notice," as used in section 1643 of this title, means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

(l) The term "credit card" means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(m) The term "accepted credit card" means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

(n) The term "cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(o) The term "card issuer" means any person who issues a credit card, or the agent of such person with respect to such card.

(p) The term "unauthorized use," as used in section 1643 of this title, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(q) The term "discount" as used in section 1666f of this title means a reduction made from the regular price. The term "discount" as used in section 1666f of this title shall not mean a surcharge.

(r) The term "surcharge" as used in this section and section 1666f of this title means any means of increasing the regular price to a cardholder which is not imposed upon customers paying by cash, check, or similar means."

(s) The term "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(t) The term "agricultural purposes" includes the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of farmland, real property with a farm residence, and personal property and services used primarily in farming.

(u) The term "agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(v) The term "material disclosures" means the disclosure, as required by this subchapter, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, the due dates or periods of payments scheduled to repay the indebtedness, and the disclosures required by section 1639(a) of this title.

(w) The term "dwelling" means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

(x) The term "residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling.

(y) As used in this section and section 1666f of this title, the term "regular price" means the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted, one of which is charged when payment is made by use of an open-end credit plan or a credit card and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of an open-end credit plan or a credit cardholder's open-end account shall not be considered payment made by use of the plan or the account.

(z) Any reference to any requirement imposed under this subchapter or any provision thereof includes reference to the regulations of the Bureau under this subchapter or the provision thereof in question.

(aa) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this subchapter does not in itself constitute a violation of this subchapter.

**(bb) HIGH-COST MORTGAGE.—**

**(1) DEFINITION.—**

**(A) IN GENERAL.—**The term "high-cost mortgage", and a mortgage referred to in this subsection, means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a reverse mortgage transaction, if—

**(i) in the case of a credit transaction secured—**

**(I) by a first mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 6.5 percentage points (8.5**

percentage points, if the dwelling is personal property and the transaction is for less than \$50,000) the average prime offer rate, as defined in section 1639c(b)(2)(B) of this title, for a comparable transaction; or

(II) by a subordinate or junior mortgage on the consumer's principal dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8.5 percentage points the average prime offer rate, as defined in section 1639c(b)(2)(B) of this title, for a comparable transaction;

(ii) the total points and fees payable in connection with the transaction, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator, exceed—

(I) in the case of a transaction for \$20,000 or more, 5 percent of the total transaction amount; or

(II) in the case of a transaction for less than \$20,000, the lesser of 8 percent of the total transaction amount or \$1,000 (or such other dollar amount as the Board shall prescribe by regulation); or

(iii) the credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.

(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate of interest shall be determined based on the following interest rate:

(i) In the case of a fixed-rate transaction in which the annual percentage rate will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction.

(ii) In the case of a transaction in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement.

(iii) In the case of any other transaction in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the transaction at the maximum rate that may be charged during the term of the loan.

(C) MORTGAGE INSURANCE.—For the purposes of computing the total points and fees under paragraph (4), the total points and fees shall exclude—

(i) any premium provided by an agency of the Federal Government or an agency of a State;

(ii) any amount that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium, charge, or fee is required to be refundable on a pro-rated basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan; and

(iii) any premium paid by the consumer after closing.

(2)(A) After the 2-year period beginning on the effective date of the regulations promulgated under section 155 of the Riegle Community Development and Regulatory Improvement Act of 1994, and no more frequently than biennially after the first increase or decrease under this subparagraph, the Bureau may by regulation increase or decrease the number of percentage points specified in paragraph (1)(A), if the Bureau determines that the increase or decrease is—

(i) consistent with the consumer protections against abusive lending provided by the amendments made by subtitle B of title I of the Riegle Community Development and Regulatory Improvement Act of 1994; and

(ii) warranted by the need for credit.

(B) An increase or decrease under subparagraph (A)—

(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.

(C) In determining whether to increase or decrease the number of percentage points referred to in subparagraph (A), the Bureau shall consult with representatives of consumers, including low-income consumers, and lenders.

(3) The amount specified in paragraph (1)(B)(ii) shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index, as reported on June 1 of the year preceding such adjustment.

(4) For purposes of paragraph (1)(B), points and fees shall include—

(A) all items included in the finance charge, except interest or the time-price differential;

(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage originator from any source, including a mortgage originator that is also the creditor in a table-funded transaction;

(C) each of the charges listed in section 1605(e) of this title (except an escrow for future payment of taxes), unless—

(i) the charge is reasonable;

(ii) the creditor receives no direct or indirect compensation; and

(iii) the charge is paid to a third party unaffiliated with the creditor; and

(D) premiums or other charges payable at or before closing for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

(E) the maximum prepayment fees and penalties which may be charged or collected under the terms of the credit transaction;

(F) all prepayment fees or penalties that are incurred by the consumer if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and

(G) such other charges as the Bureau determines to be appropriate.

(5) CALCULATION OF POINTS AND FEES FOR OPEN-END CONSUMER CREDIT PLANS.—In the case of open-end consumer credit plans, points and fees shall be calculated, for purposes of this section and section 1639 of this title, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the credit transaction, plus the minimum additional fees the consumer would be required to pay to draw down an amount equal to the total credit line.

(6) This subsection shall not be construed to limit the rate of interest or the finance charge that a person may charge a consumer for any extension of credit.

(cc) The term "reverse mortgage transaction" means a nonrecourse transaction in which a mortgage, deed of trust, or equivalent consensual security interest is created against the consumer's principal dwelling—

(1) securing one or more advances; and

(2) with respect to which the payment of any principal, interest, and shared appreciation or equity is due and payable (other than in the case of default) only after—

(A) the transfer of the dwelling;

(B) the consumer ceases to occupy the dwelling as a principal dwelling; or

(C) the death of the consumer.

(dd) DEFINITIONS RELATING TO MORTGAGE ORIGINATION AND RESIDENTIAL MORTGAGE LOANS.—

(1) COMMISSION.—Unless otherwise specified, the term "Commission" means the Federal Trade Commission.

(2) MORTGAGE ORIGINATOR.—The term "mortgage originator"—

(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—

- (i) takes a residential mortgage loan application;
- (ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or
- (iii) offers or negotiates terms of a residential mortgage loan;

(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A);

(C) does not include any person who is—

(i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph; or

(ii) a retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable—

(I) does not receive compensation or gain for engaging in activities described in subparagraph (A) that is in excess of any compensation or gain received in a comparable cash transaction;

(II) discloses to the consumer—

(aa) in writing any corporate affiliation with any creditor; and

(bb) if the retailer has a corporate affiliation with any creditor, at least 1 unaffiliated creditor; and

(III) does not directly negotiate with the consumer or lender on loan terms (including rates, fees, and other costs).

(D) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator;

(E) does not include, with respect to a residential mortgage loan, a person, estate, or trust that provides mortgage financing for the sale of 3 properties in any 12-month period to purchasers of such properties, each of which is owned by such person, estate, or trust and serves as security for the loan, provided that such loan—

(i) is not made by a person, estate, or trust that has constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of such person, estate, or trust;

(ii) is fully amortizing;

(iii) is with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan;

(iv) has a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and

(v) meets any other criteria the Board may prescribe;

(F) does not include the creditor (except the creditor in a table-funded transaction) under paragraph (1), (2), or (4) of section 1639b(c) of this title; and

(G) does not include a servicer or servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.

(3) **NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.**—The term "Nationwide Mortgage Licensing System and Registry" has the same meaning as in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [12 U.S.C. 5101 et seq.].

(4) **OTHER DEFINITIONS RELATING TO MORTGAGE ORIGINATOR.**—For purposes of this subsection, a person "assists a consumer in obtaining or applying to obtain a residential mortgage loan" by, among other things, advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(5) **RESIDENTIAL MORTGAGE LOAN.**—The term "residential mortgage loan" means any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan or, for purposes of sections 1639b and 1639c of this title and section 1638(a) (16), (17), (18), and (19) of this title, and sections 1638(f) and 1640(k) of this title, and any regulations promulgated thereunder, an extension of credit relating to a plan described in section 101(53D) of title 11.

(6) **SECRETARY.**—The term "Secretary", when used in connection with any transaction or person involved with a residential mortgage loan, means the Secretary of Housing and Urban Development.

(7) **SERVICER.**—The term "servicer" has the same meaning as in section 2605(i)(2) of title 12.

(ee) **BONA FIDE DISCOUNT POINTS AND PREPAYMENT PENALTIES.**—For the purposes of determining the amount of points and fees for purposes of subsection (aa), either the amounts described in paragraph (1) or (2) of the following paragraphs, but not both, shall be excluded:

(1) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 1 percentage point—

(A) the average prime offer rate, as defined in section 1639c of this title; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

(2) Unless 2 bona fide discount points have been excluded under paragraph (1), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points—

(A) the average prime offer rate, as defined in section 1639c of this title; or

(B) if secured by a personal property loan, the average rate on a loan in connection with which insurance is provided under title I of the National Housing Act (12 U.S.C. 1702 et seq.).

(3) For purposes of paragraph (1), the term "bona fide discount points" means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(Pub. L. 90–321, title I, §103, May 29, 1968, 82 Stat. 147; Pub. L. 91–508, title V, §501, Oct. 26, 1970, 84 Stat. 1126; Pub. L. 93–495, title III, §303, Oct. 28, 1974, 88 Stat. 1511; Pub. L. 94–222,

§3(a), Feb. 27, 1976, 90 Stat. 197; Pub. L. 96–221, title VI, §§602, 603(a), (b), 604, 612(a)(2), (b), Mar. 31, 1980, 94 Stat. 168, 169, 175, 176; Pub. L. 97–25, title I, §102, July 27, 1981, 95 Stat. 144; Pub. L. 97–320, title VII, §702(a), Oct. 15, 1982, 96 Stat. 1538; Pub. L. 103–325, title I, §§152(a)–(c), 154(a), Sept. 23, 1994, 108 Stat. 2190, 2191, 2196; Pub. L. 110–315, title X, §1011(b), Aug. 14, 2008, 122 Stat. 3481; Pub. L. 111–24, title I, §108, May 22, 2009, 123 Stat. 1743; Pub. L. 111–203, title X, §1100A(1), (2), title XIV, §§1401, 1431, July 21, 2010, 124 Stat. 2107, 2137, 2157; Pub. L. 115–174, title I, §107, May 24, 2018, 132 Stat. 1304.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Riegle Community Development and Regulatory Improvement Act of 1994, referred to in subsec. (bb)(2)(A)(i), is Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2160. Section 155 of the Act is set out below. For classification of subtitle B of title I of the Act, known as the "Home Ownership and Equity Protection Act of 1994", see Short Title of 1994 Amendment note set out under section 1601 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4701 of Title 12, Banks and Banking, and Tables.

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, referred to in subsec. (dd)(3), is title V of div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2810, also known as the S.A.F.E. Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§5101 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 5101 of Title 12 and Tables.

The National Housing Act, referred to in subsec. (ee)(1)(B), (2)(B), is act June 27, 1934, ch. 847, 48 Stat. 1246. Title I of the Act is classified generally to subchapter II (§1702 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

### AMENDMENTS

**2018**—Subsecs. (cc), (dd). Pub. L. 115–174, §107(1), redesignated subsec. (cc), relating to definitions relating to mortgage origination and residential mortgage loans, as (dd). Former subsec. (dd) redesignated (ee).

Subsec. (dd)(2)(C). Pub. L. 115–174, §107(2), added subpar. (C) and struck out former subpar. (C) which read as follows: "does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) an employee of a retailer of manufactured homes who is not described in clause (i) or (iii) of subparagraph (A) and who does not advise a consumer on loan terms (including rates, fees, and other costs);".

Subsec. (ee). Pub. L. 115–174, §107(1), redesignated subsec. (dd) as (ee).

**2010**—Pub. L. 111–203, §1100A(2), which directed substitution of "Bureau" for "Board" wherever appearing, was executed by making the substitution wherever appearing in subsecs. (g), (z), and (bb)(2)(A), (C), (4)(D), but not in subsec. (c), to reflect the probable intent of Congress.

Subsecs. (b) to (z). Pub. L. 111–203, §1100(A)(1), added subsec. (b) and redesignated former subsecs. (b) to (z) as (c) to (aa), respectively.

Subsec. (bb). Pub. L. 111–203, §1431(a), which directed amendment of subsec. (aa) by inserting subsec. heading, adding par. (1), and striking out former par. (1), was executed by making the amendment to subsec. (bb) to reflect the probable intent of Congress and the redesignation of subsec. (aa) as (bb) by Pub. L. 111–203, §1100(A)(1). See below. Text of former par. (1) read as follows: "A mortgage referred to in this subsection means a consumer credit transaction that is secured by the consumer's principal dwelling, other than a residential mortgage transaction, a reverse mortgage transaction, or a transaction under an open end credit plan, if—

"(A) the annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the yield on Treasury securities having comparable periods of maturity on the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

"(B) the total points and fees payable by the consumer at or before closing will exceed the greater of—

"(i) 8 percent of the total loan amount; or

"(ii) \$400."

Pub. L. 111–203, §1100(A)(1), redesignated subsec. (aa) as (bb). Former subsec. (bb) redesignated (cc).



Subsec. (bb)(2)(B). Pub. L. 111-203, §1431(b), which directed amendment of subsec. (aa)(2) by adding subpar. (B) and striking out former subpar. (B), was executed by making the amendment to subsec. (bb)(2) to reflect the probable intent of Congress and the redesignation of subsec. (aa) as (bb) by Pub. L. 111-203, §1100(A)(1). See above. Text of former subpar. (B) read as follows: "An increase or decrease under subparagraph (A) may not result in the number of percentage points referred to in subparagraph (A) being—

"(i) less than 8 percentage points; or

"(ii) greater than 12 percentage points."

Subsec. (bb)(4)(B). Pub. L. 111-203, §1431(c)(1)(A), which directed amendment of subsec. (aa)(4) by adding subpar. (B) and struck out former subpar. (B), was executed by making the amendment to subsec. (bb)(4) to reflect the probable intent of Congress and the redesignation of subsec. (aa) as (bb) by Pub. L. 111-203, §1100(A)(1). See above. Text of former subpar. (B) read as follows: "all compensation paid to mortgage brokers;"

Subsec. (bb)(4)(D) to (G). Pub. L. 111-203, §1431(c)(1)(B), (C), which directed amendment of subsec. (aa)(4) by adding subpars. (D) to (F) and redesignating former subpar. (D) as (G), was executed by making the amendment to subsec. (bb)(4) to reflect the probable intent of Congress and the redesignation of subsec. (aa) as (bb) by Pub. L. 111-203, §1100(A)(1). See above.

Subsec. (bb)(5), (6). Pub. L. 111-203, §1431(c)(2), which directed amendment of subsec. (aa) by adding par. (5) and redesignating former par. (5) as (6), was executed by making the amendment to subsec. (bb) to reflect the probable intent of Congress and the redesignation of subsec. (aa) as (bb) by Pub. L. 111-203, §1100(A)(1). See above.

Subsec. (cc). Pub. L. 111-203, §1401, added subsec. (cc) relating to definitions relating to mortgage origination and residential mortgage loans.

Pub. L. 111-203, §1100(A)(1), redesignated subsec. (bb) as (cc) defining the term "reverse mortgage transaction".

Subsec. (dd). Pub. L. 111-203, §1431(d), added subsec. (dd).

**2009**—Subsec. (i). Pub. L. 111-24 substituted "terms 'open end credit plan' and 'open end consumer credit plan' mean" for "term 'open end credit plan' means" in first sentence and inserted "or open end consumer credit plan" after "credit plan" wherever appearing in second sentence.

**2008**—Subsec. (f). Pub. L. 110-315 inserted at end "The term 'creditor' includes a private educational lender (as that term is defined in section 1650 of this title) for purposes of this subchapter."

**1994**—Subsec. (f). Pub. L. 103-325, §152(c), inserted at end "Any person who originates 2 or more mortgages referred to in subsection (aa) in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this subchapter."

Subsec. (u). Pub. L. 103-325, §152(b), substituted "the due dates" for "and the due dates" and inserted before period at end ", and the disclosures required by section 1639(a) of this title".

Subsec. (aa). Pub. L. 103-325, §152(a), added subsec. (aa).

Subsec. (bb). Pub. L. 103-325, §154(a), added subsec. (bb).

**1982**—Subsec. (f). Pub. L. 97-320 struck out provision that a person who regularly arranged for the extension of consumer credit payable in more than four installments or for which the payment of a finance charge was or might have been required from persons not creditors was a creditor, and provision that this subchapter applied to any creditor, irrespective of his or its status as a natural person or any type of organization, who was a card issuer.

**1981**—Subsecs. (x) to (z). Pub. L. 97-25 added subsec. (z) and, effective Apr. 10, 1982, redesignated subsecs. (x), (y), and (z) as (y), (z), and (x), respectively.

**1980**—Subsec. (f). Pub. L. 96-221, §602(a), substituted provisions defining term "creditor" as referring only to a person who both regularly extends consumer credit, subject to specified conditions, and is the person to whom the debt arising is initially payable on the face of the indebtedness or by agreement, and notwithstanding such provisions, also refers to a person regularly arranging for the extension of consumer credit, and a card issuer and any person honoring the credit card, subject to specified conditions, for provisions defining term "creditor" as referring only to creditors who regularly extend, or arrange for the extension of credit payable in more than four installments or where a finance charge is or may be required, and substituted "(a)(5)" for "(a)(6)", "(a)(6)" for "(a)(7)", "(a)(7)" for "(a)(8)", "(b)(8)" for "(b)(9)", and "(b)(10)" for "(b)(11)".

Subsec. (g). Pub. L. 96-221, §602(b), substituted "in which the seller is a creditor" for "with respect to which credit is extended or arranged by the seller".

Subsec. (h). Pub. L. 96-221, §603(a), struck out applicability to agricultural purposes.

Subsec. (i). Pub. L. 96-221, §604, inserted provisions respecting the reasonable contemplations of the creditor, and verification of credit information from time to time.

Subsecs. (s), (t). Pub. L. 96–221, §603(b), added subsecs. (s) and (t). Former subsecs. (s) and (t) redesignated (x) and (y), respectively.

Subsec. (u). Pub. L. 96–221, §612(a)(2), added subsec. (u).

Subsecs. (v), (w). Pub. L. 96–221, §612(b), added subsecs. (v) and (w).

Subsecs. (x), (y). Pub. L. 96–221, §603(b), redesignated former subsecs. (s) and (t) as (x) and (y), respectively.

**1976**—Subsecs. (p) to (t). Pub. L. 94–222 added subsecs. (p) and (q) and redesignated former subsecs. (p) to (r) as (r) to (t), respectively.

**1974**—Subsec. (f). Pub. L. 93–495 inserted provision requiring the credit to be payable by agreement in more than four installments and defining term "creditor" for the purposes of the requirements imposed under the enumerated sections of this chapter.

**1970**—Subsecs. (j) to (r). Pub. L. 91–508 added subsecs. (j) to (o) and redesignated former subsecs. (j) to (l) as (p) to (r), respectively.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by section 1100A(1), (2) of 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.

Amendment by sections 1401 and 1431 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

### **EFFECTIVE DATE OF 2009 AMENDMENT**

Pub. L. 111–24, §3, May 22, 2009, 123 Stat. 1735, provided that: "This Act [enacting sections 1616, 1651, 1665c to 1665e, 1666i–1, 1666i–2, and 1693l–1 of this title and section 1a–7b of Title 16, Conservation, amending this section and sections 1632, 1637, 1640, 1650, 1666b, 1666c, 1666j, 1681b, 1681j, and 1693m to 1693r of this title, enacting provisions set out as notes under this section and sections 1637, 1638, 1666b, 1681j, and 1693l–1 of this title and section 5311 of Title 31, Money and Finance, and amending provisions set out as notes under sections 1638 and 1693 of this title] and the amendments made by this Act shall become effective 9 months after the date of enactment of this Act [May 22, 2009], except as otherwise specifically provided in this Act."

### **EFFECTIVE DATE OF 1982 AMENDMENT**

Pub. L. 97–320, title VII, §702(b), Oct. 15, 1982, 96 Stat. 1538, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the effective date of title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980 [two years and six months after Mar. 31, 1980, see Effective Date of 1980 Amendment note below]."

### **EFFECTIVE DATE OF 1981 AMENDMENT**

Section 102(b) of Pub. L. 97–25 provided that the amendment made by that section is effective Apr. 10, 1982.

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Pub. L. 96–221, title VI, §625, Mar. 31, 1980, 94 Stat. 185, as amended by Pub. L. 97–25, title III, §301, July 27, 1981, 95 Stat. 145; Pub. L. 97–110, title III, §301, Dec. 26, 1981, 95 Stat. 1515, provided that:

"(a) Except as provided in section 608(b) [set out as an Effective Date of 1980 Amendment note under section 1607 of this title], the amendments made by this title [enacting section 1646 of this title, amending sections 57a, 1602 to 1606, 1610, 1612, 1613, 1631, 1632, 1635, 1637, 1638, 1640, 1641, 1643, 1663, 1664, 1665a, 1666, 1666d, 1667d, and 1691f of this title, repealing sections 1614, 1636, and 1639 of this title, and enacting provisions set out as a note under section 1601 of this title] shall take effect upon the expiration of two years and six months after the date of enactment of this title [Mar. 31, 1980].

"(b) All regulations, forms, and clauses required to be prescribed under the amendments made by this title shall be promulgated at least one year prior to such effective date.

"(c) Notwithstanding subsections (a) and (b), any creditor may comply with the amendments made by this title, in accordance with the regulations, forms, and clauses prescribed by the Board, prior to such effective

date. Any creditor who elects to comply with such amendments and any assignee of such a creditor shall be subject to the provisions of sections 130 and 131 of the Truth in Lending Act, as amended by sections 615 and 616, respectively, of this title [sections 1640 and 1641 of this title]."

#### **EFFECTIVE DATE OF 1974 AMENDMENT**

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

#### **REGULATIONS**

Pub. L. 111–24, §2, May 22, 2009, 123 Stat. 1735, provided that: "The Board of Governors of the Federal Reserve System (in this Act [see Short Title of 2009 Amendment note set out under section 1601 of this title] referred to as the 'Board') may issue such rules and publish such model forms as it considers necessary to carry out this Act and the amendments made by this Act."

Pub. L. 103–325, title I, §155, Sept. 23, 1994, 108 Stat. 2197, provided that: "Not later than 180 days after the date of enactment of this Act [Sept. 23, 1994], the Board of Governors of the Federal Reserve System shall issue such regulations as may be necessary to carry out this subtitle [subtitle B (§§151–158) of title I of Pub. L. 103–325, see Short Title of 1994 Amendment note set out under section 1601 of this title], and such regulations shall become effective on the date on which disclosure regulations are required to become effective under section 105(d) of the Truth in Lending Act [15 U.S.C. §1604(d)]."

#### **APPLICABILITY OF 1994 AMENDMENTS AND REGULATIONS TO SUBSECTION (AA) MORTGAGES**

Pub. L. 103–325, title I, §156, Sept. 23, 1994, 108 Stat. 2197, provided that: "This subtitle [subtitle B (§§151–158) of title I of Pub. L. 103–325, see Short Title of 1994 Amendment note set out under section 1601 of this title], and the amendments made by this subtitle, shall apply to every mortgage referred to in section 103(aa) of the Truth in Lending Act [now 15 U.S.C. 1602(bb)] (as added by section 152(a) of this Act) consummated on or after the date on which regulations issued under section 155 [set out above] become effective."

### **§1603. Exempted transactions**

This subchapter does not apply to the following:

(1) Credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, or to government or governmental agencies or instrumentalities, or to organizations.

(2) Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.

(3) Credit transactions, other than those in which a security interest is or will be acquired in real property, or in personal property used or expected to be used as the principal dwelling of the consumer and other than private education loans (as that term is defined in section 1650(a) of this title), in which the total amount financed exceeds \$50,000.<sup>1</sup>

(4) Transactions under public utility tariffs, if the Bureau determines that a State regulatory body regulates the charges for the public utility services involved, the charges for delayed payment, and any discount allowed for early payment.

(5) Transactions for which the Bureau, by rule, determines that coverage under this subchapter is not necessary to carry out the purposes of this subchapter.

(6) Repealed. Pub. L. 96–221, title VI, §603(c)(3), Mar. 31, 1980, 94 Stat. 169.

(7) Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.].

(Pub. L. 90–321, title I, §104, May 29, 1968, 82 Stat. 147; Pub. L. 93–495, title IV, §402, Oct. 28, 1974, 88 Stat. 1517; Pub. L. 96–221, title VI, §603(c), Mar. 31, 1980, 94 Stat. 169; Pub. L. 97–320, title VII, §701(a), Oct. 15, 1982, 96 Stat. 1538; Pub. L. 104–208, div. A, title II, §2102(a), Sept. 30, 1996, 110 Stat. 3009–398; Pub. L. 110–315, title X, §1022, Aug. 14, 2008, 122 Stat. 3488; Pub. L. 111–203, title X, §§1100A(2), 1100E(a)(1), July 21, 2010, 124 Stat. 2107, 2111.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in par. (7), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) 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

**2010**—Par. (3). Pub. L. 111-203, §1100E(a)(1), substituted "\$50,000" for "\$25,000".

Pars. (4), (5). Pub. L. 111-203, §1100A(2), substituted "Bureau" for "Board".

**2008**—Par. (3). Pub. L. 110-315 inserted "and other than private education loans (as that term is defined in section 1650(a) of this title)" after "consumer".

**1996**—Pars. (5) to (7). Pub. L. 104-208 added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

**1982**—Par. (6). Pub. L. 97-320 added par. (6).

**1980**—Par. (1). Pub. L. 96-221, §603(c)(1), inserted provision relating to applicability to agricultural purposes.

Par. (3). Pub. L. 96-221, §603(c)(2), substituted provision excepting security interest in real property, or in personal property used as the consumer's principal dwelling, for provisions excepting real property transactions.

Par. (5). Pub. L. 96-221, §603(c)(3), struck out par. (5) which related to credit transactions primarily for agricultural purposes where the amount financed exceeds \$25,000.

**1974**—Par. (5). Pub. L. 93-495 added par. (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.

### EFFECTIVE DATE OF 1982 AMENDMENT

Section 701(c) of Pub. L. 97-320, as amended by Pub. L. 97-457, §31, Jan. 12, 1983, 96 Stat. 2511, provided that: "The amendment made by subsection (a) [amending this section] and subsection (b) [enacting section 1099 of Title 20, Education] shall be effective with respect to loans made prior to, on, and after the date of the enactment of this Act [Oct. 15, 1982]."

### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96-221, set out as a note under section 1602 of this title.

### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93-495 effective Oct. 28, 1974, see section 416 of Pub. L. 93-495, set out as an Effective Date note under section 1665a of this title.

## EXCEPTIONS IN AREAS WHERE MAJOR DISASTER EXISTS

Board of Governors of Federal Reserve System authorized to make exceptions to requirements of this subchapter for transactions within an area in which the President has determined that a major disaster exists, if Board determines that exception can reasonably be expected to alleviate hardships to the public that outweigh possible adverse effects, see section 50002 of Pub. L. 105-18, set out as a note under section 4008 of Title 12, Banks and Banking, and similar provisions listed thereunder.

## ADJUSTMENTS FOR INFLATION

Pub. L. 111-203, title X, §1100E(b), July 21, 2010, 124 Stat. 2111, provided that: "On and after December 31, 2011, the Bureau [of Consumer Financial Protection] shall adjust annually the dollar amounts described in sections 104(3) and 181(1) of the Truth in Lending Act [15 U.S.C. 1603(3), 1667(1)] (as amended by this

section), by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published by the Bureau of Labor Statistics, rounded to the nearest multiple of \$100, or \$1,000, as applicable." Threshold amounts in effect during particular periods of time can be found in Code of Federal Regulations, Title 12, Supplement I to Part 1013, under Section 1013.2—Definitions, under 2(e)—Consumer Lease, paragraph 11.

<sup>1</sup> [\*See Adjustments for Inflation note below.\*](#)

## **§1604. Disclosure guidelines**

### **(a) Promulgation, contents, etc., of regulations**

The Bureau shall prescribe regulations to carry out the purposes of this subchapter. Except with respect to the provisions of section 1639 of this title that apply to a mortgage referred to in section 1602(aa) <sup>1</sup> of this title, such regulations may contain such additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

### **(b) Model disclosure forms and clauses; publication, criteria, compliance, etc.**

The Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this subchapter in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] that, taken together, may apply to a transaction that is subject to both or either provisions of law. The purpose of such model disclosure shall be to facilitate compliance with the disclosure requirements of this subchapter and the Real Estate Settlement Procedures Act of 1974, and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. In devising such forms, the Bureau shall consider the use by creditors or lessors of data processing or similar automated equipment. Nothing in this subchapter may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Bureau under this section. A creditor or lessor shall be deemed to be in compliance with the disclosure provisions of this subchapter with respect to other than numerical disclosures if the creditor or lessor (1) uses any appropriate model form or clause as published by the Bureau, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this subchapter, or (B) rearranging the format, if in making such deletion or rearranging the format, the creditor or lessor does not affect the substance, clarity, or meaningful sequence of the disclosure.

### **(c) Procedures applicable for adoption of model forms and clauses**

Model disclosure forms and clauses shall be adopted by the Bureau after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5.

### **(d) Effective dates of regulations containing new disclosure requirements**

Any regulation of the Bureau, or any amendment or interpretation thereof, requiring any disclosure which differs from the disclosures previously required by this part, part D, or part E or by any regulation of the Bureau promulgated thereunder shall have an effective date of that October 1 which follows by at least six months the date of promulgation, except that the Bureau may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements or shorten the length of time for creditors or lessors to make such adjustments when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or

deceptive disclosure practices. Notwithstanding the previous sentence, any creditor or lessor may comply with any such newly promulgated disclosure requirements prior to the effective date of the requirements.

**(e) Disclosure for charitable mortgage loan transactions**

With respect to a mortgage loan transaction involving a residential mortgage loan offered at 0 percent interest with only bonafide and reasonable fees and that is primarily for charitable purposes by an organization described in section 501(c)(3) of title 26 and exempt from taxation under section 501(a) of such title, forms HUD-1 and GFE (as defined under section 1024.2(b) of title 12, Code of Federal Regulations) together with a disclosure substantially in the form of the Loan Model Form H-2 (as depicted in Appendix H to part 1026 of title 12, Code of Federal Regulations) shall, collectively, be an appropriate model form for purposes of subsection (b) of this section.

**(f) Exemption authority**

**(1) In general**

The Bureau may exempt, by regulation, from all or part of this subchapter all or any class of transactions, other than transactions involving any mortgage described in section 1602(aa) <sup>1</sup> of this title, for which, in the determination of the Bureau, coverage under all or part of this subchapter does not provide a meaningful benefit to consumers in the form of useful information or protection.

**(2) Factors for consideration**

In determining which classes of transactions to exempt in whole or in part under paragraph (1), the Bureau shall consider the following factors and publish its rationale at the time a proposed exemption is published for comment:

(A) The amount of the loan and whether the disclosures, right of rescission, and other provisions provide a benefit to the consumers who are parties to such transactions, as determined by the Bureau.

(B) The extent to which the requirements of this subchapter complicate, hinder, or make more expensive the credit process for the class of transactions.

(C) The status of the borrower, including—

(i) any related financial arrangements of the borrower, as determined by the Bureau;

(ii) the financial sophistication of the borrower relative to the type of transaction; and

(iii) the importance to the borrower of the credit, related supporting property, and coverage under this subchapter, as determined by the Bureau;

(D) whether the loan is secured by the principal residence of the consumer; and

(E) whether the goal of consumer protection would be undermined by such an exemption.

**(g) Waiver for certain borrowers**

**(1) In general**

The Bureau, by regulation, may exempt from the requirements of this subchapter certain credit transactions if—

(A) the transaction involves a consumer—

(i) with an annual earned income of more than \$200,000; or

(ii) having net assets in excess of \$1,000,000 at the time of the transaction; and

(B) a waiver that is handwritten, signed, and dated by the consumer is first obtained from the consumer.

**(2) Adjustments by the Bureau**

The Bureau, at its discretion, may adjust the annual earned income and net asset requirements of paragraph (1) for inflation.

**(h) Deference**

Notwithstanding any power granted to any Federal agency under this subchapter, the deference that a court affords to the Bureau with respect to a determination made by the Bureau relating to the meaning or interpretation of any provision of this subchapter, other than section 1639e or 1639h of this title, shall be applied as if the Bureau were the only agency authorized to apply, enforce, interpret, or administer the provisions of this subchapter.

**(i) Authority of the Board to prescribe rules**

Notwithstanding subsection (a), the Board shall have authority to prescribe rules under this subchapter with respect to a person described in section 5519(a) of title 12. Regulations prescribed under this subsection may contain such classifications, differentiations, or other provisions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(Pub. L. 90–321, title I, §105, May 29, 1968, 82 Stat. 148; Pub. L. 96–221, title VI, §605, Mar. 31, 1980, 94 Stat. 170; Pub. L. 103–325, title I, §152(e)(2)(A), Sept. 23, 1994, 108 Stat. 2194; Pub. L. 104–208, div. A, title II, §§2102(b), 2104, Sept. 30, 1996, 110 Stat. 3009–399, 3009–401; Pub. L. 111–203, title X, §1100A(2), (4)–(7), title XIV, §1472(c), July 21, 2010, 124 Stat. 2107, 2108, 2190; Pub. L. 116–342, §2(a), Jan. 13, 2021, 134 Stat. 5134.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 1602(aa) of this title, referred to in subsecs. (a) and (f)(1), was redesignated section 1602(bb) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 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 2601 of Title 12 and Tables.

**AMENDMENTS**

**2021**—Subsec. (e). Pub. L. 116–342 added subsec. (e).

**2010**—Subsec. (a). Pub. L. 111–203, §1100A(2), (4), substituted "Bureau" for "Board" in two places, substituted "Except with respect to the provisions of section 1639 of this title that apply to a mortgage referred to in section 1602(aa) of this title, such regulations may contain such additional requirements," for "Except in the case of a mortgage referred to in section 1602(aa) of this title, these regulations may contain such", and inserted "all or" after "exceptions for".

Subsec. (b). Pub. L. 111–203, §1100A(2), (5), substituted "Bureau" for "Board" wherever appearing in last three sentences and substituted first two sentences for former first sentence which read as follows: "The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this subchapter and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures."

Subsecs. (c), (d). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (f). Pub. L. 111–203, §1100A(2), (6), substituted "Bureau" for "Board" wherever appearing and inserted "all or" after "from all or part of this subchapter" in par. (1).

Subsec. (g). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" in pars. (1) and (2).

Subsec. (h). Pub. L. 111–203, §1472(c), which directed addition of subsec. (h) at end of section, was executed by adding subsec. (h) before subsec. (i), to reflect the probable intent of Congress and prior amendment by Pub. L. 111–203, §1100A(7). See below.

Subsec. (i). Pub. L. 111–203, §1100A(7), added subsec. (i).

**1996**—Subsec. (f). Pub. L. 104–208, §2102(b), added subsec. (f).

Subsec. (g). Pub. L. 104–208, §2104, added subsec. (g).

**1994**—Subsec. (a). Pub. L. 103–325 substituted "Except in the case of a mortgage referred to in section 1602(aa) of this title, these" for "These" in second sentence.

**1980**—Pub. L. 96–221 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

**STATUTORY NOTES AND RELATED SUBSIDIARIES**



### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2), (4)–(7) of 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.

Amendment by section 1472(c) of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

<sup>1</sup> [\*See References in Text note below.\*](#)

## **§1605. Determination of finance charge**

### **(a) "Finance charge" defined**

Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges. Examples of charges which are included in the finance charge include any of the following types of charges which are applicable:

- (1) Interest, time price differential, and any amount payable under a point, discount, or other system or additional charges.
- (2) Service or carrying charge.
- (3) Loan fee, finder's fee, or similar charge.
- (4) Fee for an investigation or credit report.
- (5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.
- (6) Borrower-paid mortgage broker fees, including fees paid directly to the broker or the lender (for delivery to the broker) whether such fees are paid in cash or financed.

### **(b) Life, accident, or health insurance premiums included in finance charge**

Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charges unless

- (1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and
- (2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

### **(c) Property damage and liability insurance premiums included in finance charge**

Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is



furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

**(d) Items exempted from computation of finance charge in all credit transactions**

If any of the following items is itemized and disclosed in accordance with the regulations of the Bureau in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph (1) which would otherwise be payable.

(3) Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a precondition for recording the instrument securing the evidence of indebtedness.

**(e) Items exempted from computation of finance charge in extensions of credit secured by an interest in real property**

The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, title insurance, or similar purposes.

(2) Fees for preparation of loan-related documents.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing.

(6) Credit reports.

**(f) Tolerances for accuracy**

In connection with credit transactions not under an open end credit plan that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge—

(1) shall be treated as being accurate for purposes of this subchapter if the amount disclosed as the finance charge—

(A) does not vary from the actual finance charge by more than \$100; or

(B) is greater than the amount required to be disclosed under this subchapter; and

(2) shall be treated as being accurate for purposes of section 1635 of this title if—

(A) except as provided in subparagraph (B), the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one-half of one percent of the total amount of credit extended; or

(B) in the case of a transaction, other than a mortgage referred to in section 1602(aa) <sup>1</sup> of this title, which—

(i) is a refinancing of the principal balance then due and any accrued and unpaid finance charges of a residential mortgage transaction as defined in section 1602(w) <sup>1</sup> of this title, or is any subsequent refinancing of such a transaction; and

(ii) does not provide any new consolidation or new advance;

if the amount disclosed as the finance charge does not vary from the actual finance charge by more than an amount equal to one percent of the total amount of credit extended.

(Pub. L. 90-321, title I, §106, May 29, 1968, 82 Stat. 148; Pub. L. 96-221, title VI §606, Mar. 31,

1980, 94 Stat. 170; Pub. L. 104–29, §§2(a), (b)(1), (c)–(e), 3(a), Sept. 30, 1995, 109 Stat. 271, 272; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

Subsecs. (aa) and (w) of section 1602 of this title, referred to in subsec. (f)(2)(B), were redesignated subsecs. (bb) and (x), respectively, of section 1602 of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

### **AMENDMENTS**

**2010**—Subsec. (d). Pub. L. 111–203 substituted "Bureau" for "Board" in introductory provisions.

**1995**—Subsec. (a). Pub. L. 104–29, §2(a), in introductory provisions inserted after second sentence "The finance charge shall not include fees and amounts imposed by third party closing agents (including settlement agents, attorneys, and escrow and title companies) if the creditor does not require the imposition of the charges or the services provided and does not retain the charges."

Subsec. (a)(6). Pub. L. 104–29, §2(b)(1), added par. (6).

Subsec. (d)(3). Pub. L. 104–29, §2(c), added par. (3).

Subsec. (e)(2). Pub. L. 104–29, §2(d), amended par. (2) generally, substituting "loan-related" for "a deed, settlement statement, or other".

Subsec. (e)(5). Pub. L. 104–29, §2(e), inserted before period ", including fees related to any pest infestation or flood hazard inspections conducted prior to closing".

Subsec. (f). Pub. L. 104–29, §3(a), added subsec. (f).

**1980**—Subsec. (a). Pub. L. 96–221, §606(a), inserted provisions excluding charges of a type payable in comparable cash transactions and indicated that pars. (1) to (5) are examples of charges.

Subsec. (d). Pub. L. 96–221, §606(b), struck out pars. (3) and (4) setting forth applicability to taxes and any other type of charge, respectively.

## **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 OF 1995 AMENDMENT**

Pub. L. 104–29, §2(b)(2), Sept. 30, 1995, 109 Stat. 271, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on the earlier of—

"(A) 60 days after the date on which the Board of Governors of the Federal Reserve System issues final regulations under paragraph (3) [set out below]; or

"(B) the date that is 12 months after the date of the enactment of this Act [Sept. 30, 1995]."

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

## **REGULATIONS**

Pub. L. 104–29, §2(b)(3), Sept. 30, 1995, 109 Stat. 271, provided that: "The Board of Governors of the Federal Reserve System shall promulgate regulations implementing the amendment made by paragraph (1) [amending this section] by no later than 6 months after the date of the enactment of this Act [Sept. 30, 1995]."

## **ENSURING THAT FINANCE CHARGES REFLECT COST OF CREDIT**

Pub. L. 104–29, §2(f), Sept. 30, 1995, 109 Stat. 272, provided that:

"(1) REPORT.—

"(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act [Sept. 30, 1995], the Board of Governors of the Federal Reserve System shall submit to the Congress a report

containing recommendations on any regulatory or statutory changes necessary—

"(i) to ensure that finance charges imposed in connection with consumer credit transactions more accurately reflect the cost of providing credit; and

"(ii) to address abusive refinancing practices engaged in for the purpose of avoiding rescission.

"(B) REPORT REQUIREMENTS.—In preparing the report under this paragraph, the Board shall—

"(i) consider the extent to which it is feasible to include in finance charges all charges payable directly or indirectly by the consumer to whom credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit (especially those charges excluded from finance charges under section 106 of the Truth in Lending Act [15 U.S.C. 1605] as of the date of the enactment of this Act), excepting only those charges which are payable in a comparable cash transaction; and

"(ii) consult with and consider the views of affected industries and consumer groups.

"(2) REGULATIONS.—The Board of Governors of the Federal Reserve System shall prescribe any appropriate regulation in order to effect any change included in the report under paragraph (1), and shall publish the regulation in the Federal Register before the end of the 1-year period beginning on the date of enactment of this Act."

<sup>1</sup> [See References in Text note below.](#)

## **§1606. Determination of annual percentage rate**

### **(a) "Annual percentage rate" defined**

The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Bureau,

(1) in the case of any extension of credit other than under an open end credit plan, as

(A) that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(B) the rate determined by any method prescribed by the Bureau as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (A).<sup>1</sup>

(2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

### **(b) Computation of rate of finance charges for balances within a specified range**

Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the Bureau determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the Bureau may be regulation require.

### **(c) Allowable tolerances for purposes of compliance with disclosure requirements**

The disclosure of an annual percentage rate is accurate for the purpose of this subchapter if the rate disclosed is within a tolerance not greater than one-eighth of 1 per centum more or less than the actual rate or rounded to the nearest one-fourth of 1 per centum. The Bureau may allow a greater tolerance to simplify compliance where irregular payments are involved.

### **(d) Use of rate tables or charts having allowable variance from determined rates**

The Bureau may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection (a)(1)(A)

by not more than such tolerances as the Bureau may allow. The Bureau may not allow a tolerance greater than 8 per centum of that rate except to simplify compliance where irregular payments are involved.

**(e) Authorization of tolerances in determining annual percentage rates**

In the case of creditors determining the annual percentage rate in a manner other than as described in subsection (d), the Bureau may authorize other reasonable tolerances.

(Pub. L. 90–321, title I, §107, May 29, 1968, 82 Stat. 149; Pub. L. 96–221, title VI, §607, Mar. 31, 1980, 94 Stat. 170; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2010**—Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

**1980**—Subsec. (c). Pub. L. 96–221, §607(a), substituted provisions relating to allowable tolerances for purposes of compliance with disclosure requirements, for provisions relating to rounding off of annual percentage rates which are converted from single add-on or other rates.

Subsec. (e). Pub. L. 96–221, §607(b), struck out reference to subsection (c) of this section.

Subsec. (f). Pub. L. 96–221, §607(c), struck out subsec. (f) setting forth requirements for form of expressing percentage rates prior to Jan. 1, 1971.

**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 OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

<sup>1</sup> So in original.

**§1607. Administrative enforcement**

**(a) Enforcing agencies**

Subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], compliance with the requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C.

1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(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 25A of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.]; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of

foreign banks;

(2) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Director of the National Credit Union Administration, with respect to any Federal credit union;

(3) 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;

(4) 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;

(5) 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

(6) subtitle E of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5561 et seq.], by the Bureau, with respect to any person subject to this subchapter.

(7) sections 21B and 21C of the Securities Exchange Act of 1934 [15 U.S.C. 78u-2, 78u-3], in the case of a broker or dealer, other than a depository institution, by the Securities and Exchange Commission.

**(b) Violations of this subchapter deemed violations of pre-existing statutory requirements; additional agency powers**

For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under 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 subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law.

**(c) Overall enforcement authority of the Federal Trade Commission**

Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under any of paragraphs (1) through (5) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade 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 of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with the requirements under this subchapter, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.

**(d) Rules and regulations**

The authority of the Bureau to issue regulations under this subchapter does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this subchapter.

**(e) Adjustment of finance charges; procedures applicable, coverage, criteria, etc.**

(1) In carrying out its enforcement activities under this section, each agency referred to in subsection (a) or (c), in cases where an annual percentage rate or finance charge was inaccurately disclosed, shall notify the creditor of such disclosure error and is authorized in accordance with the provisions of this subsection to require the creditor to make an adjustment to the account of the person to whom credit was extended, to assure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. For the purposes of this subsection, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in determining whether a disclosure error has occurred and in

calculating any adjustment, (A) each agency shall apply (i) with respect to the annual percentage rate, a tolerance of one-quarter of 1 percent more or less than the actual rate, determined without regard to section 1606(c) of this title, and (ii) with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerance provided under this subsection for the annual percentage rate; except that (B) with respect to transactions consummated after two years following March 31, 1980, each agency shall apply (i) for transactions that have a scheduled amortization of ten years or less, with respect to the annual percentage rate, a tolerance not to exceed one-quarter of 1 percent more or less than the actual rate, determined without regard to section 1606(c) of this title, but in no event a tolerance of less than the tolerances allowed under section 1606(c) of this title, (ii) for transactions that have a scheduled amortization of more than ten years, with respect to the annual percentage rate, only such tolerances as are allowed under section 1606(c) of this title, and (iii) for all transactions, with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerances provided under this subsection for the annual percentage rate.

(2) Each agency shall require such an adjustment when it determines that such disclosure error resulted from (A) a clear and consistent pattern or practice of violations, (B) gross negligence, or (C) a willful violation which was intended to mislead the person to whom the credit was extended. Notwithstanding the preceding sentence, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, an agency need not require such an adjustment if it determines that such disclosure error—

(A) resulted from an error involving the disclosure of a fee or charge that would otherwise be excludable in computing the finance charge, including but not limited to violations involving the disclosures described in sections 1605(b), (c) and (d) of this title, in which event the agency may require such remedial action as it determines to be equitable, except that for transactions consummated after two years after March 31, 1980, such an adjustment shall be ordered for violations of section 1605(b) of this title;

(B) involved a disclosed amount which was 10 per centum or less of the amount that should have been disclosed and (i) in cases where the error involved a disclosed finance charge, the annual percentage rate was disclosed correctly, and (ii) in cases where the error involved a disclosed annual percentage rate, the finance charge was disclosed correctly; in which event the agency may require such adjustment as it determines to be equitable;

(C) involved a total failure to disclose either the annual percentage rate or the finance charge, in which event the agency may require such adjustment as it determines to be equitable; or

(D) resulted from any other unique circumstance involving clearly technical and nonsubstantive disclosure violations that do not adversely affect information provided to the consumer and that have not misled or otherwise deceived the consumer.

In the case of other such disclosure errors, each agency may require such an adjustment.

(3) Notwithstanding paragraph (2), no adjustment shall be ordered—

(A) if it would have a significantly adverse impact upon the safety or soundness of the creditor, but in any such case, the agency may—

(i) require a partial adjustment in an amount which does not have such an impact; or

(ii) require the full adjustment, but permit the creditor to make the required adjustment in partial payments over an extended period of time which the agency considers to be reasonable, if (in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a)), the agency determines that a partial adjustment or making partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized pursuant to section 38 of the Federal Deposit Insurance Act [12 U.S.C. 1831o];

(B) the <sup>1</sup> amount of the adjustment would be less than \$1, except that if more than one year has elapsed since the date of the violation, the agency may require that such amount be paid into the Treasury of the United States, or

(C) except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in the case of an open-end credit plan, more than

two years after the violation, or in the case of any other extension of credit, as follows:

(i) with respect to creditors that are subject to examination by the agencies referred to in paragraphs (1) through (3) of subsection (a) of this section, except in connection with violations arising from practices identified in the current examination and only in connection with transactions that are consummated after the date of the immediately preceding examination, except that where practices giving rise to violations identified in earlier examinations have not been corrected, adjustments for those violations shall be required in connection with transactions consummated after the date of examination in which such practices were first identified;

(ii) with respect to creditors that are not subject to examination by such agencies, except in connection with transactions that are consummated after May 10, 1978; and

(iii) in no event after the later of (I) the expiration of the life of the credit extension, or (II) two years after the agreement to extend credit was consummated.

(4)(A) Notwithstanding any other provision of this section, an adjustment under this subsection may be required by an agency referred to in subsection (a) or (c) only by an order issued in accordance with cease and desist procedures provided by the provision of law referred to in such subsections.

(B) In case of an agency which is not authorized to conduct cease and desist proceedings, such an order may be issued after an agency hearing on the record conducted at least thirty but not more than sixty days after notice of the alleged violation is served on the creditor. Such a hearing shall be deemed to be a hearing which is subject to the provisions of section 8(h) of the Federal Deposit Insurance Act [12 U.S.C. 1818(h)] and shall be subject to judicial review as provided therein.

(5) Except as otherwise specifically provided in this subsection and notwithstanding any provision of law referred to in subsection (a) or (c), no agency referred to in subsection (a) or (c) may require a creditor to make dollar adjustments for errors in any requirements under this subchapter, except with regard to the requirements of section 1666d of this title.

(6) A creditor shall not be subject to an order to make an adjustment, if within sixty days after discovering a disclosure error, whether pursuant to a final written examination report or through the creditor's own procedures, the creditor notifies the person concerned of the error and adjusts the account so as to assure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(7) Notwithstanding the second sentence of subsection (e)(1), subsection (e)(3)(C)(i), and subsection (e)(3)(C)(ii), each agency referred to in subsection (a) or (c) shall require an adjustment for an annual percentage rate disclosure error that exceeds a tolerance of one quarter of one percent less than the actual rate, determined without regard to section 1606(c) of this title, with respect to any transaction consummated between January 1, 1977, and March 31, 1980.

(Pub. L. 90-321, title I, §108, May 29, 1968, 82 Stat. 150; Pub. L. 91-206, §3, Mar. 10, 1970, 84 Stat. 49; Pub. L. 93-495, title IV, §403, Oct. 28, 1974, 88 Stat. 1517; Pub. L. 95-630, title V, §501, Nov. 10, 1978, 92 Stat. 3680; Pub. L. 96-221, title VI, §608(a), (c), Mar. 21, 1980, 94 Stat. 171, 173; Pub. L. 98-443, §9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101-73, title VII, §744(k), Aug. 9, 1989, 103 Stat. 439; Pub. L. 102-242, title II, §212(b), Dec. 19, 1991, 105 Stat. 2299; Pub. L. 102-550, title XVI, §1604(a)(5), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104-208, div. A, title II, §2106, Sept. 30, 1996, 110 Stat. 3009-402; Pub. L. 111-203, title X, §1100A(2), (8), title XIV, §1414(b), July 21, 2010, 124 Stat. 2107, 2108, 2152.)

## EDITORIAL NOTES

## REFERENCES IN TEXT

The Consumer Financial Protection Act of 2010, referred to in subsecs. (a) and (c), 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 Short Title note set out under section 5301 of Title 12 and Tables.

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (a)(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. (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. 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. (a)(4), 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. (a)(5), 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.

The Federal Trade Commission Act, referred to in subsec. (c), 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.

### CODIFICATION

In subsec. (a)(3), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958" and "that part" substituted for "that Act" on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

### AMENDMENTS

**2010**—Subsec. (a). Pub. L. 111-203, §1100A(8)(A), added subsec. (a) and struck out former subsec. (a) which listed agencies under which compliance with subchapter requirements would be enforced.

Subsec. (a)(7). Pub. L. 111-203, §1414(b), added par. (7).

Subsec. (c). Pub. L. 111-203, §1100A(8)(B), added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: "Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission 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 the Federal Trade Commission Act."

Subsec. (d). Pub. L. 111-203, §1100A(2), substituted "Bureau" for "Board".

**1996**—Subsec. (e)(3). Pub. L. 104-208 struck out "ordered (A) if" and inserted "ordered—

"(A) if";

struck out "may require a partial" and inserted "may—

"(i) require a partial";

struck out ", except that with respect to any transaction consummated after March 31, 1980, the agency shall require" and inserted "; or

"(ii) require";

directed the substitution of "reasonable, if (in the case of an agency referred to in paragraph (1), (2), or (3) of subsection (a)), the agency determines that a partial adjustment or making partial payments over an extended period is necessary to avoid causing the creditor to become undercapitalized pursuant to section 38 of the Federal Deposit Insurance Act;

"(B) the";

for "reasonable, (B) the", which was executed by making the substitution for "reasonable, (B) if the"; and struck out "(C) except" and inserted

"(C) except".

**1992**—Subsec. (a)(1)(C). Pub. L. 102-550 substituted semicolon for period at end.

**1991**—Subsec. (a). Pub. L. 102-242, §212(b)(2), inserted at end "The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101)."



Pub. L. 102–242, §212(b)(1), added par. (1) and struck out former par. (1) which read as follows: "section 8 of the Federal Deposit Insurance Act, in the case of

"(A) national banks, by the Comptroller of the Currency.

"(B) member banks of the Federal Reserve System (other than national banks), by the Board.

"(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation."

**1989**—Subsec. (a)(2). Pub. L. 101–73 amended par. (2) generally. Prior to amendment, par. (2) read as follows: "section 5(d) of the Home Owner's Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions."

**1984**—Subsec. (a)(4). Pub. L. 98–443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

**1980**—Subsec. (e). Pub. L. 96–221, §608(a), added subsec. (e).

Pub. L. 96–221, §608(c), struck out in pars. (1)(A)(i) and (7) ", except in the case of an irregular mortgage lending transaction" after "section 1606(c) of this title". See Effective Date of 1980 Amendment note below.

**1974**—Subsec. (a)(4) to (6). Pub. L. 93–495 redesignated pars. (5) and (6) as (4) and (5), respectively. Former par. (4), which related to enforcement by the Interstate Commerce Commission, was struck out.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2), (8) of 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.

Amendment by section 1414(b) of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102–242, as of Dec. 19, 1991, see section 1609(a) of Pub. L. 102–550, set out as a note under section 191 of Title 12, Banks and Banking.

### EFFECTIVE DATE OF 1984 AMENDMENT

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

### EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–221, title VI, §608(b), Mar. 31, 1980, 94 Stat. 173, provided that: "This section [amending this section] shall take effect on the date of enactment of the Truth in Lending Simplification and Reform Act [Mar. 31, 1980]."

Pub. L. 96–221, title VI, §608(c), Mar. 31, 1980, 94 Stat. 173, provided that the amendment made by that section is effective one year after Mar. 31, 1980.

### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

## TRANSFER OF FUNCTIONS

"National Credit Union Administration Board" substituted for "Director of the Bureau of Federal Credit Unions" in subsec. (a)(3) pursuant to section 3 of Pub. L. 91–206 and section 501 of Pub. L. 95–630 [12 U.S.C. 1752a] which transferred functions of Bureau of Federal Credit Unions, and Director thereof, to National Credit Union Administration and vested authority for management of Administration in National Credit Union Administration Board.

<sup>1</sup> *So in original. Probably should be preceded by "if".*

## **§1608. Views of other agencies**

In the exercise of its functions under this subchapter, the Bureau may obtain upon requests the views of any other Federal agency which, in the judgment of the Bureau, exercises regulatory or supervisory functions with respect to any class of creditors subject to this subchapter.

(Pub. L. 90–321, title I, §109, May 29, 1968, 82 Stat. 150; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

### **EDITORIAL NOTES**

#### **AMENDMENTS**

**2010**—Pub. L. 111–203 substituted "Bureau" for "Board" in two places.

### **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.

## **§1609. Repealed. Pub. L. 94–239, §3(b)(1), Mar. 23, 1976, 90 Stat. 253**

Section, Pub. L. 90–321, title I, §110, May 29, 1968, 82 Stat. 151, provided for establishment of an advisory committee authorized to seek to achieve a fair representation of interests of sellers of merchandise on credit, lenders, and the public.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE OF REPEAL**

Repeal effective Mar. 23, 1976, see section 708 of Pub. L. 90–321, set out as an Effective Date note under section 1691 of this title.

## **§1610. Effect on other laws**

### **(a) Inconsistent provisions; procedures applicable for determination**

(1) Except as provided in subsection (e), this part and parts B and C, do not annul, alter, or affect the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency. Upon its own motion or upon the request of any creditor, State, or other interested party which is submitted in accordance with procedures prescribed in regulations of the Bureau, the Bureau shall determine whether any such inconsistency exists. If the Bureau determines that a State-required disclosure is inconsistent, creditors located in that State may not make disclosures using the inconsistent term or form, and shall incur no liability under the law of that State for failure to use such term or form, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) Upon its own motion or upon the request of any creditor, State, or other interested party which is submitted in accordance with procedures prescribed in regulations of the Bureau, the Bureau shall determine whether any disclosure required under the law of any State is substantially the same in meaning as a disclosure required under this subchapter. If the Bureau determines that a State-required disclosure is substantially the same in meaning as a disclosure required by this

subchapter, then creditors located in that State may make such disclosure in compliance with such State law in lieu of the disclosure required by this subchapter, except that the annual percentage rate and finance charge shall be disclosed as required by section 1632 of this title, and such State-required disclosure may not be made in lieu of the disclosures applicable to certain mortgages under section 1639 of this title.

**(b) State credit charge statutes**

Except as provided in section 1639 of this title, this subchapter does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this subchapter extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply. The provisions of section 1639 of this title do not annul, alter, or affect the applicability of the laws of any State or exempt any person subject to the provisions of section 1639 of this title from complying with the laws of any State, with respect to the requirements for mortgages referred to in section 1602(aa) <sup>1</sup> of this title, except to the extent that those State laws are inconsistent with any provisions of section 1639 of this title, and then only to the extent of the inconsistency.

**(c) Disclosure as evidence**

In any action or proceeding in any court involving a consumer credit sale, the disclosure of the annual percentage rate as required under this subchapter in connection with that sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.

**(d) Contract or other obligations under State or Federal law**

Except as specified in sections 1635, 1640, and 1666e of this title, this subchapter and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under State or Federal law.

**(e) Certain credit and charge card application and solicitation disclosure provisions**

The provisions of subsection (c) of section 1632 of this title and subsections (c), (d), (e), and (f) of section 1637 of this title shall supersede any provision of the law of any State relating to the disclosure of information in any credit or charge card application or solicitation which is subject to the requirements of section 1637(c) of this title or any renewal notice which is subject to the requirements of section 1637(d) of this title, except that any State may employ or establish State laws for the purpose of enforcing the requirements of such sections.

(Pub. L. 90–321, title I, §111, May 29, 1968, 82 Stat. 151; Pub. L. 93–495, title III, §307(b), Oct. 28, 1974, 88 Stat. 1516; Pub. L. 96–221, title VI, §609, Mar. 31, 1980, 94 Stat. 173; Pub. L. 100–583, §4, Nov. 3, 1988, 102 Stat. 2967; Pub. L. 103–325, title I, §152(e)(2)(B), (C), Sept. 23, 1994, 108 Stat. 2194; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 1602(aa) of this title, referred to in subsec. (b), was redesignated section 1602(bb) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

**AMENDMENTS**

**2010**—Subsec. (a). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

**1994**—Subsec. (a)(2). Pub. L. 103–325, §152(e)(2)(B), which directed the amendment of par. (2) by inserting ", and such State-required disclosure may not be made in lieu of the disclosures applicable to certain mortgages under section 1639 of this title" before period, was executed by making the insertion before period at end of par. (2), to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 103–325, §152(e)(2)(C), substituted "Except as provided in section 1639 of this title, this subchapter" for "This subchapter" and inserted at end "The provisions of section 1639 of this title do not

annul, alter, or affect the applicability of the laws of any State or exempt any person subject to the provisions of section 1639 of this title from complying with the laws of any State, with respect to the requirements for mortgages referred to in section 1602(aa) of this title, except to the extent that those State laws are inconsistent with any provisions of section 1639 of this title, and then only to the extent of the inconsistency."

**1988**—Subsec. (a)(1). Pub. L. 100–583, §4(1), substituted "Except as provided in subsection (e), this part" for "This part".

Subsec. (e). Pub. L. 100–583, §4(2), added subsec. (e).

**1980**—Subsec. (a). Pub. L. 96–221 designated existing provisions as par. (1), substituted provisions respecting the effect of this part and parts B and C of this subchapter, and procedures applicable for determination, for provisions respecting the effect of this subchapter, and added par. (2).

**1974**—Subsec. (d). Pub. L. 93–495 inserted reference to section 1666e of this title.

## 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 OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

### EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

<sup>1</sup> [\*See References in Text note below.\*](#)

## §1611. Criminal liability for willful and knowing violation

Whoever willfully and knowingly

(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this subchapter or any regulation issued thereunder,

(2) uses any chart or table authorized by the Bureau under section 1606 of this title in such a manner as to consistently understate the annual percentage rate determined under section 1606(a)(1)(A) of this title, or

(3) otherwise fails to comply with any requirement imposed under this subchapter,

shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(Pub. L. 90–321, title I, §112, May 29, 1968, 82 Stat. 151; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Par. (2). Pub. L. 111–203 substituted "Bureau" for "Board".

## 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.

## **§1612. Effect on government agencies**

### **(a) Consultation requirements respecting compliance of credit instruments issued to participating creditor**

Any department or agency of the United States which administers a credit program in which it extends, insures, or guarantees consumer credit and in which it provides instruments to a creditor which contain any disclosures required by this subchapter shall, prior to the issuance or continued use of such instruments, consult with the Bureau to assure that such instruments comply with this subchapter.

### **(b) Inapplicability of Federal civil or criminal penalties to Federal, State, and local agencies**

No civil or criminal penalty provided under this subchapter for any violation thereof may be imposed upon the United States or any department or agency thereof, or upon any State or political subdivision thereof, or any agency of any State or political subdivision.

### **(c) Inapplicability of Federal civil or criminal penalties to participating creditor where violating instrument issued by United States**

A creditor participating in a credit program administered, insured, or guaranteed by any department or agency of the United States shall not be held liable for a civil or criminal penalty under this subchapter in any case in which the violation results from the use of an instrument required by any such department or agency.

### **(d) Applicability of State penalties to violations by participating creditor**

A creditor participating in a credit program administered, insured, or guaranteed by any department or agency of the United States shall not be held liable for a civil or criminal penalty under the laws of any State (other than laws determined under section 1610 of this title to be inconsistent with this subchapter) for any technical or procedural failure, such as a failure to use a specific form, to make information available at a specific place on an instrument, or to use a specific typeface, as required by State law, which is caused by the use of an instrument required to be used by such department or agency.

(Pub. L. 90–321, title I, §113, May 29, 1968, 82 Stat. 151; Pub. L. 96–221, title VI, §622(a), Mar. 31, 1980, 94 Stat. 184; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2010**—Subsec. (a). Pub. L. 111–203 substituted "Bureau" for "Board".

**1980**—Pub. L. 96–221 amended section generally, designating existing provisions as subsec. (b) and adding subsecs. (a), (c), and (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.

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

### **§1613. Annual reports to Congress by Bureau**

Each year the Bureau shall make a report to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with the requirements imposed under this subchapter is being achieved.

(Pub. L. 90–321, title I, §114, May 29, 1968, 82 Stat. 151; Pub. L. 96–221, title VI, §610(a), Mar. 31, 1980, 94 Stat. 174; Pub. L. 97–375, title II, §209(b), Dec. 21, 1982, 96 Stat. 1825; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

#### **EDITORIAL NOTES**

##### **AMENDMENTS**

**2010**—Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

**1982**—Pub. L. 97–375 struck out requirement that the Attorney General make a report on the same terms as the Board.

**1980**—Pub. L. 96–221 substituted "Each year" for "Not later than January 3 of each year after 1969,".

#### **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 OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

### **§1614. Repealed. Pub. L. 96–221, title VI, §616(b), Mar. 31, 1980, 94 Stat. 182**

Section, Pub. L. 90–321, title I, §115, as added Pub. L. 93–495, title IV, §413(a), Oct. 28, 1974, 88 Stat. 1520, related to liability of assignees. See section 1641 of this title.

#### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

##### **EFFECTIVE DATE OF REPEAL**

Repeal effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

### **§1615. Prohibition on use of "Rule of 78's" in connection with mortgage refinancings and other consumer loans**

#### **(a) Prompt refund of unearned interest required**

##### **(1) In general**

If a consumer prepays in full the financed amount under any consumer credit transaction, the

creditor shall promptly refund any unearned portion of the interest charge to the consumer.

**(2) Exception for refund of de minimus <sup>1</sup> amount**

No refund shall be required under paragraph (1) with respect to the prepayment of any consumer credit transaction if the total amount of the refund would be less than \$1.

**(3) Applicability to refinanced transactions and acceleration by the creditor**

This subsection shall apply with respect to any prepayment of a consumer credit transaction described in paragraph (1) without regard to the manner or the reason for the prepayment, including—

(A) any prepayment made in connection with the refinancing, consolidation, or restructuring of the transaction; and

(B) any prepayment made as a result of the acceleration of the obligation to repay the amount due with respect to the transaction.

**(b) Use of "Rule of 78's" prohibited**

For the purpose of calculating any refund of interest required under subsection (a) for any precomputed consumer credit transaction of a term exceeding 61 months which is consummated after September 30, 1993, the creditor shall compute the refund based on a method which is at least as favorable to the consumer as the actuarial method.

**(c) Statement of prepayment amount**

**(1) In general**

Before the end of the 5-day period beginning on the date an oral or written request is received by a creditor from a consumer for the disclosure of the amount due on any precomputed consumer credit account, the creditor or assignee shall provide the consumer with a statement of—

(A) the amount necessary to prepay the account in full; and

(B) if the amount disclosed pursuant to subparagraph (A) includes an amount which is required to be refunded under this section with respect to such prepayment, the amount of such refund.

**(2) Written statement required if request is in writing**

If the customer's request is in writing, the statement under paragraph (1) shall be in writing.

**(3) 1 free annual statement**

A consumer shall be entitled to obtain 1 statement under paragraph (1) each year without charge.

**(4) Additional statements subject to reasonable fees**

Any creditor may impose a reasonable fee to cover the cost of providing any statement under paragraph (1) to any consumer in addition to the 1 free annual statement required under paragraph (3) if the amount of the charge for such additional statement is disclosed to the consumer before furnishing such statement.

**(d) Definitions**

For the purpose of this section—

**(1) Actuarial method**

The term "actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

**(2) Consumer, credit**

The terms "consumer" and "creditor" have the meanings given to such terms in section 1602 of this title.



### **(3) Creditor**

The term "creditor"—

(A) has the meaning given to such term in section 1602 of this title; and

(B) includes any assignee of any creditor with respect to credit extended in connection with any consumer credit transaction and any subsequent assignee with respect to such credit.

(Pub. L. 102–550, title IX, §933, Oct. 28, 1992, 106 Stat. 3891.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Section was enacted as part of the Housing and Community Development Act of 1992, and not as part of the Consumer Credit Protection Act which comprises this chapter.

*<sup>1</sup> So in original. Probably should be "de minimis".*

## **§1616. Board review of consumer credit plans and regulations**

### **(a) Required review**

Not later than 2 years after the effective date of this Act and every 2 years thereafter, except as provided in subsection (c)(2), the Board shall conduct a review, within the limits of its existing resources available for reporting purposes, of the consumer credit card market, including—

(1) the terms of credit card agreements and the practices of credit card issuers;

(2) the effectiveness of disclosure of terms, fees, and other expenses of credit card plans;

(3) the adequacy of protections against unfair or deceptive acts or practices relating to credit card plans; and

(4) whether or not, and to what extent, the implementation of this Act and the amendments made by this Act has affected—

(A) cost and availability of credit, particularly with respect to non-prime borrowers;

(B) the safety and soundness of credit card issuers;

(C) the use of risk-based pricing; or

(D) credit card product innovation.

### **(b) Solicitation of public comment**

In connection with conducting the review required by subsection (a), the Board shall solicit comment from consumers, credit card issuers, and other interested parties, such as through hearings or written comments.

### **(c) Regulations**

#### **(1) Notice**

Following the review required by subsection (a), the Board shall publish a notice in the Federal Register that—

(A) summarizes the review, the comments received from the public solicitation, and other evidence gathered by the Board, such as through consumer testing or other research; and

(B) either—

(i) proposes new or revised regulations or interpretations to update or revise disclosures and protections for consumer credit cards, as appropriate; or

(ii) states the reason for the determination of the Board that new or revised regulations are not necessary.

#### **(2) Revision of review period following material revision of regulations**

In the event that the Board materially revises regulations on consumer credit card plans, a review need not be conducted until 2 years after the effective date of the revised regulations,



which thereafter shall be treated as the new date for the biennial review required by subsection (a).

**(d) Board report to the Congress**

The Board shall report to Congress not less frequently than every 2 years, except as provided in subsection (c)(2), on the status of its most recent review, its efforts to address any issues identified from the review, and any recommendations for legislation.

**(e) Additional reporting**

The Federal banking agencies (as that term is defined in section 1813 of title 12) and the Federal Trade Commission shall provide annually to the Board, and the Board shall include in its annual report to Congress under section 247 of title 12, information about the supervisory and enforcement activities of the agencies with respect to compliance by credit card issuers with applicable Federal consumer protection statutes and regulations, including—

(1) this Act, the amendments made by this Act, and regulations prescribed under this Act and such amendments; and

(2) section 5 of the Federal Trade Commission Act [15 U.S.C. 45], and regulations prescribed under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], including part 227 of title 12 of the Code of Federal Regulations, as prescribed by the Board (referred to as "Regulation AA").

(Pub. L. 111–24, title V, §502, May 22, 2009, 123 Stat. 1755.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The effective date of this Act, referred to in subsec. (a), is 9 months after May 22, 2009, except as otherwise specifically provided in Pub. L. 111–24, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

This Act, referred to in subsecs. (a)(4) and (e)(1), is Pub. L. 111–24, May 22, 2009, 123 Stat. 1734, known as the Credit Card Accountability Responsibility and Disclosure Act of 2009, and also as the Credit CARD Act of 2009, which enacted this section and sections 1651, 1665c to 1665e, 1666i–1, 1666i–2, and 1693l–1 of this title and section 1a–7b of Title 16, Conservation, amended sections 1602, 1632, 1637, 1640, 1650, 1666b, 1666c, 1666j, 1681b, 1681j, and 1693m to 1693r of this title, enacted provisions set out as notes under sections 1602, 1637, 1638, 1666b, 1681j, and 1693l–1 of this title and section 5311 of Title 31, Money and Finance, and amended provisions set out as notes under sections 1638 and 1693 of this title. For complete classification of this Act to the Code, see Short Title of 2009 Amendment note set out under section 1601 of this title and Tables.

The Federal Trade Commission Act, referred to in subsec. (e)(2), 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.

**CODIFICATION**

Section was enacted as part of the Credit Card Accountability Responsibility and Disclosure Act of 2009, also known as the Credit CARD Act of 2009, and not as part of the Consumer Credit Protection Act which comprises this chapter.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

**DEFINITION**

For definition of "Board", see section 2 of Pub. L. 111–24, set out as a Regulations note under section 1602 of this title.

## PART B—CREDIT TRANSACTIONS

### §1631. Disclosure requirements

#### (a) Duty of creditor or lessor respecting one or more than one obligor

Subject to subsection (b), a creditor or lessor shall disclose to the person who is obligated on a consumer lease or a consumer credit transaction the information required under this subchapter. In a transaction involving more than one obligor, a creditor or lessor, except in a transaction under section 1635 of this title, need not disclose to more than one of such obligors if the obligor given disclosure is a primary obligor.

#### (b) Creditor or lessor required to make disclosure

If a transaction involves one creditor as defined in section 1602(f) <sup>1</sup> of this title, or one lessor as defined in section 1667(3) of this title, such creditor or lessor shall make the disclosures. If a transaction involves more than one creditor or lessor, only one creditor or lessor shall be required to make the disclosures. The Bureau shall by regulation specify which creditor or lessor shall make the disclosures.

#### (c) Estimates as satisfying statutory requirements; basis of disclosure for per diem interest

The Bureau may provide by regulation that any portion of the information required to be disclosed by this subchapter may be given in the form of estimates where the provider of such information is not in a position to know exact information. In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this subchapter if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction.

#### (d) Tolerances for numerical disclosures

The Bureau shall determine whether tolerances for numerical disclosures other than the annual percentage rate are necessary to facilitate compliance with this subchapter, and if it determines that such tolerances are necessary to facilitate compliance, it shall by regulation permit disclosures within such tolerances. The Bureau shall exercise its authority to permit tolerances for numerical disclosures other than the annual percentage rate so that such tolerances are narrow enough to prevent such tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of this subchapter.

(Pub. L. 90–321, title I, §121, May 29, 1968, 82 Stat. 152; Pub. L. 93–495, title III, §307(c), (d), title IV, §409, Oct. 28, 1974, 88 Stat. 1516, 1519; Pub. L. 94–205, §11, Jan. 2, 1976, 89 Stat. 1159; Pub. L. 96–221, title VI, §611, Mar. 31, 1980, 94 Stat. 174; Pub. L. 104–29, §3(b), Sept. 30, 1995, 109 Stat. 273; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

### EDITORIAL NOTES

#### REFERENCES IN TEXT

Section 1602(f) of this title, referred to in subsec. (b), was redesignated section 1602(g) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

#### AMENDMENTS

**2010**—Subsecs. (b) to (d). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

**1995**—Subsec. (c). Pub. L. 104–29 inserted at end "In the case of any consumer credit transaction a portion of the interest on which is determined on a per diem basis and is to be collected upon the consummation of such transaction, any disclosure with respect to such portion of interest shall be deemed to be accurate for purposes of this subchapter if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction."

**1980**—Subsec. (a). Pub. L. 96–221 substituted provisions respecting to which obligor duty of creditor or lessor, where one or more than one obligor is involved, is owed, for provisions setting forth clear and conspicuous disclosure requirements for creditors to persons extended consumer credit.

Subsec. (b). Pub. L. 96–221 substituted provisions relating to disclosure requirements of creditor or lessor, for provisions relating to statement of information where more than one obligor is involved.

Subsecs. (c), (d). Pub. L. 96–221 added subsecs. (c) and (d).

**1976**—Subsec. (c). Pub. L. 94–205 struck out subsec. (c) which related to disclosure including a full statement of closing costs incurred and permitted estimates of such information where the lender was not in a position to know exact information.

**1974**—Subsec. (a). Pub. L. 93–495, §307(c), inserted reference to part D of this subchapter and struck out "and upon whom a finance charge is or may be imposed" after "extended".

Subsec. (b). Pub. L. 93–495, §307(d), inserted reference to part D of this subchapter.

Subsec. (c). Pub. L. 93–495, §409, added subsec (c).

## **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 OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

### **EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94–205 effective Jan. 2, 1976, see section 12 of Pub. L. 94–205, set out as a note under section 2602 of Title 12, Banks and Banking.

### **EFFECTIVE DATE OF 1974 AMENDMENT**

For effective date of amendment by section 307(c), (d) of Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

For effective date of amendment by section 409 of Pub. L. 93–495, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

### **EFFECTIVE DATE**

Pub. L. 90–321, title V, §504(b), May 29, 1968, 82 Stat. 167, provided in part that chapter 2 of title I, which enacted sections 1631 to 1641 of this title, is effective July 1, 1969.

### **REAL ESTATE SETTLEMENT PROCEDURES**

Provisions of Real Estate Settlement Procedures Act of 1974, as superseding provisions of subsec. (c) of this section insofar as applying to federally related mortgage loans, see section 2605 of Title 12, Banks and Banking.

<sup>1</sup> [\*See References in Text note below.\*](#)

## **§1632. Form of disclosure; additional information**

### **(a) Information clearly and conspicuously disclosed; "annual percentage rate" and "finance charge"; order of disclosures and use of different terminology**

Information required by this subchapter shall be disclosed clearly and conspicuously, in accordance with regulations of the Bureau. The terms "annual percentage rate" and "finance charge" shall be disclosed more conspicuously than other terms, data, or information provided in connection with a transaction, except information relating to the identify of the creditor. Except as provided in

subsection (c), regulations of the Bureau need not require that disclosures pursuant to this subchapter be made in the order set forth in this subchapter and, except as otherwise provided, may permit the use of terminology different from that employed in this subchapter if it conveys substantially the same meaning.

**(b) Optional information by creditor or lessor**

Any creditor or lessor may supply additional information or explanation with any disclosures required under parts D and E and, except as provided in sections 1637a(b)(3) and 1638(b)(1) of this title, under this part.

**(c) Tabular format required for certain disclosures under section 1637(c)**

**(1) In general**

The information described in paragraphs (1)(A), (3)(B)(i)(I), (4)(A), and (4)(C)(i)(I) of section 1637(c) of this title shall be—

- (A) disclosed in the form and manner which the Bureau shall prescribe by regulations; and
- (B) placed in a conspicuous and prominent location on or with any written application, solicitation, or other document or paper with respect to which such disclosure is required.

**(2) Tabular format**

**(A) Form of table to be prescribed**

In the regulations prescribed under paragraph (1)(A) of this subsection, the Bureau shall require that the disclosure of such information shall, to the extent the Bureau determines to be practicable and appropriate, be in the form of a table which—

- (i) contains clear and concise headings for each item of such information; and
- (ii) provides a clear and concise form for stating each item of information required to be disclosed under each such heading.

**(B) Bureau discretion in prescribing order and wording of table**

In prescribing the form of the table under subparagraph (A), the Bureau may—

- (i) list the items required to be included in the table in a different order than the order in which such items are set forth in paragraph (1)(A) or (4)(A) of section 1637(c) of this title; and
- (ii) subject to subparagraph (C), employ terminology which is different than the terminology which is employed in section 1637(c) of this title if such terminology conveys substantially the same meaning.

**(C) Grace period**

Either the heading or the statement under the heading which relates to the time period referred to in section 1637(c)(1)(A)(iii) of this title shall contain the term "grace period".

**(d) Additional electronic disclosures**

**(1) Posting agreements**

Each creditor shall establish and maintain an Internet site on which the creditor shall post the written agreement between the creditor and the consumer for each credit card account under an open-end consumer credit plan.

**(2) Creditor to provide contracts to the Bureau**

Each creditor shall provide to the Bureau, in electronic format, the consumer credit card agreements that it publishes on its Internet site.

**(3) Record repository**

The Bureau shall establish and maintain on its publicly available Internet site a central repository of the consumer credit card agreements received from creditors pursuant to this subsection, and such agreements shall be easily accessible and retrievable by the public.

**(4) Exception**

This subsection shall not apply to individually negotiated changes to contractual terms, such as individually modified workouts or renegotiations of amounts owed by a consumer under an open end consumer credit plan.

## **(5) Regulations**

The Bureau, in consultation with the other Federal banking agencies (as that term is defined in section 1681a of this title) and the Bureau,<sup>1</sup> may promulgate regulations to implement this subsection, including specifying the format for posting the agreements on the Internet sites of creditors and establishing exceptions to paragraphs (1) and (2), in any case in which the administrative burden outweighs the benefit of increased transparency, such as where a credit card plan has a de minimis number of consumer account holders.

(Pub. L. 90–321, title I, §122, May 29, 1968, 82 Stat. 152; Pub. L. 93–495, title III, §307(e), (f), Oct. 28, 1974, 88 Stat. 1516, 1517; Pub. L. 96–221, title VI, §611, Mar. 31, 1980, 94 Stat. 175; Pub. L. 100–583, §2(b), Nov. 3, 1988, 102 Stat. 2966; Pub. L. 100–709, §2(d), Nov. 23, 1988, 102 Stat. 4731; Pub. L. 111–24, title II, §204, May 22, 2009, 123 Stat. 1746; Pub. L. 111–203, title X, §1100A(2), (3), July 21, 2010, 124 Stat. 2107.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2010**—Subsecs. (a), (c). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (d)(2), (3). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (d)(5). Pub. L. 111–203 substituted "The Bureau, in" for "The Board, in" and "and the Bureau, may" for "and the Federal Trade Commission, may".

**2009**—Subsec. (d). Pub. L. 111–24 added subsec. (d).

**1988**—Subsec. (a). Pub. L. 100–583, §2(b)(1), substituted "Except as provided in subsection (c), regulations" for "Regulations".

Subsec. (b). Pub. L. 100–709 substituted "sections 1637a(b)(3) and 1638(b)(1)" for "section 1638(b)(1)".

Subsec. (c). Pub. L. 100–583, §2(b)(2), added subsec. (c).

**1980**—Subsec. (a). Pub. L. 96–221 substituted provisions setting forth form of disclosure to meet requirements of this subchapter, for provisions setting forth form of disclosure authorized under this part or part D of this subchapter.

Subsec. (b). Pub. L. 96–221 substituted provisions setting forth disclosure requirements for additional information by creditors or lessors, for provisions setting forth disclosure requirements for additional information by creditors.

**1974**—Subsecs. (a), (b). Pub. L. 93–495 inserted references to part D of this subchapter.

## **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 OF 2009 AMENDMENT**

Amendment by Pub. L. 111–24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as a note under section 1602 of this title.

### **EFFECTIVE DATE OF 1988 AMENDMENT**

For effective date of amendments by Pub. L. 100–709, see Regulations; Effective Date note below.

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to

such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

#### **EFFECTIVE DATE OF 1974 AMENDMENT**

For effective date of amendment by Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

#### **REGULATIONS; EFFECTIVE DATE**

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709, and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set out as a note under section 1637a of this title.

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–583, and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–583, set out as a note under section 1637 of this title.

<sup>1</sup> *So in original.*

### **§1633. Exemption for State-regulated transactions**

The Bureau shall by regulation exempt from the requirements of this part any class of credit 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 part, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title I, §123, May 29, 1968, 82 Stat. 152; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

#### **EDITORIAL NOTES**

##### **AMENDMENTS**

**2010**—Pub. L. 111–203 substituted "Bureau" for "Board".

#### **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.

### **§1634. Effect of subsequent occurrence**

If information disclosed in accordance with this part is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this part.

(Pub. L. 90–321, title I, §124, May 29, 1968, 82 Stat. 152.)

### **§1635. Right of rescission as to certain transactions**

#### **(a) Disclosure of obligor's right to rescind**

Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the

obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this subchapter, whichever is later, by notifying the creditor, in accordance with regulations of the Bureau, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Bureau, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Bureau, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

**(b) Return of money or property following rescission**

When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

**(c) Rebuttable presumption of delivery of required disclosures**

Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this subchapter by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

**(d) Modification and waiver of rights**

The Bureau may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

**(e) Exempted transactions; reapplication of provisions**

This section does not apply to—

- (1) a residential mortgage transaction as defined in section 1602(w) <sup>1</sup> of this title;
- (2) a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;
- (3) a transaction in which an agency of a State is the creditor; or
- (4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

**(f) Time limit for exercise of right**

An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this part have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this subchapter institutes a proceeding to enforce the provisions of this section within



three years after the date of consummation of the transaction, (2) such agency finds a violation of this section, and (3) the obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

**(g) Additional relief**

In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under section 1640 of this title for violations of this subchapter not relating to the right to rescind.

**(h) Limitation on rescission**

An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Bureau, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.

**(i) Rescission rights in foreclosure**

**(1) In general**

Notwithstanding section 1649 of this title, and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if—

(A) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Bureau or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

**(2) Tolerance for disclosures**

Notwithstanding section 1605(f) of this title, and subject to the time period provided in subsection (f), for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed under this subchapter.

**(3) Right of recoupment under State law**

Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

**(4) Applicability**

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

(Pub. L. 90–321, title I, §125, May 29, 1968, 82 Stat. 153; Pub. L. 93–495, title IV, §§404, 405, 412, Oct. 28, 1974, 88 Stat. 1517, 1519; Pub. L. 96–221, title VI, §612(a)(1), (3)–(6), Mar. 31, 1980, 94 Stat. 175, 176; Pub. L. 98–479, title II, §205, Oct. 17, 1984, 98 Stat. 2234; Pub. L. 104–29, §§5, 8, Sept. 30, 1995, 109 Stat. 274, 275; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)



## REFERENCES IN TEXT

Section 1602(w) of this title, referred to in subsec. (e)(1), was redesignated section 1602(x) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

## AMENDMENTS

**2010**—Subsecs. (a), (d), (h), (i)(1)(B). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

**1995**—Subsec. (h). Pub. L. 104–29, §5, added subsec. (h).

Subsec. (i). Pub. L. 104–29, §8, added subsec. (i).

**1984**—Subsec. (e). Pub. L. 98–479 redesignated par. (1) as subsec. (e), redesignated subpars. (A), (B), (C), and (D) of par. (1) as pars. (1), (2), (3), and (4), respectively, and struck out par. (2) which read as follows: "The provisions of paragraph (1)(D) shall cease to be effective 3 years after the effective date of the Truth in Lending Simplification Reform Act."

**1980**—Subsec. (a). Pub. L. 96–221, §612(a)(1), substituted provisions relating to the right of rescission until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required together with the statement containing the material disclosures required under this subchapter, whichever is later, for provisions relating to right of rescission until midnight of the third business day following the consummation of the transaction or the delivery of the required disclosures and all other material disclosures required under this part, whichever is later.

Subsec. (b). Pub. L. 96–221, §612(a)(3), (4), inserted provisions setting forth applicability of procedures prescribed by this subsection, and substituted "20" for "ten" in two places.

Subsec. (c). Pub. L. 96–221, §612(a)(5), inserted "information, forms, and" after "whom".

Subsec. (e). Pub. L. 96–221, §612(a)(6), substituted provisions relating to nonapplicability to residential mortgage transactions, refinancing or consolidation transactions, etc., for provisions relating to nonapplicability to creation or retention of first liens.

Subsec. (f). Pub. L. 96–221, §612(a)(6), substituted provisions setting forth duration of right of rescission where the required information and forms or other disclosures required under this part have not been delivered to the obligor, and exceptions to such term, for provisions setting forth duration of right of rescission where the required disclosures or any other material disclosures required under this part have not been delivered to the obligor.

Subsec. (g). Pub. L. 96–221, §612(a)(6), added subsec. (g).

**1974**—Subsecs. (a), (b). Pub. L. 93–495, §404, inserted provisions relating to security interest arising by operation of law.

Subsec. (e). Pub. L. 93–495, §412, inserted exemption for consumer credit transactions where a State agency is the creditor.

Subsec. (f). Pub. L. 93–495, §405, added subsec. (f).

## 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 OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

### EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

<sup>1</sup> [\*See References in Text note below.\*](#)

**§1636. Repealed. Pub. L. 96–221, title VI, §614(e)(1), Mar. 31, 1980, 94 Stat. 180**

Section, Pub. L. 90–321, title I, §126, May 29, 1968, 82 Stat. 153, related to contents of periodic statements.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF REPEAL**

Repeal effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

**§1637. Open end consumer credit plans**

**(a) Required disclosures by creditor**

Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including the time period (if any) within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is received after the termination of such time period. If no such time period is provided, the creditor shall disclose such fact.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(5) Identification of other charges which may be imposed as part of the plan, and their method of computation, in accordance with regulations of the Bureau.

(6) In cases where the credit is or will be secured, a statement that a security interest has been or will be taken in (A) the property purchased as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(7) A statement, in a form prescribed by regulations of the Bureau of the protection provided by sections 1666 and 1666i of this title to an obligor and the creditor's responsibilities under sections 1666a and 1666i of this title. With respect to one billing cycle per calendar year, at intervals of not less than six months or more than eighteen months, the creditor shall transmit such statement to each obligor to whom the creditor is required to transmit a statement pursuant to subsection (b) for such billing cycle.

(8) In the case of any account under an open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, any information which—

(A) is required to be disclosed under section 1637a(a) of this title; and

(B) the Bureau determines is not described in any other paragraph of this subsection.

**(b) Statement required with each billing cycle**

The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the statement period.

(2) The amount and date of each extension of credit during the period, and a brief identification,

on or accompanying the statement of each extension of credit in a form prescribed by the Bureau sufficient to enable the obligor either to identify the transaction or to relate it to copies of sales vouchers or similar instruments previously furnished, except that a creditor's failure to disclose such information in accordance with this paragraph shall not be deemed a failure to comply with this part or this subchapter if (A) the creditor maintains procedures reasonably adapted to procure and provide such information, and (B) the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under section 1666 of this title. In lieu of complying with the requirements of the previous sentence, in the case of any transaction in which the creditor and seller are the same person, as defined by the Bureau, and such person's open end credit plan has fewer than 15,000 accounts, the creditor may elect to provide only the amount and date of each extension of credit during the period and the seller's name and location where the transaction took place if (A) a brief identification of the transaction has been previously furnished, and (B) the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under section 1666 of this title.

(3) The total amount credited to the account during the period.

(4) The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge.

(5) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage rate (determined under section 1606(a)(2) of this title) is required to be disclosed pursuant to paragraph (6), the corresponding nominal annual percentage rate determined by multiplying the periodic rate by the number of periods in a year.

(6) Where the total finance charge exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate (determined under section 1606(a)(2) of this title), except that if the finance charge is the sum of two or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable.

(7) The balance on which the finance charge was computed and a statement of how the balance was determined. If the balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed.

(8) The outstanding balance in the account at the end of the period.

(9) The date by which or the period (if any) within which, payment must be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period.

(10) The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor.

(11)(A) A written statement in the following form: "Minimum Payment Warning: Making only the minimum payment will increase the amount of interest you pay and the time it takes to repay your balance.", or such similar statement as is established by the Bureau pursuant to consumer testing.

(B) Repayment information that would apply to the outstanding balance of the consumer under the credit plan, including—

(i) the number of months (rounded to the nearest month) that it would take to pay the entire amount of that balance, if the consumer pays only the required minimum monthly payments and if no further advances are made;

(ii) the total cost to the consumer, including interest and principal payments, of paying that balance in full, if the consumer pays only the required minimum monthly payments and if no further advances are made;

(iii) the monthly payment amount that would be required for the consumer to eliminate the

outstanding balance in 36 months, if no further advances are made, and the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays the balance over 36 months; and

(iv) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.

(C)(i) Subject to clause (ii), in making the disclosures under subparagraph (B), the creditor shall apply the interest rate or rates in effect on the date on which the disclosure is made until the date on which the balance would be paid in full.

(ii) If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision applying an index or formula for subsequent interest rate adjustment, the creditor shall apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will apply under that contractual provision, and then apply an interest rate based on the index or formula in effect on the applicable billing date.

(D) All of the information described in subparagraph (B) shall—

(i) be disclosed in the form and manner which the Bureau shall prescribe, by regulation, and in a manner that avoids duplication; and

(ii) be placed in a conspicuous and prominent location on the billing statement.

(E) In the regulations prescribed under subparagraph (D), the Bureau shall require that the disclosure of such information shall be in the form of a table that—

(i) contains clear and concise headings for each item of such information; and

(ii) provides a clear and concise form stating each item of information required to be disclosed under each such heading.

(F) In prescribing the form of the table under subparagraph (E), the Bureau shall require that—

(i) all of the information in the table, and not just a reference to the table, be placed on the billing statement, as required by this paragraph; and

(ii) the items required to be included in the table shall be listed in the order in which such items are set forth in subparagraph (B).

(G) In prescribing the form of the table under subparagraph (D), the Bureau shall employ terminology which is different than the terminology which is employed in subparagraph (B), if such terminology is more easily understood and conveys substantially the same meaning.

#### (12) REQUIREMENTS RELATING TO LATE PAYMENT DEADLINES AND PENALTIES.—

(A) LATE PAYMENT DEADLINE REQUIRED TO BE DISCLOSED.—In the case of a credit card account under an open end consumer credit plan under which a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment, the periodic statement required under subsection (b) with respect to the account shall include, in a conspicuous location on the billing statement, the date on which the payment is due or, if different, the date on which a late payment fee will be charged, together with the amount of the fee or charge to be imposed if payment is made after that date.

(B) DISCLOSURE OF INCREASE IN INTEREST RATES FOR LATE PAYMENTS.—If 1 or more late payments under an open end consumer credit plan may result in an increase in the annual percentage rate applicable to the account, the statement required under subsection (b) with respect to the account shall include conspicuous notice of such fact, together with the applicable penalty annual percentage rate, in close proximity to the disclosure required under subparagraph (A) of the date on which payment is due under the terms of the account.

(C) PAYMENTS AT LOCAL BRANCHES.—If the creditor, in the case of a credit card account referred to in subparagraph (A), is a financial institution which maintains branches or offices at which payments on any such account are accepted from the obligor in person, the date on which the obligor makes a payment on the account at such branch or office shall be

considered to be the date on which the payment is made for purposes of determining whether a late fee or charge may be imposed due to the failure of the obligor to make payment on or before the due date for such payment.

**(c) Disclosure in credit and charge card applications and solicitations**

**(1) Direct mail applications and solicitations**

**(A) Information in tabular format**

Any application to open a credit card account for any person under an open end consumer credit plan, or a solicitation to open such an account without requiring an application, that is mailed to consumers shall disclose the following information, subject to subsection (e) and section 1632(c) of this title:

**(i) Annual percentage rates**

(I) Each annual percentage rate applicable to extensions of credit under such credit plan.

(II) Where an extension of credit is subject to a variable rate, the fact that the rate is variable, the annual percentage rate in effect at the time of the mailing, and how the rate is determined.

(III) Where more than one rate applies, the range of balances to which each rate applies.

**(ii) Annual and other fees**

(I) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of a credit card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle.

(II) Any minimum finance charge imposed for each period during which any extension of credit which is subject to a finance charge is outstanding.

(III) Any transaction charge imposed in connection with use of the card to purchase goods or services.

**(iii) Grace period**

(I) The date by which or the period within which any credit extended under such credit plan for purchases of goods or services must be repaid to avoid incurring a finance charge, and, if no such period is offered, such fact shall be clearly stated.

(II) If the length of such "grace period" varies, the card issuer may disclose the range of days in the grace period, the minimum number of days in the grace period, or the average number of days in the grace period, if the disclosure is identified as such.

**(iv) Balance calculation method**

(I) The name of the balance calculation method used in determining the balance on which the finance charge is computed if the method used has been defined by the Bureau, or a detailed explanation of the balance calculation method used if the method has not been so defined.

(II) In prescribing regulations to carry out this clause, the Bureau shall define and name not more than the 5 balance calculation methods determined by the Bureau to be the most commonly used methods.

**(B) Other information**

In addition to the information required to be disclosed under subparagraph (A), each application or solicitation to which such subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections (e) and (f):

**(i) Cash advance fee**

Any fee imposed for an extension of credit in the form of cash.

**(ii) Late fee**

Any fee imposed for a late payment.

**(iii) Over-the-limit fee**

Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

**(2) Telephone solicitations**

**(A) In general**

In any telephone solicitation to open a credit card account for any person under an open end consumer credit plan, the person making the solicitation shall orally disclose the information described in paragraph (1)(A).

**(B) Exception**

Subparagraph (A) shall not apply to any telephone solicitation if—

(i) the credit card issuer—

(I) does not impose any fee described in paragraph (1)(A)(ii)(I); or

(II) does not impose any fee in connection with telephone solicitations unless the consumer signifies acceptance by using the card;

(ii) the card issuer discloses clearly and conspicuously in writing the information described in paragraph (1) within 30 days after the consumer requests the card, but in no event later than the date of delivery of the card; and

(iii) the card issuer discloses clearly and conspicuously that the consumer is not obligated to accept the card or account and the consumer will not be obligated to pay any of the fees or charges disclosed unless the consumer elects to accept the card or account by using the card.

**(3) Applications and solicitations by other means**

**(A) In general**

Any application to open a credit card account for any person under an open end consumer credit plan, and any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications shall meet the disclosure requirements of subparagraph (B), (C), or (D).

**(B) Specific information**

An application or solicitation described in subparagraph (A) meets the requirement of this subparagraph if such application or solicitation contains—

(i) the information—

(I) described in paragraph (1)(A) in the form required under section 1632(c) of this title, subject to subsection (e), and

(II) described in paragraph (1)(B) in a clear and conspicuous form, subject to subsections (e) and (f);

(ii) a statement, in a conspicuous and prominent location on the application or solicitation, that—

(I) the information is accurate as of the date the application or solicitation was printed;

(II) the information contained in the application or solicitation is subject to change after such date; and

(III) the applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;

(iii) a clear and conspicuous disclosure of the date the application or solicitation was printed; and

(iv) a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.

**(C) General information without any specific term**

An application or solicitation described in subparagraph (A) meets the requirement of this subparagraph if such application or solicitation—

(i) contains a statement, in a conspicuous and prominent location on the application or solicitation, that—

(I) there are costs associated with the use of credit cards; and

(II) the applicant may contact the creditor to request disclosure of specific information of such costs by calling a toll free telephone number or by writing to an address, specified in the application;

(ii) contains a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number and a mailing address at which the applicant may contact the creditor to obtain such information; and

(iii) does not contain any of the items described in paragraph (1).

**(D) Applications or solicitations containing subsection (a) disclosures**

An application or solicitation meets the requirement of this subparagraph if it contains, or is accompanied by—

(i) the disclosures required by paragraphs (1) through (6) of subsection (a);

(ii) the disclosures required by subparagraphs (A) and (B) of paragraph (1) of this subsection included clearly and conspicuously <sup>1</sup> (except that the provisions of section 1632(c) of this title shall not apply); and

(iii) a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided.

**(E) Prompt response to information requests**

Upon receipt of a request for any of the information referred to in subparagraph (B), (C), or (D), the card issuer or the agent of such issuer shall promptly disclose all of the information described in paragraph (1).

**(4) Charge card applications and solicitations**

**(A) In general**

Any application or solicitation to open a charge card account shall disclose clearly and conspicuously the following information in the form required by section 1632(c) of this title, subject to subsection (e):

(i) Any annual fee, other periodic fee, or membership fee imposed for the issuance or availability of the charge card, including any account maintenance fee or other charge imposed based on activity or inactivity for the account during the billing cycle.

(ii) Any transaction charge imposed in connection with use of the card to purchase goods or services.

(iii) A statement that charges incurred by use of the charge card are due and payable upon receipt of a periodic statement rendered for such charge card account.

**(B) Other information**

In addition to the information required to be disclosed under subparagraph (A), each written application or solicitation to which such subparagraph applies shall disclose clearly and conspicuously the following information, subject to subsections (e) and (f):

**(i) Cash advance fee**

Any fee imposed for an extension of credit in the form of cash.

**(ii) Late fee**

Any fee imposed for a late payment.

**(iii) Over-the-limit fee**

Any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

**(C) Applications and solicitations by other means**

Any application to open a charge card account, and any solicitation to open such an account without requiring an application, that is made available to the public or contained in catalogs, magazines, or other publications shall contain—

(i) the information—

(I) described in subparagraph (A) in the form required under section 1632(c) of this title, subject to subsection (e), and

(II) described in subparagraph (B) in a clear and conspicuous form, subject to subsections (e) and (f);

(ii) a statement, in a conspicuous and prominent location on the application or solicitation, that—

(I) the information is accurate as of the date the application or solicitation was printed;

(II) the information contained in the application or solicitation is subject to change after such date; and

(III) the applicant should contact the creditor for information on any change in the information contained in the application or solicitation since it was printed;

(iii) a clear and conspicuous disclosure of the date the application or solicitation was printed; and

(iv) a disclosure, in a conspicuous and prominent location on the application or solicitation, of a toll free telephone number or a mailing address at which the applicant may contact the creditor to obtain any change in the information provided in the application or solicitation since it was printed.

**(D) Issuers of charge cards which provide access to open end consumer credit plans**

If a charge card permits the card holder to receive an extension of credit under an open end consumer credit plan, which is not maintained by the charge card issuer, the charge card issuer may provide the information described in subparagraphs (A) and (B) in the form required by such subparagraphs in lieu of the information required to be provided under paragraph (1), (2), or (3) with respect to any credit extended under such plan, if the charge card issuer discloses clearly and conspicuously to the consumer in the application or solicitation that—

(i) the charge card issuer will make an independent decision as to whether to issue the card;

(ii) the charge card may arrive before the decision is made with respect to an extension of credit under an open end consumer credit plan; and

(iii) approval by the charge card issuer does not constitute approval by the issuer of the extension of credit.

The information required to be disclosed under paragraph (1) shall be provided to the charge card holder by the creditor which maintains such open end consumer credit plan before the first extension of credit under such plan.

**(E) Charge card defined**

For the purposes of this subsection, the term "charge card" means a card, plate, or other single credit device that may be used from time to time to obtain credit which is not subject to a finance charge.

**(5) Regulatory authority of the Bureau**

The Bureau may, by regulation, require the disclosure of information in addition to that otherwise required by this subsection or subsection (d), and modify any disclosure of information required by this subsection or subsection (d), in any application to open a credit card account for



any person under an open end consumer credit plan or any application to open a charge card account for any person, or a solicitation to open any such account without requiring an application, if the Bureau determines that such action is necessary to carry out the purposes of, or prevent evasions of, any paragraph of this subsection.

**(6) Additional notice concerning "introductory rates"**

**(A) In general**

Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

(i) use the term "introductory" in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 1632(c) of this title), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 1632(c) of this title), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

**(B) Exception**

Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

**(C) Conditions for introductory rates**

An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

**(D) Definitions**

In this paragraph—

(i) the terms "temporary annual percentage rate of interest" and "temporary annual percentage rate" mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

(ii) the term "introductory period" means the maximum time period for which the temporary annual percentage rate may be applicable.

**(E) Relation to other disclosure requirements**

Nothing in this paragraph may be construed to supersede subsection (a) of section 1632 of this title, or any disclosure required by paragraph (1) or any other provision of this subsection.

**(7) Internet-based solicitations**

**(A) In general**

In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

- (i) the information described in subparagraphs (A) and (B) of paragraph (1); and
- (ii) the information described in paragraph (6).

**(B) Form of disclosure**

The disclosures required by subparagraph (A) shall be—

- (i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and
- (ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

**(C) Definitions**

For purposes of this paragraph—

- (i) the term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and
- (ii) the term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

**(8) Applications from underage consumers**

**(A) Prohibition on issuance**

No credit card may be issued to, or open end consumer credit plan established by or on behalf of, a consumer who has not attained the age of 21, unless the consumer has submitted a written application to the card issuer that meets the requirements of subparagraph (B).

**(B) Application requirements**

An application to open a credit card account by a consumer who has not attained the age of 21 as of the date of submission of the application shall require—

- (i) the signature of a cosigner, including the parent, legal guardian, spouse, or any other individual who has attained the age of 21 having a means to repay debts incurred by the consumer in connection with the account, indicating joint liability for debts incurred by the consumer in connection with the account before the consumer has attained the age of 21; or
- (ii) submission by the consumer of financial information, including through an application, indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account.

**(C) Safe harbor**

The Bureau shall promulgate regulations providing standards that, if met, would satisfy the requirements of subparagraph (B)(ii).

**(d) Disclosure prior to renewal**

**(1) In general**

A card issuer that has changed or amended any term of the account since the last renewal that

has not been previously disclosed or that imposes any fee described in subsection (c)(1)(A)(ii)(I) or (c)(4)(A)(i) shall transmit to a consumer at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card account a clear and conspicuous disclosure of—

(A) the date by which, the month by which, or the billing period at the close of which, the account will expire if not renewed;

(B) the information described in subsection (c)(1)(A) or (c)(4)(A) that would apply if the account were renewed, subject to subsection (e); and

(C) the method by which the consumer may terminate continued credit availability under the account.

## **(2) Short-term renewals**

The Bureau may by regulation provide for fewer disclosures than are required by paragraph (1) in the case of an account which is renewable for a period of less than 6 months.

## **(e) Other rules for disclosures under subsections (c) and (d)**

### **(1) Fees determined on the basis of a percentage**

If the amount of any fee required to be disclosed under subsection (c) or (d) is determined on the basis of a percentage of another amount, the percentage used in making such determination and the identification of the amount against which such percentage is applied shall be disclosed in lieu of the amount of such fee.

### **(2) Disclosure only of fees actually imposed**

If a credit or charge card issuer does not impose any fee required to be disclosed under any provision of subsection (c) or (d), such provision shall not apply with respect to such issuer.

## **(f) Disclosure of range of certain fees which vary by State allowed**

If the amount of any fee required to be disclosed by a credit or charge card issuer under paragraph (1)(B), (3)(B)(i)(II), (4)(B), or (4)(C)(i)(II) of subsection (c) varies from State to State, the card issuer may disclose the range of such fees for purposes of subsection (c) in lieu of the amount for each applicable State, if such disclosure includes a statement that the amount of such fee varies from State to State.

## **(g) Insurance in connection with certain open end credit card plans**

### **(1) Change in insurance carrier**

Whenever a card issuer that offers any guarantee or insurance for repayment of all or part of the outstanding balance of an open end credit card plan proposes to change the person providing that guarantee or insurance, the card issuer shall send each insured consumer written notice of the proposed change not less than 30 days prior to the change, including notice of any increase in the rate or substantial decrease in coverage or service which will result from such change. Such notice may be included on or with the monthly statement provided to the consumer prior to the month in which the proposed change would take effect.

### **(2) Notice of new insurance coverage**

In any case in which a proposed change described in paragraph (1) occurs, the insured consumer shall be given the name and address of the new guarantor or insurer and a copy of the policy or group certificate containing the basic terms and conditions, including the premium rate to be charged.

### **(3) Right to discontinue guarantee or insurance**

The notices required under paragraphs (1) and (2) shall each include a statement that the consumer has the option to discontinue the insurance or guarantee.

### **(4) No preemption of State law**

No provision of this subsection shall be construed as superseding any provision of State law which is applicable to the regulation of insurance.

**(5) Bureau definition of substantial decrease in coverage or service**

The Bureau shall define, in regulations, what constitutes a "substantial decrease in coverage or service" for purposes of paragraph (1).

**(h) Prohibition on certain actions for failure to incur finance charges**

A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.

**(i) Advance notice of rate increase and other changes required**

**(1) Advance notice of increase in interest rate required**

In the case of any credit card account under an open end consumer credit plan, a creditor shall provide a written notice of an increase in an annual percentage rate (except in the case of an increase described in paragraph (1), (2), or (3) of section 1666i-1(b) of this title) not later than 45 days prior to the effective date of the increase.

**(2) Advance notice of other significant changes required**

In the case of any credit card account under an open end consumer credit plan, a creditor shall provide a written notice of any significant change, as determined by rule of the Bureau, in the terms (including an increase in any fee or finance charge, other than as provided in paragraph (1)) of the cardholder agreement between the creditor and the obligor, not later than 45 days prior to the effective date of the change.

**(3) Notice of right to cancel**

Each notice required by paragraph (1) or (2) shall be made in a clear and conspicuous manner, and shall contain a brief statement of the right of the obligor to cancel the account pursuant to rules established by the Bureau before the effective date of the subject rate increase or other change.

**(4) Rule of construction**

Closure or cancellation of an account by the obligor shall not constitute a default under an existing cardholder agreement, and shall not trigger an obligation to immediately repay the obligation in full or through a method that is less beneficial to the obligor than one of the methods described in section 1666i-1(c)(2) of this title, or the imposition of any other penalty or fee.

**(j) Prohibition on penalties for on-time payments**

**(1) Prohibition on double-cycle billing and penalties for on-time payments**

Except as provided in paragraph (2), a creditor may not impose any finance charge on a credit card account under an open end consumer credit plan as a result of the loss of any time period provided by the creditor within which the obligor may repay any portion of the credit extended without incurring a finance charge, with respect to—

(A) any balances for days in billing cycles that precede the most recent billing cycle; or

(B) any balances or portions thereof in the current billing cycle that were repaid within such time period.

**(2) Exceptions**

Paragraph (1) does not apply to—

(A) any adjustment to a finance charge as a result of the resolution of a dispute; or

(B) any adjustment to a finance charge as a result of the return of a payment for insufficient funds.

**(k) Opt-in required for over-the-limit transactions if fees are imposed**

**(1) In general**

In the case of any credit card account under an open end consumer credit plan under which an

over-the-limit fee may be imposed by the creditor for any extension of credit in excess of the amount of credit authorized to be extended under such account, no such fee shall be charged, unless the consumer has expressly elected to permit the creditor, with respect to such account, to complete transactions involving the extension of credit under such account in excess of the amount of credit authorized.

**(2) Disclosure by creditor**

No election by a consumer under paragraph (1) shall take effect unless the consumer, before making such election, received a notice from the creditor of any over-the-limit fee in the form and manner, and at the time, determined by the Bureau. If the consumer makes the election referred to in paragraph (1), the creditor shall provide notice to the consumer of the right to revoke the election, in the form prescribed by the Bureau, in any periodic statement that includes notice of the imposition of an over-the-limit fee during the period covered by the statement.

**(3) Form of election**

A consumer may make or revoke the election referred to in paragraph (1) orally, electronically, or in writing, pursuant to regulations prescribed by the Bureau. The Bureau shall prescribe regulations to ensure that the same options are available for both making and revoking such election.

**(4) Time of election**

A consumer may make the election referred to in paragraph (1) at any time, and such election shall be effective until the election is revoked in the manner prescribed under paragraph (3).

**(5) Regulations**

The Bureau shall prescribe regulations—

- (A) governing disclosures under this subsection; and
- (B) that prevent unfair or deceptive acts or practices in connection with the manipulation of credit limits designed to increase over-the-limit fees or other penalty fees.

**(6) Rule of construction**

Nothing in this subsection shall be construed to prohibit a creditor from completing an over-the-limit transaction, provided that a consumer who has not made a valid election under paragraph (1) is not charged an over-the-limit fee for such transaction.

**(7) Restriction on fees charged for an over-the-limit transaction**

With respect to a credit card account under an open end consumer credit plan, an over-the-limit fee may be imposed only once during a billing cycle if the credit limit on the account is exceeded, and an over-the-limit fee, with respect to such excess credit, may be imposed only once in each of the 2 subsequent billing cycles, unless the consumer has obtained an additional extension of credit in excess of such credit limit during any such subsequent cycle or the consumer reduces the outstanding balance below the credit limit as of the end of such billing cycle.

**(l) Limit on fees related to method of payment**

With respect to a credit card account under an open end consumer credit plan, the creditor may not impose a separate fee to allow the obligor to repay an extension of credit or finance charge, whether such repayment is made by mail, electronic transfer, telephone authorization, or other means, unless such payment involves an expedited service by a service representative of the creditor.

**(m) Use of term "fixed rate"**

With respect to the terms of any credit card account under an open end consumer credit plan, the term "fixed", when appearing in conjunction with a reference to the annual percentage rate or interest rate applicable with respect to such account, may only be used to refer to an annual percentage rate or interest rate that will not change or vary for any reason over the period specified clearly and conspicuously in the terms of the account.

**(n) Standards applicable to initial issuance of subprime or "fee harvester" cards**

**(1) In general**

If the terms of a credit card account under an open end consumer credit plan require the payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) by the consumer in the first year during which the account is opened in an aggregate amount in excess of 25 percent of the total amount of credit authorized under the account when the account is opened, no payment of any fees (other than any late fee, over-the-limit fee, or fee for a payment returned for insufficient funds) may be made from the credit made available under the terms of the account.

**(2) Rule of construction**

No provision of this subsection may be construed as authorizing any imposition or payment of advance fees otherwise prohibited by any provision of law.

**(o) Due dates for credit card accounts**

**(1) In general**

The payment due date for a credit card account under an open end consumer credit plan shall be the same day each month.

**(2) Weekend or holiday due dates**

If the payment due date for a credit card account under an open end consumer credit plan is a day on which the creditor does not receive or accept payments by mail (including weekends and holidays), the creditor may not treat a payment received on the next business day as late for any purpose.

**(p) Parental approval required to increase credit lines for accounts for which parent is jointly liable**

No increase may be made in the amount of credit authorized to be extended under a credit card account for which a parent, legal guardian, or spouse of the consumer, or any other individual has assumed joint liability for debts incurred by the consumer in connection with the account before the consumer attains the age of 21, unless that parent, guardian, or spouse approves in writing, and assumes joint liability for, such increase.

**(r) <sup>2</sup> College card agreements**

**(1) Definitions**

For purposes of this subsection, the following definitions shall apply:

**(A) College affinity card**

The term "college affinity card" means a credit card issued by a credit card issuer under an open end consumer credit plan in conjunction with an agreement between the issuer and an institution of higher education, or an alumni organization or foundation affiliated with or related to such institution, under which such cards are issued to college students who have an affinity with such institution, organization and—

(i) the creditor has agreed to donate a portion of the proceeds of the credit card to the institution, organization, or foundation (including a lump sum or 1-time payment of money for access);

(ii) the creditor has agreed to offer discounted terms to the consumer; or

(iii) the credit card bears the name, emblem, mascot, or logo of such institution, organization, or foundation, or other words, pictures, or symbols readily identified with such institution, organization, or foundation.

**(B) College student credit card account**

The term "college student credit card account" means a credit card account under an open end consumer credit plan established or maintained for or on behalf of any college student.

**(C) College student**

The term "college student" means an individual who is a full-time or a part-time student attending an institution of higher education.

**(D) Institution of higher education**

The term "institution of higher education" has the same meaning as in section <sup>3</sup> 1001 and 1002 of title 20.

**(2) Reports by creditors**

**(A) In general**

Each creditor shall submit an annual report to the Bureau containing the terms and conditions of all business, marketing, and promotional agreements and college affinity card agreements with an institution of higher education, or an alumni organization or foundation affiliated with or related to such institution, with respect to any college student credit card issued to a college student at such institution.

**(B) Details of report**

The information required to be reported under subparagraph (A) includes—

- (i) any memorandum of understanding between or among a creditor, an institution of higher education, an alumni association, or foundation that directly or indirectly relates to any aspect of any agreement referred to in such subparagraph or controls or directs any obligations or distribution of benefits between or among any such entities;
- (ii) the amount of any payments from the creditor to the institution, organization, or foundation during the period covered by the report, and the precise terms of any agreement under which such amounts are determined; and
- (iii) the number of credit card accounts covered by any such agreement that were opened during the period covered by the report, and the total number of credit card accounts covered by the agreement that were outstanding at the end of such period.

**(C) Aggregation by institution**

The information required to be reported under subparagraph (A) shall be aggregated with respect to each institution of higher education or alumni organization or foundation affiliated with or related to such institution.

**(D) Initial report**

The initial report required under subparagraph (A) shall be submitted to the Bureau before the end of the 9-month period beginning on May 22, 2009.

**(3) Reports by Bureau**

The Bureau shall submit to the Congress, and make available to the public, an annual report that lists the information concerning credit card agreements submitted to the Bureau under paragraph (2) by each institution of higher education, alumni organization, or foundation.

(Pub. L. 90–321, title I, §127, May 29, 1968, 82 Stat. 153; Pub. L. 93–495, title III, §§304, 305, title IV, §§411, 415, Oct. 28, 1974, 88 Stat. 1511, 1519, 1521; Pub. L. 96–221, title VI, §613(a)–(e), Mar. 31, 1980, 94 Stat. 176, 177; Pub. L. 100–583, §2(a), 6, Nov. 3, 1988, 102 Stat. 2960, 2968; Pub. L. 100–709, §2(b), Nov. 23, 1988, 102 Stat. 4729; Pub. L. 109–8, title XIII, §§1301(a), 1303(a), 1304(a), 1305(a), 1306(a), Apr. 20, 2005, 119 Stat. 204, 209, 211, 212; Pub. L. 111–24, title I, §§101(a)(1), 102(a), 103, 105, 106(a), title II, §§201(a), 202, 203, title III, §§301, 303, 305(a), May 22, 2009, 123 Stat. 1735, 1738, 1741–1743, 1745–1749; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2010**—Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

**2009**—Subsec. (b)(11). Pub. L. 111–24, §201(a), amended par. (11) generally, revising the minimum

payment disclosures required from creditors.

Subsec. (b)(12). Pub. L. 111-24, §202, amended par. (12) generally. Prior to amendment, par. (12) read as follows: "If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

"(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

"(B) The amount of the late payment fee to be imposed if payment is made after such date."

Subsec. (c)(8). Pub. L. 111-24, §301, added par. (8).

Subsec. (d)(1). Pub. L. 111-24, §203(3), substituted "A card issuer that has changed or amended any term of the account since the last renewal that has not been previously disclosed or" for "Except as provided in paragraph (2), a card issuer" in introductory provisions.

Subsec. (d)(2), (3). Pub. L. 111-24, §203(1), (2), redesignated par. (3) as (2) and struck out former par. (2) which provided a special rule for certain disclosures.

Subsec. (i). Pub. L. 111-24, §101(a)(1), added subsec. (i).

Subsecs. (j) to (l). Pub. L. 111-24, §102(a), added subsecs. (j) to (l).

Subsec. (m). Pub. L. 111-24, §103, added subsec. (m).

Subsec. (n). Pub. L. 111-24, §105, added subsec. (n).

Subsec. (o). Pub. L. 111-24, §106(a), added subsec. (o).

Subsec. (p). Pub. L. 111-24, §303, added subsec. (p).

Subsec. (r). Pub. L. 111-24, §305(a), added subsec. (r).

**2005**—Subsec. (b)(11). Pub. L. 109-8, §1301(a), added par. (11).

Subsec. (b)(12). Pub. L. 109-8, §1305(a), added par. (12).

Subsec. (c)(6). Pub. L. 109-8, §1303(a), added par. (6).

Subsec. (c)(7). Pub. L. 109-8, §1304(a), added par. (7).

Subsec. (h). Pub. L. 109-8, §1306(a), added subsec. (h).

**1988**—Subsec. (a)(8). Pub. L. 100-709 added par. (8).

Subsecs. (c) to (f). Pub. L. 100-583, §2(a), added subsecs. (c) to (f).

Subsec. (g). Pub. L. 100-583, §6, added subsec. (g).

**1980**—Subsec. (a)(1). Pub. L. 96-221, §613(a)(1), inserted provisions requiring the creditor to disclose that no time period is provided.

Subsec. (a)(5). Pub. L. 96-221, §613(a)(2), (3), redesignated par. (6) as (5) and inserted provisions relating to identification of other charges, and regulations by the Board. Former par. (5), relating to elective rights of the creditor, was struck out.

Subsec. (a)(6). Pub. L. 96-221, §613(a)(2), (3), redesignated par. (7) as (6) and revised nomenclature and expanded statement requirements. Former par. (6) redesignated (5).

Subsec. (a)(7), (8). Pub. L. 96-221, §613(a)(2), (d), redesignated par. (8) as (7) and substituted provisions relating to one billing cycle per calendar year, for provisions relating to each of two billing cycles per year. Former par. (7) redesignated (6).

Subsec. (b)(2). Pub. L. 96-221, §613(b), inserted provisions relating to failure of the creditor to disclose information in accordance with this paragraph, and made minor changes in phraseology.

Subsec. (b)(7) to (11). Pub. L. 96-221, §613(c), struck out par. (7) which related to elective rights of the creditor, and redesignated pars. (8) to (11) as (7) to (10), respectively.

Subsec. (c). Pub. L. 96-221, §613(e), struck out subsec. (c) which related to the time for making disclosures with respect to open end consumer credit plans having an outstanding balance of more than \$1 at or after the close of the first full billing cycle.

**1974**—Subsec. (a)(1). Pub. L. 93-495, §415(1), inserted exception relating to nonimposition of a finance charge at the election of the creditor and without disclosure.

Subsec. (a)(8). Pub. L. 93-495, §304(a), added par. (8).

Subsec. (b)(2). Pub. L. 93-495, §411, substituted provisions requiring a brief identification on or accompanying the statement of credit extension sufficient to enable the obligor to identify the transaction or relate it to copies of sales vouchers or similar instruments previously furnished, for provisions requiring for purchases a brief identification, unless previously furnished, of the goods or services purchased.

Subsec. (b)(10). Pub. L. 93-495, §415(2), inserted exception relating to nonimposition of additional finance charge at the election of the creditor and without disclosure.

Subsec. (b)(11). Pub. L. 93-495, §305, added par. (11).

Subsec. (c). Pub. L. 93-495, §304(b), substituted provisions relating to disclosure requirements in a notice mailed or delivered to the obligor not later than the time of mailing the next statement required by subsec. (b) of this section, for provisions relating to disclosure requirements in a notice mailed or delivered to the obligor



not later than thirty days after July 1, 1969.

## **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 OF 2009 AMENDMENT**

Amendment by Pub. L. 111–24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as a note under section 1602 of this title.

Pub. L. 111–24, title I, §101(a)(2), May 22, 2009, 123 Stat. 1736, provided that: "Notwithstanding section 3 [see Effective Date of 2009 Amendment note set out under section 1602 of this title], section 127(i) of the Truth in Lending Act [15 U.S.C. 1637(i)], as added by this subsection, shall become effective 90 days after the date of enactment of this Act [May 22, 2009]."

### **EFFECTIVE DATE OF 2005 AMENDMENT**

Pub. L. 109–8, title XIII, §1301(b)(2), Apr. 20, 2005, 119 Stat. 207, provided that: "Section 127(b)(11) of the Truth in Lending Act [subsec. (b)(11) of this section], as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection [set out as a note under this section] shall not take effect until the later of—

"(A) 18 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the publication of such final regulations by the Board [of Governors of the Federal Reserve System] [Jan. 29, 2009, see 74 F.R. 5244]."

Pub. L. 109–8, title XIII, §1303(b)(2), Apr. 20, 2005, 119 Stat. 211, provided that: "Section 127(c)(6) of the Truth in Lending Act [subsec. (c)(6) of this section], as added by this section, and regulations issued under paragraph (1) of this subsection [set out as a note under this section] shall not take effect until the later of—

"(A) 12 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the date of publication of such final regulations by the Board [of Governors of the Federal Reserve System] [Jan. 29, 2009, see 74 F.R. 5244]."

Pub. L. 109–8, title XIII, §1304(b)(2), Apr. 20, 2005, 119 Stat. 212, provided that: "The amendment made by subsection (a) [amending this section] and the regulations issued under paragraph (1) of this subsection [set out as a note under this section] shall not take effect until the later of—

"(A) 12 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the date of publication of such final regulations by the Board [of Governors of the Federal Reserve System] [Jan. 29, 2009, see 74 F.R. 5244]."

Pub. L. 109–8, title XIII, §1305(b)(2), Apr. 20, 2005, 119 Stat. 212, provided that: "The amendment made by subsection (a) [amending this section] and regulations issued under paragraph (1) of this subsection [set out as a note under this section] shall not take effect until the later of—

"(A) 12 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the date of publication of such final regulations by the Board [of Governors of the Federal Reserve System] [Jan. 29, 2009, see 74 F.R. 5244]."

Pub. L. 109–8, title XIII, §1306(b)(2), Apr. 20, 2005, 119 Stat. 212, provided that: "The amendment made by subsection (a) [amending this section] and regulations issued under paragraph (1) of this subsection [set out as a note under this section] shall not take effect until the later of—

"(A) 12 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the date of publication of such final regulations by the Board [of Governors of the Federal Reserve System] [Jan. 29, 2009, see 74 F.R. 5244]."

### **EFFECTIVE DATE OF 1988 AMENDMENT**

For effective date of amendments by Pub. L. 100–709, see Regulations; Effective Date note below.

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

## EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by sections 304 and 305 of Pub. L. 93–495, see section 308 of Pub. L. 93–495, set out as an Effective Date note under section 1666 of this title.

For effective date of amendment by section 411 of Pub. L. 93–495, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

Amendment by section 415 of Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

## REGULATIONS

Pub. L. 111–24, title II, §201(c), May 22, 2009, 123 Stat. 1745, provided that:

"(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act [May 22, 2009], the Board [of Governors of the Federal Reserve System] shall issue guidelines, by rule, in consultation with the Secretary of the Treasury, for the establishment and maintenance by creditors of a toll-free telephone number for purposes of providing information about accessing credit counseling and debt management services, as required under section 127(b)(11)(B)(iv) of the Truth in Lending Act [15 U.S.C. 1637(b)(11)(B)(iv)], as added by this section.

"(2) APPROVED AGENCIES.—Guidelines issued under this subsection shall ensure that referrals provided by the toll-free number referred to in paragraph (1) include only those nonprofit budget and credit counseling agencies approved by a United States bankruptcy trustee pursuant to section 111(a) of title 11, United States Code."

Pub. L. 109–8, title XIII, §1301(b)(1), Apr. 20, 2005, 119 Stat. 207, provided that: "The Board of Governors of the Federal Reserve System (hereafter in this title [amending this section and sections 1637a, 1638, 1664, and 1665b of this title and enacting provisions set out as notes under this section and section 1637a of this title] referred to as the 'Board') shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act [subsec. (b)(11) of this section], as added by subsection (a) of this section."

Pub. L. 109–8, title XIII, §1303(b)(1), Apr. 20, 2005, 119 Stat. 211, provided that: "The Board [of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act [subsec. (c)(6) of this section], as added by this section."

Pub. L. 109–8, title XIII, §1304(b)(1), Apr. 20, 2005, 119 Stat. 211, provided that: "The Board [of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act [subsec. (c)(7) of this section], as added by this section."

Pub. L. 109–8, title XIII, §1305(b)(1), Apr. 20, 2005, 119 Stat. 212, provided that: "The Board [of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act [subsec. (b)(12) of this section], as added by this section."

Pub. L. 109–8, title XIII, §1306(b)(1), Apr. 20, 2005, 119 Stat. 212, provided that: "The Board [of Governors of the Federal Reserve System] shall promulgate regulations implementing the requirements of section 127(h) of the Truth in Lending Act [subsec. (h) of this section], as added by this section."

Pub. L. 109–8, title XIII, §1309, Apr. 20, 2005, 119 Stat. 213, provided that:

"(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act [Apr. 20, 2005], the Board [of Governors of the Federal Reserve System], in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]), the National Credit Union Administration Board, and the Federal Trade Commission, shall promulgate regulations to provide guidance regarding the meaning of the term 'clear and conspicuous', as used in subparagraphs (A), (B), and (C) of section 127(b)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act [subsecs. (b)(11) and (c)(6)(A) of this section].

"(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act [15 U.S.C. 1601 et seq.] referred to in subsection (a).

"(c) STANDARDS.—In promulgating regulations under this section, the Board [of Governors of the Federal Reserve System] shall ensure that the clear and conspicuous standard required for disclosures made under the provisions of the Truth in Lending Act referred to in subsection (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice."

## REGULATIONS; EFFECTIVE DATE

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709, and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set

out as a note under section 1637a of this title.

Pub. L. 100-583, §7, Nov. 3, 1988, 102 Stat. 2968, provided that: "Any regulation required to be prescribed by the Board under the amendments made by section 2 [amending this section and section 1632 of this title] shall—

"(1) take effect not later than the end of the 150-day period beginning on the date of the enactment of this Act [Nov. 3, 1988]; and

"(2) apply only with respect to applications, solicitations, and other material distributed after the end of the 150-day period beginning after the end of the period referred to in paragraph (1), except that—

"(A) in the case of applications and solicitations subject to paragraph (3) or (4)(C) of section 127(c) of the Truth in Lending Act [15 U.S.C. 1637(c)(3), (4)(C)] (as added by section 2), such period shall be 240 days; and

"(B) any card issuer may, at its option, comply with the requirements of the amendments made by this Act [see Short Title of 1988 Amendment note under section 1601 of this title] prior to the applicable effective date, in which case the amendments made by this Act shall be fully applicable to such card issuer."

## REPORTS TO CONGRESS

Pub. L. 111-24, title III, §305(b), May 22, 2009, 123 Stat. 1750, provided that:

"(1) STUDY.—The Comptroller General of the United States shall, from time to time, review the reports submitted by creditors under section 127(r) of the Truth in Lending Act [15 U.S.C. 1637(r)], as added by this section, and the marketing practices of creditors to determine the impact that college affinity card agreements and college student card agreements have on credit card debt.

"(2) REPORT.—Upon completion of any study under paragraph (1), the Comptroller General shall periodically submit a report to the Congress on the findings and conclusions of the study, together with such recommendations for administrative or legislative action as the Comptroller General determines to be appropriate."

Pub. L. 100-583, §8, Nov. 3, 1988, 102 Stat. 2969, provided that: "Not later than 1 year after the regulations prescribed under section 7 of this Act [set out as a note above] become effective and annually thereafter, the Board of Governors of the Federal Reserve System shall transmit to the Congress a report containing an assessment by the Board of the profitability of credit card operations of depository institutions, including an analysis of any impact of the amendments made by this Act [see Short Title of 1988 Amendment note under section 1601 of this title] on such profitability."

<sup>1</sup> *So in original. Probably should be "conspicuously".*

<sup>2</sup> *So in original. No subsec. (q) has been enacted.*

<sup>3</sup> *So in original. Probably should be "sections".*

## **§1637a. Disclosure requirements for open end consumer credit plans secured by consumer's principal dwelling**

### **(a) Application disclosures**

In the case of any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor shall make the following disclosures in accordance with subsection (b):

#### **(1) Fixed annual percentage rate**

Each annual percentage rate imposed in connection with extensions of credit under the plan and a statement that such rate does not include costs other than interest.

#### **(2) Variable percentage rate**

In the case of a plan which provides for variable rates of interest on credit extended under the plan—

(A) a description of the manner in which such rate will be computed and a statement that

such rate does not include costs other than interest;

(B) a description of the manner in which any changes in the annual percentage rate will be made, including—

- (i) any negative amortization and interest rate carryover;
- (ii) the timing of any such changes;
- (iii) any index or margin to which such changes in the rate are related; and
- (iv) a source of information about any such index;

(C) if an initial annual percentage rate is offered which is not based on an index—

- (i) a statement of such rate and the period of time such initial rate will be in effect; and
- (ii) a statement that such rate does not include costs other than interest;

(D) a statement that the consumer should ask about the current index value and interest rate;

(E) a statement of the maximum amount by which the annual percentage rate may change in any 1-year period or a statement that no such limit exists;

(F) a statement of the maximum annual percentage rate that may be imposed at any time under the plan;

(G) subject to subsection (b)(3), a table, based on a \$10,000 extension of credit, showing how the annual percentage rate and the minimum periodic payment amount under each repayment option of the plan would have been affected during the preceding 15-year period by changes in any index used to compute such rate;

(H) a statement of—

- (i) the maximum annual percentage rate which may be imposed under each repayment option of the plan;
- (ii) the minimum amount of any periodic payment which may be required, based on a \$10,000 outstanding balance, under each such option when such maximum annual percentage rate is in effect; and
- (iii) the earliest date by which such maximum annual interest rate may be imposed; and

(I) a statement that interest rate information will be provided on or with each periodic statement.

### **(3) Other fees imposed by the creditor**

An itemization of any fees imposed by the creditor in connection with the availability or use of credit under such plan, including annual fees, application fees, transaction fees, and closing costs (including costs commonly described as "points"), and the time when such fees are payable.

### **(4) Estimates of fees which may be imposed by third parties**

#### **(A) Aggregate amount**

An estimate, based on the creditor's experience with such plans and stated as a single amount or as a reasonable range, of the aggregate amount of additional fees that may be imposed by third parties (such as governmental authorities, appraisers, and attorneys) in connection with opening an account under the plan.

#### **(B) Statement of availability**

A statement that the consumer may ask the creditor for a good faith estimate by the creditor of the fees that may be imposed by third parties.

### **(5) Statement of risk of loss of dwelling**

A statement that—

- (A) any extension of credit under the plan is secured by the consumer's dwelling; and
- (B) in the event of any default, the consumer risks the loss of the dwelling.

### **(6) Conditions to which disclosed terms are subject**

#### **(A) Period during which such terms are available**

A clear and conspicuous statement—

- (i) of the time by which an application must be submitted to obtain the terms disclosed; or
- (ii) if applicable, that the terms are subject to change.

**(B) Right of refusal if certain terms change**

A statement that—

- (i) the consumer may elect not to enter into an agreement to open an account under the plan if any term changes (other than a change contemplated by a variable feature of the plan) before any such agreement is final; and
- (ii) if the consumer makes an election described in clause (i), the consumer is entitled to a refund of all fees paid in connection with the application.

**(C) Retention of information**

A statement that the consumer should make or otherwise retain a copy of information disclosed under this subparagraph.

**(7) Rights of creditor with respect to extensions of credit**

A statement that—

- (A) under certain conditions, the creditor may terminate any account under the plan and require immediate repayment of any outstanding balance, prohibit any additional extension of credit to the account, or reduce the credit limit applicable to the account; and
- (B) the consumer may receive, upon request, more specific information about the conditions under which the creditor may take any action described in subparagraph (A).

**(8) Repayment options and minimum periodic payments**

The repayment options under the plan, including—

- (A) if applicable, any differences in repayment options with regard to—
  - (i) any period during which additional extensions of credit may be obtained; and
  - (ii) any period during which repayment is required to be made and no additional extensions of credit may be obtained;

(B) the length of any repayment period, including any differences in the length of any repayment period with regard to the periods described in clauses (i) and (ii) of subparagraph (A); and

(C) an explanation of how the amount of any minimum monthly or periodic payment will be determined under each such option, including any differences in the determination of any such amount with regard to the periods described in clauses (i) and (ii) of subparagraph (A).

**(9) Example of minimum payments and maximum repayment period**

An example, based on a \$10,000 outstanding balance and the interest rate (other than a rate not based on the index under the plan) which is, or was recently, in effect under such plan, showing the minimum monthly or periodic payment, and the time it would take to repay the entire \$10,000 if the consumer paid only the minimum periodic payments and obtained no additional extensions of credit.

**(10) Statement concerning balloon payments**

If, under any repayment option of the plan, the payment of not more than the minimum periodic payments required under such option over the length of the repayment period—

- (A) would not repay any of the principal balance; or
- (B) would repay less than the outstanding balance by the end of such period,

as the case may be, a statement of such fact, including an explicit statement that at the end of such repayment period a balloon payment (as defined in section 1665b(f) of this title) would result which would be required to be paid in full at that time.

**(11) Negative amortization**

If applicable, a statement that—

- (A) any limitation in the plan on the amount of any increase in the minimum payments may result in negative amortization;
- (B) negative amortization increases the outstanding principal balance of the account; and
- (C) negative amortization reduces the consumer's equity in the consumer's dwelling.

**(12) Limitations and minimum amount requirements on extensions of credit**

**(A) Number and dollar amount limitations**

Any limitation contained in the plan on the number of extensions of credit and the amount of credit which may be obtained during any month or other defined time period.

**(B) Minimum balance and other transaction amount requirements**

Any requirement which establishes a minimum amount for—

- (i) the initial extension of credit to an account under the plan;
- (ii) any subsequent extension of credit to an account under the plan; or
- (iii) any outstanding balance of an account under the plan.

**(13) Statement regarding tax deductibility**

A statement that—

- (A) the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan; and
- (B) in any case in which the extension of credit exceeds the fair market value (as defined under title 26) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.

**(14) Disclosure requirements established by Bureau**

Any other term which the Bureau requires, in regulations, to be disclosed.

**(b) Time and form of disclosures**

**(1) Time of disclosure**

**(A) In general**

The disclosures required under subsection (a) with respect to any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling and the pamphlet required under subsection (e) shall be provided to any consumer at the time the creditor distributes an application to establish an account under such plan to such consumer.

**(B) Telephone, publications, and third party applications**

In the case of telephone applications, applications contained in magazines or other publications, or applications provided by a third party, the disclosures required under subsection (a) and the pamphlet required under subsection (e) shall be provided by the creditor before the end of the 3-day period beginning on the date the creditor receives a completed application from a consumer.

**(2) Form**

**(A) In general**

Except as provided in paragraph (1)(B), the disclosures required under subsection (a) shall be provided on or with any application to establish an account under an open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling.

**(B) Segregation of required disclosures from other information**

The disclosures required under subsection (a) shall be conspicuously segregated from all other terms, data, or additional information provided in connection with the application, either by grouping the disclosures separately on the application form or by providing the disclosures

on a separate form, in accordance with regulations of the Bureau.

**(C) Precedence of certain information**

The disclosures required by paragraphs (5), (6), and (7) of subsection (a) shall precede all of the other required disclosures.

**(D) Special provision relating to variable interest rate information**

Whether or not the disclosures required under subsection (a) are provided on the application form, the variable rate information described in subsection (a)(2) may be provided separately from the other information required to be disclosed.

**(3) Requirement for historical table**

In preparing the table required under subsection (a)(2)(G), the creditor shall consistently select one rate of interest for each year and the manner of selecting the rate from year to year shall be consistent with the plan.

**(c) Third party applications**

In the case of an application to open an account under any open end consumer credit plan described in subsection (a) which is provided to a consumer by any person other than the creditor—

(1) such person shall provide such consumer with—

(A) the disclosures required under subsection (a) with respect to such plan, in accordance with subsection (b); and

(B) the pamphlet required under subsection (e); or

(2) if such person cannot provide specific terms about the plan because specific information about the plan terms is not available, no nonrefundable fee may be imposed in connection with such application before the end of the 3-day period beginning on the date the consumer receives the disclosures required under subsection (a) with respect to the application.

**(d) "Principal dwelling" defined**

For purposes of this section and sections 1647 and 1665b of this title, the term "principal dwelling" includes any second or vacation home of the consumer.

**(e) Pamphlet**

In addition to the disclosures required under subsection (a) with respect to an application to open an account under any open end consumer credit plan described in such subsection, the creditor or other person providing such disclosures to the consumer shall provide—

(1) a pamphlet published by the Bureau pursuant to section 4 of the Home Equity <sup>1</sup> Consumer Protection Act of 1988; or

(2) any pamphlet which provides substantially similar information to the information described in such section, as determined by the Bureau.

(Pub. L. 90–321, title I, §127A, as added Pub. L. 100–709, §2(a), Nov. 23, 1988, 102 Stat. 4725; amended Pub. L. 109–8, title XIII, §1302(a)(1), Apr. 20, 2005, 119 Stat. 208; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 4 of the Home Equity Loan Consumer Protection Act of 1988, referred to in subsec. (e)(1), is section 4 of Pub. L. 100–709, which is set out as a note below.

**AMENDMENTS**

**2010**—Subsecs. (a)(14), (b)(2)(B), (e). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

**2005**—Subsec. (a)(13). Pub. L. 109–8 substituted "tax deductibility" for "consultation of tax advisor" in heading, designated existing provisions as introductory provisions and subpar. (A), inserted dash, substituted

"; and" for period at end of subpar. (A), and added subpar. (B).

## 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 OF 2005 AMENDMENT

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

### EFFECTIVE DATE

For effective date of section, see Regulations; Effective Date note below.

### REGULATIONS

Pub. L. 109–8, title XIII, §1302(c), Apr. 20, 2005, 119 Stat. 209, provided that:

"(1) IN GENERAL.—The Board [of Governors of the Federal Reserve System] shall promulgate regulations implementing the amendments made by this section [amending this section and sections 1638, 1664, and 1665b of this title].

"(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall not take effect until the later of—

"(A) 12 months after the date of enactment of this Act [Apr. 20, 2005]; or

"(B) 12 months after the date of publication of such final regulations by the Board."

### REGULATIONS; EFFECTIVE DATE

Pub. L. 100–709, §7, Nov. 23, 1988, 102 Stat. 4734, provided that:

"(a) REGULATIONS.—Before the end of the 60-day period beginning on the date of the enactment of this Act [Nov. 23, 1988], the Board of Governors of the Federal Reserve System shall prescribe such regulations as may be necessary to carry out the proposes [sic] of the amendments made by this Act [enacting this section and sections 1647 and 1665b of this title, amending sections 1632 and 1637 of this title, and enacting provisions set out as notes under this section and section 1601 of this title].

"(b) EFFECTIVE DATE.—The amendments made by this Act, and the regulations prescribed pursuant to subsection (a) with respect to such amendments, shall apply to—

"(1) any agreement to open an account under an open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling which is entered into after the end of the 5-month period beginning on the date on which the regulations prescribed under subsection (a) become final; and

"(2) any application to open such an account which is distributed by, or received by a creditor, after the end of such 5-month period.

"(c) VOLUNTARY COMPLIANCE.—Notwithstanding subsection (b), any creditor may comply with the amendments made by this Act, in accordance with the regulations prescribed by the Board, before the effective date established under such subsection."

### CONSUMER EDUCATION

Pub. L. 100–709, §4, Nov. 23, 1988, 102 Stat. 4733, provided that: "The Board of Governors of the Federal Reserve System shall develop and prepare a pamphlet for distribution to consumers which contains—

"(1) a general description of open end consumer credit plans secured by the consumer's principal dwelling and the terms and conditions under which such loans are generally extended; and

"(2) a discussion of the potential advantages and disadvantages of such plans, including how to compare among home equity plans and between home equity and closed end credit plans."

*<sup>1</sup> So in original. Probably should be followed by "Loan".*

## §1638. Transactions other than under an open end credit plan

### (a) Required disclosures by creditor



For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) The identity of the creditor required to make disclosure.

(2)(A) The "amount financed", using that term, which shall be the amount of credit of which the consumer has actual use. This amount shall be computed as follows, but the computations need not be disclosed and shall not be disclosed with the disclosures conspicuously segregated in accordance with subsection (b)(1):

(i) take the principal amount of the loan or the cash price less downpayment and trade-in;

(ii) add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the consumer, including the cost of any items excluded from the finance charge pursuant to section 1605 of this title; and

(iii) subtract any charges which are part of the finance charge but which will be paid by the consumer before or at the time of the consummation of the transaction, or have been withheld from the proceeds of the credit.

(B) In conjunction with the disclosure of the amount financed, a creditor shall provide a statement of the consumer's right to obtain, upon a written request, a written itemization of the amount financed. The statement shall include spaces for a "yes" and "no" indication to be initialed by the consumer to indicate whether the consumer wants a written itemization of the amount financed. Upon receiving an affirmative indication, the creditor shall provide, at the time other disclosures are required to be furnished, a written itemization of the amount financed. For the purposes of this subparagraph, "itemization of the amount financed" means a disclosure of the following items, to the extent applicable:

(i) the amount that is or will be paid directly to the consumer;

(ii) the amount that is or will be credited to the consumer's account to discharge obligations owed to the creditor;

(iii) each amount that is or will be paid to third persons by the creditor on the consumer's behalf, together with an identification of or reference to the third person; and

(iv) the total amount of any charges described in the preceding subparagraph (A)(iii).

(3) The "finance charge", not itemized, using that term.

(4) The finance charge expressed as an "annual percentage rate", using that term. This shall not be required if the amount financed does not exceed \$75 and the finance charge does not exceed \$5, or if the amount financed exceeds \$75 and the finance charge does not exceed \$7.50.

(5) The sum of the amount financed and the finance charge, which shall be termed the "total of payments".

(6) The number, amount, and due dates or period of payments scheduled to repay the total of payments.

(7) In a sale of property or services in which the seller is the creditor required to disclose pursuant to section 1631(b) of this title, the "total sale price", using that term, which shall be the total of the cash price of the property or services, additional charges, and the finance charge.

(8) Descriptive explanations of the terms "amount financed", "finance charge", "annual percentage rate", "total of payments", and "total sale price" as specified by the Bureau. The descriptive explanation of "total sale price" shall include reference to the amount of the downpayment.

(9) Where the credit is secured, a statement that a security interest has been taken in (A) the property which is purchased as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(10) Any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment, other than a deferral or extension charge.

(11) A statement indicating whether or not the consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge. A statement indicating whether or not a penalty

will be imposed in those same circumstances if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance.

(12) A statement that the consumer should refer to the appropriate contract document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt, and prepayment rebates and penalties.

(13) In any residential mortgage transaction, a statement indicating whether a subsequent purchaser or assignee of the consumer may assume the debt obligation on its original terms and conditions.

(14) In the case of any variable interest rate residential mortgage transaction, in disclosures provided at application as prescribed by the Bureau for a variable rate transaction secured by the consumer's principal dwelling, at the option of the creditor, a statement that the periodic payments may increase or decrease substantially, and the maximum interest rate and payment for a \$10,000 loan originated at a recent interest rate, as determined by the Bureau, assuming the maximum periodic increases in rates and payments under the program, or a historical example illustrating the effects of interest rate changes implemented according to the loan program.

(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(16) In the case of a variable rate residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments—

(A) the amount of initial monthly payment due under the loan for the payment of principal and interest, and the amount of such initial monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments; and

(B) the amount of the fully indexed monthly payment due under the loan for the payment of principal and interest, and the amount of such fully indexed monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments.

(17) In the case of a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.

(18) In the case of a residential mortgage loan, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor.

(19) In the case of a residential mortgage loan, the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan. Such amount shall be computed assuming the consumer makes each monthly payment in full and on-time, and does not make any over-payments.

**(b) Form and timing of disclosures; residential mortgage transaction requirements**

(1) Except as otherwise provided in this part, the disclosures required under subsection (a) shall be made before the credit is extended. Except for the disclosures required by subsection (a)(1) of this section, all disclosures required under subsection (a) and any disclosure provided for in subsection (b), (c), or (d) of section 1605 of this title shall be conspicuously segregated from all other terms, data, or information provided in connection with a transaction, including any computations or itemization.

(2)(A) Except as provided in subparagraph (G), in the case of any extension of credit that is secured by the dwelling of a consumer, which is also subject to the Real Estate Settlement Procedures Act [12 U.S.C. 2601 et seq.], good faith estimates of the disclosures required under subsection (a) shall be made in accordance with regulations of the Bureau under section 1631(c) of this title and shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application, which shall be at least 7 business days before consummation of the transaction.

(B) In the case of an extension of credit that is secured by the dwelling of a consumer, the disclosures provided under subparagraph (A),<sup>1</sup> shall be in addition to the other disclosures required by subsection (a), and shall—

(i) state in conspicuous type size and format, the following: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application."; and

(ii) be provided in the form of final disclosures at the time of consummation of the transaction, in the form and manner prescribed by this section.

(C) In the case of an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required by subsection (a), the disclosures provided under this subsection shall do the following:

(i) Label the payment schedule as follows: "Payment Schedule: Payments Will Vary Based on Interest Rate Changes".

(ii) State in conspicuous type size and format examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required to be provided under this clause is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract, in accordance with the rules of the Bureau. Prior to issuing any rules pursuant to this clause, the Bureau shall conduct consumer testing to determine the appropriate format for providing the disclosures required under this subparagraph to consumers so that such disclosures can be easily understood, including the fact that the initial regular payments are for a specific time period that will end on a certain date, that payments will adjust afterwards potentially to a higher amount, and that there is no guarantee that the borrower will be able to refinance to a lower amount.

(D) In any case in which the disclosure statement under subparagraph (A) contains an annual percentage rate of interest that is no longer accurate, as determined under section 1606(c) of this title, the creditor shall furnish an additional, corrected statement to the borrower, not later than 3 business days before the date of consummation of the transaction.

(E) The consumer shall receive the disclosures required under this paragraph before paying any fee to the creditor or other person in connection with the consumer's application for an extension of credit that is secured by the dwelling of a consumer. If the disclosures are mailed to the consumer, the consumer is considered to have received them 3 business days after they are mailed. A creditor or other person may impose a fee for obtaining the consumer's credit report before the consumer has received the disclosures under this paragraph, provided the fee is bona fide and reasonable in amount.

(F) **WAIVER OF TIMELINESS OF DISCLOSURES.**—To expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may waive or modify the timing requirements for disclosures under subparagraph (A), provided that—

(i) the term "bona fide personal emergency" may be further defined in regulations issued by the Bureau;

(ii) the consumer provides to the creditor a dated, written statement describing the emergency and specifically waiving or modifying those timing requirements, which statement shall bear the

signature of all consumers entitled to receive the disclosures required by this paragraph; and

(iii) the creditor provides to the consumers at or before the time of such waiver or modification, the final disclosures required by paragraph (1).

(G)(i) In the case of an extension of credit relating to a plan described in section 101(53D) of title 11—

(I) the requirements of subparagraphs (A) through (E) shall not apply; and

(II) a good faith estimate of the disclosures required under subsection (a) shall be made in accordance with regulations of the Bureau under section 1631(c) of this title before such credit is extended, or shall be delivered or placed in the mail not later than 3 business days after the date on which the creditor receives the written application of the consumer for such credit, whichever is earlier.

(ii) If a disclosure statement furnished within 3 business days of the written application (as provided under clause (i)(II)) contains an annual percentage rate which is subsequently rendered inaccurate, within the meaning of section 1606(c) of this title, the creditor shall furnish another disclosure statement at the time of settlement or consummation of the transaction.

(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.

(4) REPAYMENT ANALYSIS REQUIRED TO INCLUDE ESCROW PAYMENTS.—

(A) IN GENERAL.—In the case of any consumer credit transaction secured by a first mortgage or lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, for which an impound, trust, or other type of account has been or will be established in connection with the transaction for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property, the information required to be provided under subsection (a) with respect to the number, amount, and due dates or period of payments scheduled to repay the total of payments shall take into account the amount of any monthly payment to such account for each such repayment in accordance with section 10(a)(2) of the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2609(a)(2)].

(B) ASSESSMENT VALUE.—The amount taken into account under subparagraph (A) for the payment of property taxes, hazard and flood (if any) insurance premiums, or other periodic payments or premiums with respect to the property shall reflect the taxable assessed value of the real property securing the transaction after the consummation of the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction), if known, and the replacement costs of the property for hazard insurance, in the initial year after the transaction.

**(c) Timing of disclosures on unsolicited mailed or telephone purchase orders or loan requests**

(1) If a creditor receives a purchase order by mail or telephone without personal solicitation, and the cash price and the total sale price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection (a) may be made at any time not later than the date the first payment is due.

(2) If a creditor receives a request for a loan by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material delivered to the obligor, then the disclosures required under subsection (a) may be made at any time not later than the date the first payment is due.

**(d) Timing of disclosure in cases of an addition of a deferred payment price to an existing outstanding balance**

If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to

an agreement providing for the addition of the deferred payment price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection (a) for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest price shall be deemed first paid for.

**(e) Terms and disclosure with respect to private education loans**

**(1) Disclosures required in private education loan applications and solicitations**

In any application for a private education loan, or a solicitation for a private education loan without requiring an application, the private educational lender shall disclose to the borrower, clearly and conspicuously—

- (A) the potential range of rates of interest applicable to the private education loan;
- (B) whether the rate of interest applicable to the private education loan is fixed or variable;
- (C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;
- (D) requirements for a co-borrower, including any changes in the applicable interest rates without a co-borrower;
- (E) potential finance charges, late fees, penalties, and adjustments to principal, based on defaults or late payments of the borrower;
- (F) fees or range of fees applicable to the private education loan;
- (G) the term of the private education loan;
- (H) whether interest will accrue while the student to whom the private education loan relates is enrolled at a covered educational institution;
- (I) payment deferral options;
- (J) general eligibility criteria for the private education loan;
- (K) an example of the total cost of the private education loan over the life of the loan—
  - (i) which shall be calculated using the principal amount and the maximum rate of interest actually offered by the private educational lender; and
  - (ii) calculated both with and without capitalization of interest, if an option exists for postponing interest payments;
- (L) that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form;
- (M) that the borrower may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), in lieu of, or in addition to, a loan from a non-Federal source;
- (N) the interest rates available with respect to such Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);
- (O) that, as provided in paragraph (6)—
  - (i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and
  - (ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in clause (i);

(P) that, before a private education loan may be consummated, the borrower must obtain

from the relevant institution of higher education the form required under paragraph (3), and complete, sign, and return such form to the private educational lender;

(Q) that the consumer may obtain additional information concerning such Federal student financial assistance from their institution of higher education, or at the website of the Department of Education; and

(R) such other information as the Bureau shall prescribe, by rule, as necessary or appropriate for consumers to make informed borrowing decisions.

## **(2) Disclosures at the time of private education loan approval**

Contemporaneously with the approval of a private education loan application, and before the loan transaction is consummated, the private educational lender shall disclose to the borrower, clearly and conspicuously—

(A) the applicable rate of interest in effect on the date of approval;

(B) whether the rate of interest applicable to the private education loan is fixed or variable;

(C) limitations on interest rate adjustments, both in terms of frequency and amount, or the lack thereof, if applicable;

(D) the initial approved principal amount;

(E) applicable finance charges, late fees, penalties, and adjustments to principal, based on borrower defaults or late payments, including limitations on the discharge of a private education loan in bankruptcy;

(F) fees or range of fees applicable to the private education loan;

(G) the maximum term under the private education loan program;

(H) an estimate of the total amount for repayment, at both the interest rate in effect on the date of approval and at the maximum possible rate of interest offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof;

(I) any principal and interest payments required while the student for whom the private education loan is intended is enrolled at a covered educational institution and unpaid interest that will accrue during such enrollment;

(J) payment deferral options applicable to the borrower;

(K) whether monthly payments are graduated;

(L) that, as provided in paragraph (6)—

(i) the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan; and

(ii) except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender during the period described in clause (i);

(M) that the borrower—

(i) may qualify for Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.), in lieu of, or in addition to, a loan from a non-Federal source; and

(ii) may obtain additional information concerning such assistance from their institution of higher education or the website of the Department of Education;

(N) the interest rates available with respect to such Federal financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.);

(O) the maximum monthly payment, calculated using the maximum rate of interest actually offered by the private educational lender and applicable to the borrower, to the extent that such maximum rate may be determined, or if not, a good faith estimate thereof; and

(P) such other information as the Bureau shall prescribe, by rule, as necessary or appropriate

for consumers to make informed borrowing decisions.

### **(3) Self-certification of information**

#### **(A) In general**

Before a private educational lender may consummate a private education loan with respect to a student attending an institution of higher education, the lender shall obtain from the applicant for the private education loan the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965 [20 U.S.C. 1019d], signed by the applicant, in written or electronic form.

#### **(B) Rule of construction**

No other provision of this subsection shall be construed to require a private educational lender to perform any additional duty under this paragraph, other than collecting the form required under subparagraph (A).

### **(4) Disclosures at the time of private education loan consummation**

Contemporaneously with the consummation of a private education loan, a private educational lender shall make to the borrower each of the disclosures described in—

- (A) paragraph (2)(A) (adjusted, as necessary, for the rate of interest in effect on the date of consummation, based on the index used for the loan);
- (B) subparagraphs (B) through (K) and (M) through (P) of paragraph (2); and
- (C) paragraph (7).

### **(5) Format of disclosures**

#### **(A) Model form**

Not later than 2 years after August 14, 2008, the Bureau shall, based on consumer testing, and in consultation with the Secretary of Education, develop and issue model forms that may be used, at the option of the private educational lender, for the provision of disclosures required under this subsection.

#### **(B) Format**

Model forms developed under this paragraph shall—

- (i) be comprehensible to borrowers, with a clear format and design;
- (ii) provide for clear and conspicuous disclosures;
- (iii) enable borrowers easily to identify material terms of the loan and to compare such terms among private education loans; and
- (iv) be succinct, and use an easily readable type font.

#### **(C) Safe harbor**

Any private educational lender that elects to provide a model form developed under this subsection that accurately reflects the practices of the private educational lender shall be deemed to be in compliance with the disclosures required under this subsection.

### **(6) Effective period of approved rate of interest and loan terms**

#### **(A) In general**

With respect to a private education loan, the borrower shall have the right to accept the terms of the loan and consummate the transaction at any time within 30 calendar days (or such longer period as the private educational lender may provide) following the date on which the application for the private education loan is approved and the borrower receives the disclosure documents required under this subsection for the loan, and the rates and terms of the loan may not be changed by the private educational lender during that period.

#### **(B) Prohibition on changes**

Except for changes based on adjustments to the index used for a loan, the rates and terms of the loan may not be changed by the private educational lender prior to the earlier of—

- (i) the date of acceptance of the terms of the loan and consummation of the transaction by the borrower, as described in subparagraph (A); or
- (ii) the expiration of the period described in subparagraph (A).

**(7) Right to cancel**

With respect to a private education loan, the borrower may cancel the loan, without penalty to the borrower, at any time within 3 business days of the date on which the loan is consummated, and the private educational lender shall disclose such right to the borrower in accordance with paragraph (4).

**(8) Prohibition on disbursement**

No funds may be disbursed with respect to a private education loan until the expiration of the 3-day period described in paragraph (7).

**(9) Bureau regulations**

In issuing regulations under this subsection, the Bureau shall prevent, to the extent possible, duplicative disclosure requirements for private educational lenders that are otherwise required to make disclosures under this subchapter, except that in any case in which the disclosure requirements of this subsection differ or conflict with the disclosure requirements of any other provision of this subchapter, the requirements of this subsection shall be controlling.

**(10) Definitions**

For purposes of this subsection, the terms "covered educational institution", "private educational lender", and "private education loan" have the same meanings as in section 1650 of this title.

**(11) Duties of lenders participating in preferred lender arrangements**

Each private educational lender that has a preferred lender arrangement with a covered educational institution shall annually, by a date determined by the Bureau, in consultation with the Secretary of Education, provide to the covered educational institution such information as the Bureau determines to include in the model form developed under paragraph (5) for each type of private education loan that the lender plans to offer to students attending the covered educational institution, or to the families of such students, for the next award year (as that term is defined in section 481 of the Higher Education Act of 1965 [20 U.S.C. 1088]).

**(f) Periodic statements for residential mortgage loans**

**(1) In general**

The creditor, assignee, or servicer with respect to any residential mortgage loan shall transmit to the obligor, for each billing cycle, a statement setting forth each of the following items, to the extent applicable, in a conspicuous and prominent manner:

- (A) The amount of the principal obligation under the mortgage.
- (B) The current interest rate in effect for the loan.
- (C) The date on which the interest rate may next reset or adjust.
- (D) The amount of any prepayment fee to be charged, if any.
- (E) A description of any late payment fees.
- (F) A telephone number and electronic mail address that may be used by the obligor to obtain information regarding the mortgage.
- (G) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1441a-1 of title 12).
- (H) Such other information as the Board <sup>2</sup> may prescribe in regulations.

**(2) Development and use of standard form**

The Board <sup>2</sup> shall develop and prescribe a standard form for the disclosure required under this subsection, taking into account that the statements required may be transmitted in writing or



electronically.

### **(3) Exception**

Paragraph (1) shall not apply to any fixed rate residential mortgage loan where the creditor, assignee, or servicer provides the obligor with a coupon book that provides the obligor with substantially the same information as required in paragraph (1).

(Pub. L. 90–321, title I, §128, May 29, 1968, 82 Stat. 155; Pub. L. 96–221, title VI, §614(a)–(c), Mar. 31, 1980, 94 Stat. 178, 179; Pub. L. 104–208, div. A, title II, §2105, Sept. 30, 1996, 110 Stat. 3009–402; Pub. L. 109–8, title XIII, §1302(b)(1), Apr. 20, 2005, 119 Stat. 208; Pub. L. 110–289, div. B, title V, §2502(a), July 30, 2008, 122 Stat. 2855; Pub. L. 110–315, title X, §1021(a), Aug. 14, 2008, 122 Stat. 3483; Pub. L. 110–343, div. A, title I, §130(a), Oct. 3, 2008, 122 Stat. 3797; Pub. L. 111–203, title X, §1100A(2), title XIV, §§1419, 1420, 1465, July 21, 2010, 124 Stat. 2107, 2154, 2155, 2185.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Real Estate Settlement Procedures Act, referred to in subsec. (b)(2)(A), probably refers to the Real Estate Settlement Procedures Act of 1974, Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 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 2601 of Title 12 and Tables.

The Higher Education Act of 1965, referred to in subsec. (e)(1)(M), (N), (2)(M)(i), (N), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) 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**

**2010**—Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (a)(16) to (19). Pub. L. 111–203, §1419, added pars. (16) to (19).

Subsec. (b)(4). Pub. L. 111–203, §1465, added par. (4).

Subsec. (f). Pub. L. 111–203, §1420, added subsec. (f).

**2008**—Subsec. (b)(2). Pub. L. 110–289, §2502(a)(1), designated existing provisions as subpar. (A).

Subsec. (b)(2)(A). Pub. L. 110–343, §130(a)(1), substituted "Except as provided in subparagraph (G), in the case" for "In the case".

Pub. L. 110–289, §2502(a)(5), (6), struck out ", whichever is earlier" after "consummation of the transaction" and "If the disclosure statement furnished within three days of the written application contains an annual percentage rate which is subsequently rendered inaccurate within the meaning of section 1606(c) of this title, the creditor shall furnish another statement at the time of settlement or consummation." at the end.

Pub. L. 110–289, §2502(a)(4), which directed insertion of ", which shall be at least 7 business days before consummation of the transaction" after "written application", was executed by making the insertion after "written application" the first place appearing.

Pub. L. 110–289, §2502(a)(2), (3), substituted "any extension of credit that is secured by the dwelling of a consumer" for "a residential mortgage transaction, as defined in section 1602(w) of this title" and "and" for "before the credit is extended, or".

Subsec. (b)(2)(B) to (F). Pub. L. 110–289, §2502(a)(6), added subpars. (B) to (F).

Subsec. (b)(2)(G). Pub. L. 110–343, §130(a)(2), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: "The requirements of subparagraphs (B), (C), (D) and (E) shall not apply to extensions of credit relating to plans described in section 101(53D) of title 11."

Pub. L. 110–289, §2502(a)(6), added subpar. (G).

Subsec. (e). Pub. L. 110–315 added subsec. (e).

**2005**—Subsec. (a)(15). Pub. L. 109–8, §1302(b)(1)(A), added par. (15).

Subsec. (b)(3). Pub. L. 109–8, §1302(b)(1)(B), added par. (3).

**1996**—Subsec. (a)(14). Pub. L. 104–208 added par. (14).

**1980**—Subsec. (a). Pub. L. 96–221, §614(a), substituted provisions setting forth required disclosures by the creditor for transactions other than under an open end credit plan, for provisions setting forth required disclosures by the creditor for sales not under open end credit plans.

Subsec. (b). Pub. L. 96–221, §614(b), designated existing provisions as par. (1), inserted provisions relating

to the conspicuous segregation of required disclosures, and struck out provisions authorizing the required information to be disclosed in the signed evidence of indebtedness, and added par. (2).

Subsec. (c). Pub. L. 96–221, §614(c), designated existing provisions as par. (1), substituted "total sale" for "deferred payment", and added par. (2).

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by section 1100A(2) of 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.

Amendment by sections 1419, 1420, and 1465 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

### **EFFECTIVE DATE OF 2008 AMENDMENT**

Pub. L. 110–343, div. A, title I, §130(b), Oct. 3, 2008, 122 Stat. 3797, provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 2502 of the Mortgage Disclosure Improvement Act of 2008 (Public Law 110–289) [amending this section and section 1640 of this title]."

Pub. L. 110–315, title X, §1003, Aug. 14, 2008, 122 Stat. 3478, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b) and as otherwise provided in this title [see Short Title of 2008 Amendment note set out under section 1601 of this title], this title and the amendments made by this title shall become effective on the date of enactment of this Act [Aug. 14, 2008].

"(b) EFFECT NOTWITHSTANDING REGULATIONS.—Paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) [15 U.S.C. 1638(e)] and section 140(c) of the Truth in Lending Act [15 U.S.C. 1650(c)], as added by this title, shall become effective on the earlier of the date on which regulations issued under section 1002 [set out as a note below] become effective [Such regulations were issued effective Sept. 14, 2009, with compliance optional until Feb. 14, 2010. See 74 F.R. 41194.] or 18 months after the date of enactment of this Act [Aug. 14, 2008]."

Pub. L. 110–289, div. B, title V, §2502(c), July 30, 2008, 122 Stat. 2857, provided that:

"(1) GENERAL DISCLOSURES.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall become effective 12 months after the date of enactment of this Act [July 30, 2008].

"(2) VARIABLE INTEREST RATES.—Subparagraph (C) of section 128(b)(2) of the Truth in Lending Act (15 U.S.C. 1638(b)(2)(C)), as added by subsection (a) of this section, shall become effective on the earlier of—

"(A) the compliance date established by the Board for such purpose, by regulation; or

"(B) 30 months after the date of enactment of this Act [July 30, 2008]."

### **EFFECTIVE DATE OF 2005 AMENDMENT**

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

## **REGULATIONS**

Pub. L. 110–315, title X, §1002, Aug. 14, 2008, 122 Stat. 3478, provided that: "Not later than 365 days after the date of enactment of this Act [Aug. 14, 2008], the Board of Governors of the Federal Reserve System

shall issue regulations in final form to implement paragraphs (1), (2), (3), (4), (6), (7), and (8) of section 128(e) [15 U.S.C. 1638(e)] and section 140(c) of the Truth in Lending Act [15 U.S.C. 1650(c)], as added by this title, which regulations shall become effective not later than 6 months after their date of issuance."

<sup>1</sup> *So in original. The comma probably should not appear.*

<sup>2</sup> *So in original. Probably should be "Bureau".*

## **§1638a. Reset of hybrid adjustable rate mortgages**

### **(a) Hybrid adjustable rate mortgages defined**

For purposes of this section, the term "hybrid adjustable rate mortgage" means a consumer credit transaction secured by the consumer's principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period.

### **(b) Notice of reset and alternatives**

During the 1-month period that ends 6 months before the date on which the interest rate in effect during the introductory period of a hybrid adjustable rate mortgage adjusts or resets to a variable interest rate or, in the case of such an adjustment or resetting that occurs within the first 6 months after consummation of such loan, at consummation, the creditor or servicer of such loan shall provide a written notice, separate and distinct from all other correspondence to the consumer, that includes the following:

- (1) Any index or formula used in making adjustments to or resetting the interest rate and a source of information about the index or formula.
- (2) An explanation of how the new interest rate and payment would be determined, including an explanation of how the index was adjusted, such as by the addition of a margin.
- (3) A good faith estimate, based on accepted industry standards, of the creditor or servicer of the amount of the monthly payment that will apply after the date of the adjustment or reset, and the assumptions on which this estimate is based.
- (4) A list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including—
  - (A) refinancing;
  - (B) renegotiation of loan terms;
  - (C) payment forbearances; and
  - (D) pre-foreclosure sales.
- (5) The names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a State housing finance authority (as defined in section 1441a–1 of title 12).
- (6) The address, telephone number, and Internet address for the State housing finance authority (as so defined) for the State in which the consumer resides.

### **(c) Savings clause**

The Board may require the notice in paragraph (b) or other notice consistent with this chapter for adjustable rate mortgage loans that are not hybrid adjustable rate mortgage loans.

(Pub. L. 90–321, title I, §128A, as added Pub. L. 111–203, title XIV, §1418(a), July 21, 2010, 124 Stat. 2153.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This chapter, referred to in subsec. (c), was in the original "this Act" meaning Pub. L. 90–321, May 29,

1968, 82 Stat. 146, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date, if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

## §1639. Requirements for certain mortgages

### (a) Disclosures

#### (1) Specific disclosures

In addition to other disclosures required under this subchapter, for each mortgage referred to in section 1602(aa) <sup>1</sup> of this title, the creditor shall provide the following disclosures in conspicuous type size:

(A) "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application."

(B) "If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

#### (2) Annual percentage rate

In addition to the disclosures required under paragraph (1), the creditor shall disclose—

(A) in the case of a credit transaction with a fixed rate of interest, the annual percentage rate and the amount of the regular monthly payment; or

(B) in the case of any other credit transaction, the annual percentage rate of the loan, the amount of the regular monthly payment, a statement that the interest rate and monthly payment may increase, and the amount of the maximum monthly payment, based on the maximum interest rate allowed pursuant to section 3806 of title 12.

### (b) Time of disclosures

#### (1) In general

The disclosures required by this section shall be given not less than 3 business days prior to consummation of the transaction.

#### (2) New disclosures required

##### (A) In general

After providing the disclosures required by this section, a creditor may not change the terms of the extension of credit if such changes make the disclosures inaccurate, unless new disclosures are provided that meet the requirements of this section.

##### (B) Telephone disclosure

A creditor may provide new disclosures pursuant to subparagraph (A) by telephone, if—

(i) the change is initiated by the consumer; and

(ii) at the consummation of the transaction under which the credit is extended—

(I) the creditor provides to the consumer the new disclosures, in writing; and

(II) the creditor and consumer certify in writing that the new disclosures were provided by telephone, by not later than 3 days prior to the date of consummation of the transaction.

#### (3) No wait for lower rate

If a creditor extends to a consumer a second offer of credit with a lower annual percentage rate, the transaction may be consummated without regard to the period specified in paragraph (1) with respect to the second offer.

**(4) Modifications**

The Bureau may, if it finds that such action is necessary to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of rights created under this subsection, to the extent and under the circumstances set forth in those regulations.

**(c) No prepayment penalty**

**(1) In general <sup>2</sup>**

**(A) Limitation on terms**

A mortgage referred to in section 1602(aa) <sup>1</sup> of this title may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal before the date on which the principal is due.

**(B) Construction**

For purposes of this subsection, any method of computing a refund of unearned scheduled interest is a prepayment penalty if it is less favorable to the consumer than the actuarial method (as that term is defined in section 1615(d) of this title).

**(d) Limitations after default**

A mortgage referred to in section 1602(aa) <sup>1</sup> of this title may not provide for an interest rate applicable after default that is higher than the interest rate that applies before default. If the date of maturity of a mortgage referred to in subsection <sup>3</sup> 1602(aa) <sup>1</sup> of this title is accelerated due to default and the consumer is entitled to a rebate of interest, that rebate shall be computed by any method that is not less favorable than the actuarial method (as that term is defined in section 1615(d) of this title).

**(e) No balloon payments**

No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.

**(f) No negative amortization**

A mortgage referred to in section 1602(aa) <sup>1</sup> of this title may not include terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.

**(g) No prepaid payments**

A mortgage referred to in section 1602(aa) <sup>1</sup> of this title may not include terms under which more than 2 periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the consumer.

**(h) Prohibition on extending credit without regard to payment ability of consumer**

A creditor shall not engage in a pattern or practice of extending credit to consumers under mortgages referred to in section 1602(aa) <sup>1</sup> of this title based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment.

**(i) Requirements for payments under home improvement contracts**

A creditor shall not make a payment to a contractor under a home improvement contract from amounts extended as credit under a mortgage referred to in section 1602(aa) <sup>1</sup> of this title, other than—

(1) in the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor; or

(2) at the election of the consumer, by a third party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before the date of payment.

**(j) Recommended default**

No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

**(k) Late fees**

**(1) In general**

No creditor may impose a late payment charge or fee in connection with a high-cost mortgage—

(A) in an amount in excess of 4 percent of the amount of the payment past due;

(B) unless the loan documents specifically authorize the charge or fee;

(C) before the end of the 15-day period beginning on the date the payment is due, or in the case of a loan on which interest on each installment is paid in advance, before the end of the 30-day period beginning on the date the payment is due; or

(D) more than once with respect to a single late payment.

**(2) Coordination with subsequent late fees**

If a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.

**(3) Failure to make installment payment**

If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.

**(l) Acceleration of debt**

No high-cost mortgage may contain a provision which permits the creditor to accelerate the indebtedness, except when repayment of the loan has been accelerated by default in payment, or pursuant to a due-on-sale provision, or pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.

**(m) Restriction on financing points and fees**

No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following:

(1) Any prepayment fee or penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced.

(2) Any points or fees.

**(n) Consequence of failure to comply**

Any mortgage that contains a provision prohibited by this section shall be deemed a failure to deliver the material disclosures required under this subchapter, for the purpose of section 1635 of this title.

**(o) "Affiliate" defined**

For purposes of this section, the term "affiliate" has the same meaning as in section 1841(k) of title 12.

**(p) Discretionary regulatory authority of Bureau**

**(1) Exemptions**

The Bureau may, by regulation or order, exempt specific mortgage products or categories of mortgages from any or all of the prohibitions specified in subsections (c) through (i), if the Bureau finds that the exemption—

(A) is in the interest of the borrowing public; and

(B) will apply only to products that maintain and strengthen home ownership and equity protection.

**(2) Prohibitions**

The Bureau, by regulation or order, shall prohibit acts or practices in connection with—

(A) mortgage loans that the Bureau finds to be unfair, deceptive, or designed to evade the provisions of this section; and

(B) refinancing of mortgage loans that the Bureau finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower.

**(q) Civil penalties in Federal Trade Commission enforcement actions**

For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Bureau pursuant to subsection (1)(2) shall be treated as a violation of a rule promulgated under section 57a of this title regarding unfair or deceptive acts or practices.

**(r) Prohibitions on evasions, structuring of transactions, and reciprocal arrangements**

A creditor may not take any action in connection with a high-cost mortgage—

(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this subchapter; or

(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of this subchapter.

**(s) Modification and deferral fees prohibited**

A creditor, successor in interest, assignee, or any agent of any of the above, may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage.

**(t) Payoff statement**

**(1) Fees**

**(A) In general**

Except as provided in subparagraph (B), no creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off the outstanding balance on a high-cost mortgage.

**(B) Transaction fee**

When payoff information referred to in subparagraph (A) is provided by facsimile transmission or by a courier service, a creditor or servicer may charge a processing fee to cover the cost of such transmission or service in an amount not to exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages.

**(C) Fee disclosure**

Prior to charging a transaction fee as provided in subparagraph (B), a creditor or servicer shall disclose that payoff balances are available for free pursuant to subparagraph (A).

**(D) Multiple requests**

If a creditor or servicer has provided payoff information referred to in subparagraph (A) without charge, other than the transaction fee allowed by subparagraph (B), on 4 occasions

during a calendar year, the creditor or servicer may thereafter charge a reasonable fee for providing such information during the remainder of the calendar year.

**(2) Prompt delivery**

Payoff balances shall be provided within 5 business days after receiving a request by a consumer or a person authorized by the consumer to obtain such information.

**(u) Pre-loan counseling**

**(1) In general**

A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of the Secretary, a State housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.

**(2) Disclosures required prior to counseling**

No counselor may certify that a consumer has received counseling on the advisability of the high-cost mortgage unless the counselor can verify that the consumer has received each statement required (in connection with such loan) by this section or the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] with respect to the transaction.

**(3) Regulations**

The Board <sup>4</sup> may prescribe such regulations as the Board determines to be appropriate to carry out the requirements of paragraph (1).

**(v) Corrections and unintentional violations**

A creditor or assignee in a high-cost mortgage who, when acting in good faith, fails to comply with any requirement under this section will not be deemed to have violated such requirement if the creditor or assignee establishes that either—

(1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

(A) make the loan satisfy the requirements of this part; or

(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial to the consumer so that the loan will no longer be a high-cost mortgage; or

(2) within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer—

(A) make the loan satisfy the requirements of this part; or

(B) in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.

(Pub. L. 90–321, title I, §129, as added Pub. L. 103–325, title I, §152(d), Sept. 23, 1994, 108 Stat. 2191; amended Pub. L. 111–8, div. D, title VI, §626(c), Mar. 11, 2009, 123 Stat. 679; Pub. L. 111–203, title X, §1100A(2), (9), title XIV, §§1432, 1433, July 21, 2010, 124 Stat. 2107, 2109, 2160; Pub. L. 115–174, title I, §109(a), May 24, 2018, 132 Stat. 1305.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 1602(aa) of this title, referred to in text, was redesignated section 1602(bb) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (u)(2), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 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 2601 of Title 12 and Tables.

### PRIOR PROVISIONS

A prior section 1639, Pub. L. 90–321, title I, §129, May 29, 1968, 82 Stat. 156, related to consumer loans not under open end credit plans, prior to repeal by Pub. L. 96–221, title VI, §614(d)(1), Mar. 31, 1980, 94 Stat. 180. Repeal effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

### AMENDMENTS

**2018**—Subsec. (b)(3), (4). Pub. L. 115–174 added par. (3) and redesignated former par. (3) as (4).

**2010**—Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (c)(2). Pub. L. 111–203, §1432(a), struck out par. (2) which related to exception to prepayment penalty prohibition.

Subsec. (e). Pub. L. 111–203, §1432(b), amended subsec. (e) generally. Prior to amendment, text read as follows: "A mortgage referred to in section 1602(aa) of this title having a term of less than 5 years may not include terms under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal balance."

Subsecs. (j) to (l). Pub. L. 111–203, §1433(a)(2), added subsecs. (j) to (l). Former subsecs. (j) to (l) redesignated (n) to (p), respectively.

Subsec. (m). Pub. L. 111–203, §1433(a)(2), added subsec. (m). Former subsec. (m) redesignated (q).

Pub. L. 111–203, §1100A(9), added subsec. (m) and struck out former subsec. (m). Prior to amendment, text read as follows: "For purposes of enforcement by the Federal Trade Commission, any violation of a regulation issued by the Federal Reserve Board pursuant to subsection (l)(2) of this section shall be treated as a violation of a rule promulgated under section 57a of this title regarding unfair or deceptive acts or practices."

Subsecs. (n) to (q). Pub. L. 111–203, §1433(a)(1), redesignated former subsecs. (j) to (m) as (n) to (q), respectively.

Subsecs. (r) to (v). Pub. L. 111–203, §1433(b)–(f), added subsecs. (r) to (v).

**2009**—Subsec. (m). Pub. L. 111–8 added subsec. (m).

### STATUTORY NOTES AND RELATED SUBSIDIARIES

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2), (9) of 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.

Amendment by sections 1432 and 1433 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

<sup>1</sup> [See References in Text note below.](#)

<sup>2</sup> [So in original. There is no par. \(2\).](#)

<sup>3</sup> [So in original. Probably should be "section".](#)

<sup>4</sup> [So in original. Probably should be "Bureau".](#)

## §1639a. Duty of servicers of residential mortgages

### (a) In general

Notwithstanding any other provision of law, whenever a servicer of residential mortgages agrees to enter into a qualified loss mitigation plan with respect to 1 or more residential mortgages originated before May 20, 2009, including mortgages held in a securitization or other investment vehicle—

(1) to the extent that the servicer owes a duty to investors or other parties to maximize the net present value of such mortgages, the duty shall be construed to apply to all such investors and parties, and not to any individual party or group of parties; and

(2) the servicer shall be deemed to have satisfied the duty set forth in paragraph (1) if, before December 31, 2012, the servicer implements a qualified loss mitigation plan that meets the following criteria:

(A) Default on the payment of such mortgage has occurred, is imminent, or is reasonably foreseeable, as such terms are defined by guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.].

(B) The mortgagor occupies the property securing the mortgage as his or her principal residence.

(C) The servicer reasonably determined, consistent with the guidelines issued by the Secretary of the Treasury or his designee, that the application of such qualified loss mitigation plan to a mortgage or class of mortgages will likely provide an anticipated recovery on the outstanding principal mortgage debt that will exceed the anticipated recovery through foreclosures.

**(b) No liability**

A servicer that is deemed to be acting in the best interests of all investors or other parties under this section shall not be liable to any party who is owed a duty under subsection (a)(1), and shall not be subject to any injunction, stay, or other equitable relief to such party, based solely upon the implementation by the servicer of a qualified loss mitigation plan.

**(c) Standard industry practice**

The qualified loss mitigation plan guidelines issued by the Secretary of the Treasury under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.] shall constitute standard industry practice for purposes of all Federal and State laws.

**(d) Scope of safe harbor**

Any person, including a trustee, issuer, and loan originator, shall not be liable for monetary damages or be subject to an injunction, stay, or other equitable relief, based solely upon the cooperation of such person with a servicer when such cooperation is necessary for the servicer to implement a qualified loss mitigation plan that meets the requirements of subsection (a).

**(e) Reporting**

Each servicer that engages in qualified loss mitigation plans under this section shall regularly report to the Secretary of the Treasury the extent, scope, and results of the servicer's modification activities. The Secretary of the Treasury shall prescribe regulations or guidance specifying the form, content, and timing of such reports.

**(f) Definitions**

As used in this section—

(1) the term "qualified loss mitigation plan" means—

(A) a residential loan modification, workout, or other loss mitigation plan, including to the extent that the Secretary of the Treasury determines appropriate, a loan sale, real property disposition, trial modification, pre-foreclosure sale, and deed in lieu of foreclosure, that is described or authorized in guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.]; and

(B) a refinancing of a mortgage under the Hope for Homeowners program;

(2) the term "servicer" means the person responsible for the servicing for others of residential

mortgage loans (including of a pool of residential mortgage loans); and

(3) the term "securitization vehicle" means a trust, special purpose entity, or other legal structure that is used to facilitate the issuing of securities, participation certificates, or similar instruments backed by or referring to a pool of assets that includes residential mortgages (or instruments that are related to residential mortgages such as credit-linked notes).

**(g) Rule of construction**

No provision of subsection (b) or (d) shall be construed as affecting the liability of any servicer or person as described in subsection (d) for actual fraud in the origination or servicing of a loan or in the implementation of a qualified loss mitigation plan, or for the violation of a State or Federal law, including laws regulating the origination of mortgage loans, commonly referred to as predatory lending laws.

(Pub. L. 90–321, title I, §129A, as added Pub. L. 110–289, div. A, title IV, §1403, July 30, 2008, 122 Stat. 2809; renumbered §129 and amended Pub. L. 111–22, div. A, title II, §201(b), May 20, 2009, 123 Stat. 1638; renumbered §129A, Pub. L. 111–203, title XIV, §1402(a)(1), July 21, 2010, 124 Stat. 2138.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Emergency Economic Stabilization Act of 2008, referred to in subsecs. (a)(2)(A), (c), (f)(1)(A), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 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 5201 of Title 12 and Tables.

**AMENDMENTS**

**2009**—Pub. L. 111–22 amended section generally. Prior to amendment, section related to fiduciary duty of servicers of pooled residential mortgages without providing for date limitation for implementing modifications or workout plans.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**FINDINGS**

Pub. L. 111–22, div. A, title II, §201(a), May 20, 2009, 123 Stat. 1638, provided that: "Congress finds the following:

"(1) Increasing numbers of mortgage foreclosures are not only depriving many Americans of their homes, but are also destabilizing property values and negatively affecting State and local economies as well as the national economy.

"(2) In order to reduce the number of foreclosures and to stabilize property values, local economies, and the national economy, servicers must be given—

"(A) authorization to—

"(i) modify mortgage loans and engage in other loss mitigation activities consistent with applicable guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.]; and

"(ii) refinance mortgage loans under the Hope for Homeowners program; and

"(B) a safe harbor to enable such servicers to exercise these authorities."

**§1639b. Residential mortgage loan origination**

**(a) Finding and purpose**

**(1) Finding**

The Congress finds that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.

## **(2) Purpose**

It is the purpose of this section and section 1639c of this title to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.

## **(b) Duty of care**

### **(1) Standard**

Subject to regulations prescribed under this subsection, each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of State or Federal law—

(A) be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable State or Federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [12 U.S.C. 5101 et seq.]; and

(B) include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.

### **(2) Compliance procedures required**

The Bureau shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 [12 U.S.C. 5106].

## **(c) Prohibition on steering incentives**

### **(1) In general**

For any residential mortgage loan, no mortgage originator shall receive from any person and no person shall pay to a mortgage originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal).

### **(2) Restructuring of financing origination fee**

#### **(A) In general**

For any mortgage loan, a mortgage originator may not receive from any person other than the consumer and no person, other than the consumer, who knows or has reason to know that a consumer has directly compensated or will directly compensate a mortgage originator may pay a mortgage originator any origination fee or charge except bona fide third party charges not retained by the creditor, mortgage originator, or an affiliate of the creditor or mortgage originator.

#### **(B) Exception**

Notwithstanding subparagraph (A), a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if—

(i) the mortgage originator does not receive any compensation directly from the consumer; and

(ii) the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator), except that the Bureau may, by rule, waive or provide exemptions to this clause if the Bureau determines that such waiver or exemption is in the interest of consumers and in the public interest.

### **(3) Regulations**

The Bureau shall prescribe regulations to prohibit—

(A) mortgage originators from steering any consumer to a residential mortgage loan that—

(i) the consumer lacks a reasonable ability to repay (in accordance with regulations

prescribed under section 1639c(a) of this title); or

(ii) has predatory characteristics or effects (such as equity stripping, excessive fees, or abusive terms);

(B) mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage (as defined in section 1639c(b)(2) of this title) to a residential mortgage loan that is not a qualified mortgage;

(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age; and

(D) mortgage originators from—

(i) mischaracterizing the credit history of a consumer or the residential mortgage loans available to a consumer;

(ii) mischaracterizing or suborning the mischaracterization of the appraised value of the property securing the extension of credit; or

(iii) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than a loan for which the consumer qualifies, discouraging a consumer from seeking a residential mortgage loan secured by a consumer's principal dwelling from another mortgage originator.

#### **(4) Rules of construction**

No provision of this subsection shall be construed as—

(A) permitting any yield spread premium or other similar compensation that would, for any residential mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage originator to vary based on the terms of the loan (other than the amount of the principal);

(B) limiting or affecting the amount of compensation received by a creditor upon the sale of a consummated loan to a subsequent purchaser;

(C) restricting a consumer's ability to finance, at the option of the consumer, including through principal or rate, any origination fees or costs permitted under this subsection, or the mortgage originator's right to receive such fees or costs (including compensation) from any person, subject to paragraph (2)(B), so long as such fees or costs do not vary based on the terms of the loan (other than the amount of the principal) or the consumer's decision about whether to finance such fees or costs; or

(D) prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time.

#### **(d) Liability for violations**

##### **(1) In general**

For purposes of providing a cause of action for any failure by a mortgage originator, other than a creditor, to comply with any requirement imposed under this section and any regulation prescribed under this section, section 1640 of this title shall be applied with respect to any such failure by substituting "mortgage originator" for "creditor" each place such term appears in each such subsection.<sup>1</sup>

##### **(2) Maximum**

The maximum amount of any liability of a mortgage originator under paragraph (1) to a consumer for any violation of this section shall not exceed the greater of actual damages or an amount equal to 3 times the total amount of direct and indirect compensation or gain accruing to the mortgage originator in connection with the residential mortgage loan involved in the violation, plus the costs to the consumer of the action, including a reasonable attorney's fee.

#### **(e) Discretionary regulatory authority**

##### **(1) In general**

The Bureau shall, by regulations, prohibit or condition terms, acts or practices relating to

residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section and section 1639c of this title, necessary or proper to effectuate the purposes of this section and section 1639c of this title, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower.

## **(2) Application**

The regulations prescribed under paragraph (1) shall be applicable to all residential mortgage loans and shall be applied in the same manner as regulations prescribed under section 1604 of this title.

## **(f) Timeshare plans**

This section and any regulations promulgated thereunder do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11.

(Pub. L. 90–321, title I, §129B, as added and amended Pub. L. 111–203, title X, §1100A(2), title XIV, §§1402(a)(2), 1403–1405(a), July 21, 2010, 124 Stat. 2107, 2139–2141.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008, referred to in subsec. (b)(1)(A), is title V of div. A of Pub. L. 110–289, July 30, 2008, 122 Stat. 2810, also known as the S.A.F.E. Mortgage Licensing Act of 2008, which is classified generally to chapter 51 (§5101 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 5101 of Title 12 and Tables.

### **AMENDMENTS**

**2010**—Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (c). Pub. L. 111–203, §1403, added subsec. (c).

Subsec. (d). Pub. L. 111–203, §1404, added subsec. (d).

Subsecs. (e), (f). Pub. L. 111–203, §1405(a), added subsecs. (e) and (f).

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by section 1100A(2) of 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.

Amendment by sections 1403–1405(a) of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE**

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

### **RULE OF CONSTRUCTION**

Pub. L. 111–203, title XIV, §1415, July 21, 2010, 124 Stat. 2153, provided that: "Except as otherwise expressly provided in section 129B or 129C of the Truth in Lending Act [15 U.S.C. 1639b, 1639c] (as added by this title), no provision of such section 129B or 129C shall be construed as superseding, repealing, or affecting any duty, right, obligation, privilege, or remedy of any person under any other provision of the Truth in Lending Act [15 U.S.C. 1601 et seq.] or any other provision of Federal or State law."

[For definition of "State" as used in section 1415 of Pub. L. 111–203, set out above, see section 5301 of

Title 12, Banks and Banking.]

<sup>1</sup> So in original. Probably should be "in such section."

## **§1639c. Minimum standards for residential mortgage loans**

### **(a) Ability to repay**

#### **(1) In general**

In accordance with regulations prescribed by the Bureau, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

#### **(2) Multiple loans**

If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

#### **(3) Basis for determination**

A determination under this subsection of a consumer's ability to repay a residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan. A creditor shall determine the ability of the consumer to repay using a payment schedule that fully amortizes the loan over the term of the loan.

#### **(4) Income verification**

A creditor making a residential mortgage loan shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets. In order to safeguard against fraudulent reporting, any consideration of a consumer's income history in making a determination under this subsection shall include the verification of such income by the use of—

(A) Internal Revenue Service transcripts of tax returns; or

(B) a method that quickly and effectively verifies income documentation by a third party subject to rules prescribed by the Bureau.

#### **(5) Exemption**

With respect to loans made, guaranteed, or insured by Federal departments or agencies identified in subsection (b)(3)(B)(ii), such departments or agencies may exempt refinancings under a streamlined refinancing from this income verification requirement as long as the following conditions are met:

(A) The consumer is not 30 days or more past due on the prior existing residential mortgage loan.

(B) The refinancing does not increase the principal balance outstanding on the prior existing residential mortgage loan, except to the extent of fees and charges allowed by the department or

agency making, guaranteeing, or insuring the refinancing.

(C) Total points and fees (as defined in section 1602(aa)(4) <sup>1</sup> of this title, other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator) payable in connection with the refinancing do not exceed 3 percent of the total new loan amount.

(D) The interest rate on the refinanced loan is lower than the interest rate of the original loan, unless the borrower is refinancing from an adjustable rate to a fixed-rate loan, under guidelines that the department or agency shall establish for loans they make, guarantee, or issue.

(E) The refinancing is subject to a payment schedule that will fully amortize the refinancing in accordance with the regulations prescribed by the department or agency making, guaranteeing, or insuring the refinancing.

(F) The terms of the refinancing do not result in a balloon payment, as defined in subsection (b)(2)(A)(ii).

(G) Both the residential mortgage loan being refinanced and the refinancing satisfy all requirements of the department or agency making, guaranteeing, or insuring the refinancing.

## **(6) Nonstandard loans**

### **(A) Variable rate loans that defer repayment of any principal or interest**

For purposes of determining, under this subsection, a consumer's ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

### **(B) Interest-only loans**

For purposes of determining, under this subsection, a consumer's ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

### **(C) Calculation for negative amortization**

In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

### **(D) Calculation process**

For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

- (i) the loan proceeds are fully disbursed on the date of the consummation of the loan;
- (ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in which case the calculation shall be made (I) in accordance with regulations prescribed by the Bureau, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract's repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and
- (iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the time of the loan closing, without considering the introductory rate.

### **(E) Refinance of hybrid loans with current lender**

In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which there would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing



hybrid loan, the creditor may—

- (i) consider the mortgagor's good standing on the existing mortgage;
- (ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and
- (iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

**(7) Fully-indexed rate defined**

For purposes of this subsection, the term "fully indexed rate" means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

**(8) Reverse mortgages and bridge loans**

This subsection shall not apply with respect to any reverse mortgage or temporary or bridge loan with a term of 12 months or less, including to any loan to purchase a new dwelling where the consumer plans to sell a different dwelling within 12 months.

**(9) Seasonal income**

If documented income, including income from a small business, is a repayment source for a residential mortgage loan, a creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

**(b) Presumption of ability to repay**

**(1) In general**

Any creditor with respect to any residential mortgage loan, and any assignee of such loan subject to liability under this subchapter, may presume that the loan has met the requirements of subsection (a), if the loan is a qualified mortgage.

**(2) Definitions**

For purposes of this subsection, the following definitions shall apply:

**(A) Qualified mortgage**

The term "qualified mortgage" means any residential mortgage loan—

- (i) for which the regular periodic payments for the loan may not—
  - (I) result in an increase of the principal balance; or
  - (II) except as provided in subparagraph (E), allow the consumer to defer repayment of principal;
- (ii) except as provided in subparagraph (E), the terms of which do not result in a balloon payment, where a "balloon payment" is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;
- (iii) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;
- (iv) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;
- (v) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first 5 years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;
- (vi) that complies with any guidelines or regulations established by the Bureau relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay

regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Bureau may determine relevant and consistent with the purposes described in paragraph (3)(B)(i);

(vii) for which the total points and fees (as defined in subparagraph (C)) payable in connection with the loan do not exceed 3 percent of the total loan amount;

(viii) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (3), such as in high-cost areas; and

(ix) in the case of a reverse mortgage (except for the purposes of subsection (a) of this section, to the extent that such mortgages are exempt altogether from those requirements), a reverse mortgage which meets the standards for a qualified mortgage, as set by the Bureau in rules that are consistent with the purposes of this subsection.

#### **(B) Average prime offer rate**

The term "average prime offer rate" means the average prime offer rate for a comparable transaction as of the date on which the interest rate for the transaction is set, as published by the Bureau..<sup>2</sup>

#### **(C) Points and fees**

##### **(i) In general**

For purposes of subparagraph (A), the term "points and fees" means points and fees as defined by section 1602(aa)(4)<sup>1</sup> of this title (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator).

##### **(ii) Computation**

For purposes of computing the total points and fees under this subparagraph, the total points and fees shall exclude either of the amounts described in the following subclauses, but not both:

(I) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 1 percentage point the average prime offer rate.

(II) Unless 2 bona fide discount points have been excluded under subclause (I), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points the average prime offer rate.

##### **(iii) Bona fide discount points defined**

For purposes of clause (ii), the term "bona fide discount points" means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

##### **(iv) Interest rate reduction**

Subclauses (I) and (II) of clause (ii) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

#### **(D) Smaller loans**

The Bureau shall prescribe rules adjusting the criteria under subparagraph (A)(vii) in order to permit lenders that extend smaller loans to meet the requirements of the presumption of compliance under paragraph (1). In prescribing such rules, the Bureau shall consider the potential impact of such rules on rural areas and other areas where home values are lower.

**(E) Balloon loans**

The Bureau may, by regulation, provide that the term "qualified mortgage" includes a balloon loan—

(i) that meets all of the criteria for a qualified mortgage under subparagraph (A) (except clauses (i)(II), (ii), (iv), and (v) of such subparagraph);

(ii) for which the creditor makes a determination that the consumer is able to make all scheduled payments, except the balloon payment, out of income or assets other than the collateral;

(iii) for which the underwriting is based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into account all applicable taxes, insurance, and assessments; and

(iv) that is extended by a creditor that—

(I) operates in rural or underserved areas;

(II) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Bureau;

(III) retains the balloon loans in portfolio; and

(IV) meets any asset size threshold and any other criteria as the Bureau may establish, consistent with the purposes of this part.

**(F) Safe harbor**

**(i) Definitions**

In this subparagraph—

(I) the term "covered institution" means an insured depository institution or an insured credit union that, together with its affiliates, has less than \$10,000,000,000 in total consolidated assets;

(II) the term "insured credit union" has the meaning given the term in section 1752 of title 12;

(III) the term "insured depository institution" has the meaning given the term in section 1813 of title 12;

(IV) the term "interest-only" means that, under the terms of the legal obligation, one or more of the periodic payments may be applied solely to accrued interest and not to loan principal; and

(V) the term "negative amortization" means payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation.

**(ii) Safe harbor**

In this section—

(I) the term "qualified mortgage" includes any residential mortgage loan—

(aa) that is originated and retained in portfolio by a covered institution;

(bb) that is in compliance with the limitations with respect to prepayment penalties described in subsections (c)(1) and (c)(3);

(cc) that is in compliance with the requirements of clause (vii) of subparagraph (A);

(dd) that does not have negative amortization or interest-only features; and

(ee) for which the covered institution considers and documents the debt, income, and financial resources of the consumer in accordance with clause (iv); and

(II) a residential mortgage loan described in subclause (I) shall be deemed to meet the requirements of subsection (a).

**(iii) Exception for certain transfers**

A residential mortgage loan described in clause (ii)(I) shall not qualify for the safe harbor under clause (ii) if the legal title to the residential mortgage loan is sold, assigned, or otherwise transferred to another person unless the residential mortgage loan is sold, assigned, or otherwise transferred—

- (I) to another person by reason of the bankruptcy or failure of a covered institution;
- (II) to a covered institution so long as the loan is retained in portfolio by the covered institution to which the loan is sold, assigned, or otherwise transferred;
- (III) pursuant to a merger of a covered institution with another person or the acquisition of a covered institution by another person or of another person by a covered institution, so long as the loan is retained in portfolio by the person to whom the loan is sold, assigned, or otherwise transferred; or
- (IV) to a wholly owned subsidiary of a covered institution, provided that, after the sale, assignment, or transfer, the residential mortgage loan is considered to be an asset of the covered institution for regulatory accounting purposes.

**(iv) Consideration and documentation requirements**

The consideration and documentation requirements described in clause (ii)(I)(ee) shall—

- (I) not be construed to require compliance with, or documentation in accordance with, appendix Q to part 1026 of title 12, Code of Federal Regulations, or any successor regulation; and
- (II) be construed to permit multiple methods of documentation.

**(3) Regulations**

**(A) In general**

The Bureau shall prescribe regulations to carry out the purposes of this subsection.

**(B) Revision of safe harbor criteria**

**(i) In general**

The Bureau may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 1639b of this title, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

**(ii) Loan definition**

The following agencies shall, in consultation with the Bureau, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are qualified mortgages for purposes of paragraph (2)(A), and such rules may revise, add to, or subtract from the criteria used to define a qualified mortgage under paragraph (2)(A), upon a finding that such rules are consistent with the purposes of this section and section 1639b of this title, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections:

- (I) The Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act [12 U.S.C. 1701 et seq.].
- (II) The Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs.
- (III) The Department of Agriculture, with regard <sup>3</sup> loans guaranteed by the Secretary of Agriculture pursuant to section 1472(h) of title 42.
- (IV) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.

**(C) Consideration of underwriting requirements for Property Assessed Clean Energy financing**

**(i) Definition**

In this subparagraph, the term "Property Assessed Clean Energy financing" means financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer.

**(ii) Regulations**

The Bureau shall prescribe regulations that carry out the purposes of subsection (a) and apply section 1640 of this title with respect to violations under subsection (a) of this section with respect to Property Assessed Clean Energy financing, which shall account for the unique nature of Property Assessed Clean Energy financing.

**(iii) Collection of information and consultation**

In prescribing the regulations under this subparagraph, the Bureau—

- (I) may collect such information and data that the Bureau determines is necessary; and
- (II) shall consult with State and local governments and bond-issuing authorities.

**(c) Prohibition on certain prepayment penalties**

**(1) Prohibited on certain loans**

**(A) In general**

A residential mortgage loan that is not a "qualified mortgage", as defined under subsection (b)(2), may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

**(B) Exclusions**

For purposes of this subsection, a "qualified mortgage" may not include a residential mortgage loan that—

- (i) has an adjustable rate; or
- (ii) has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 1454(a)(2) of title 12;

(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 1454(a)(2) of title 12; and

(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.

**(2) Publication of average prime offer rate and APR thresholds**

The Bureau—

- (A) shall publish, and update at least weekly, average prime offer rates;
- (B) may publish multiple rates based on varying types of mortgage transactions; and
- (C) shall adjust the thresholds established under subclause (I), (II), and (III) of paragraph (1)(B)(ii) as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

**(3) Phased-out penalties on qualified mortgages**

A qualified mortgage (as defined in subsection (b)(2)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

**(4) Option for no prepayment penalty required**

A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

**(d) Single premium credit insurance prohibited**

No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and

(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

**(e) Arbitration**

**(1) In general**

No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

**(2) Post-controversy agreements**

Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor or any assignee to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

**(3) No waiver of statutory cause of action**

No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 1640 of this title or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this subchapter, or any other Federal law.

**(f) Mortgages with negative amortization**

No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—

- (1) the creditor provides the consumer with a statement that—
  - (A) the pending transaction will or may, as the case may be, result in negative amortization;
  - (B) describes negative amortization in such manner as the Bureau shall prescribe;
  - (C) negative amortization increases the outstanding principal balance of the account; and
  - (D) negative amortization reduces the consumer's equity in the dwelling or real property; and

(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.

**(g) Protection against loss of anti-deficiency protection**

**(1) Definition**

For purposes of this subsection, the term "anti-deficiency law" means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

**(2) Notice at time of consummation**

In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

**(3) Notice before refinancing that would cause loss of protection**

In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.

**(h) Policy regarding acceptance of partial payment**

In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

- (1) the creditor's policy regarding the acceptance of partial payments; and
- (2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.

**(i) Timeshare plans**

This section and any regulations promulgated under this section do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11.

(Pub. L. 90–321, title I, §129C, as added and amended Pub. L. 111–203, title X, §1100A(2), title XIV, §§1411(a)(2), 1412, 1414(a), (c), (d), July 21, 2010, 124 Stat. 2107, 2142, 2145, 2149, 2152; Pub. L. 114–94, div. G, title LXXXIX, §89003(1), Dec. 4, 2015, 129 Stat. 1800; Pub. L. 115–174, title I, §101, title III, §307, May 24, 2018, 132 Stat. 1297, 1347.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 1602(aa)(4) of this title, referred to in subsecs. (a)(5)(C) and (b)(2)(C)(i), was redesignated section

1602(bb)(4) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

This part, referred to in subsec. (b)(2)(E)(iv)(IV), was in the original "this subtitle", and was translated as reading "this chapter", meaning chapter 2 of title I of Pub. L. 90–321, to reflect the probable intent of Congress. Title I of Pub. L. 90–321 does not contain subtitles.

The National Housing Act, referred to in subsec. (b)(3)(B)(ii)(I), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified principally to chapter 13 (§1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The Mortgage Reform and Anti-Predatory Lending Act, referred to in subsec. (c)(2)(C), is title XIV of Pub. L. 111–203, July 21, 2010, 124 Stat. 2136. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1601 of this title and Tables.

#### AMENDMENTS

**2018**—Subsec. (b)(2)(F). Pub. L. 115–174, §101, added subpar. (F).

Subsec. (b)(3)(C). Pub. L. 115–174, §307, added subpar. (C).

**2015**—Subsec. (b)(2)(E)(iv)(I). Pub. L. 114–94 struck out "predominantly" after "operates".

**2010**—Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (b). Pub. L. 111–203, §1412, added subsec. (b).

Subsecs. (c) to (f). Pub. L. 111–203, §1414(a), added subsecs. (c) to (f).

Subsec. (g). Pub. L. 111–203, §1414(c), added subsec. (g).

Subsecs. (h), (i). Pub. L. 111–203, §1414(d), added subsecs. (h) and (i).

#### STATUTORY NOTES AND RELATED SUBSIDIARIES

##### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2) of 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.

Amendment by sections 1412 and 1414(a), (c), (d) of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date, if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

##### EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

##### RULE OF CONSTRUCTION

Pub. L. 111–203, title XIV, §1411(a)(1), July 21, 2010, 124 Stat. 2142, provided that: "No regulation, order, or guidance issued by the Bureau under this title [see Tables for classification] shall be construed as requiring a depository institution to apply mortgage underwriting standards that do not meet the minimum underwriting standards required by the appropriate prudential regulator of the depository institution."

[For definitions of "Bureau" and "depository institution" as used in section 1411(a)(1) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking.]

<sup>1</sup> [\*See References in Text note below.\*](#)

<sup>2</sup> [\*So in original.\*](#)

<sup>3</sup> [\*So in original. Probably should be followed by "to".\*](#)

#### **§1639d. Escrow or impound accounts relating to certain consumer credit transactions**



**(a) In general**

Except as provided in subsection (b), (c), (d), or (e), a creditor, in connection with the consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section.

**(b) When required**

No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

(2) a loan is made, guaranteed, or insured by a State or Federal governmental lending or insuring agency;

(3) the transaction is secured by a first mortgage or lien on the consumer's principal dwelling having an original principal obligation amount that—

(A) does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 1454(a)(2) of title 12, and the annual percentage rate will exceed the average prime offer rate as defined in section 1639c of this title by 1.5 or more percentage points; or

(B) exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 1454(a)(2) of title 12, and the annual percentage rate will exceed the average prime offer rate as defined in section 1639c of this title by 2.5 or more percentage points; or

(4) so required pursuant to regulation.

**(c) Exemptions**

**(1) In general**

The Bureau may, by regulation, exempt from the requirements of subsection (a) a creditor that—

(A) operates in rural or underserved areas;

(B) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the Bureau;

(C) retains its mortgage loan originations in portfolio; and

(D) meets any asset size threshold and any other criteria the Bureau may establish, consistent with the purposes of this part.

**(2) Treatment of loans held by smaller institutions**

The Bureau shall, by regulation, exempt from the requirements of subsection (a) any loan made by an insured depository institution or an insured credit union secured by a first lien on the principal dwelling of a consumer if—

(A) the insured depository institution or insured credit union has assets of \$10,000,000,000 or less;

(B) during the preceding calendar year, the insured depository institution or insured credit union and its affiliates originated 1,000 or fewer loans secured by a first lien on a principal dwelling; and

(C) the transaction satisfies the criteria in sections 1026.35(b)(2)(iii)(A), 1026.35(b)(2)(iii)(D), and 1026.35(b)(2)(v) of title 12, Code of Federal Regulations, or any successor regulation.

**(d) Duration of mandatory escrow or impound account**

An escrow or impound account established pursuant to subsection (b) shall remain in existence for a minimum period of 5 years, beginning with the date of the consummation of the loan, unless and until—

- (1) such borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance;
  - (2) such borrower is delinquent;
  - (3) such borrower otherwise has not complied with the legal obligation, as established by rule;
- or
- (4) the underlying mortgage establishing the account is terminated.

**(e) Limited exemptions for loans secured by shares in a cooperative or in which an association must maintain a master insurance policy**

Escrow accounts need not be established for loans secured by shares in a cooperative. Insurance premiums need not be included in escrow accounts for loans secured by dwellings or units, where the borrower must join an association as a condition of ownership, and that association has an obligation to the dwelling or unit owners to maintain a master policy insuring the dwellings or units.

**(f) Clarification on escrow accounts for loans not meeting statutory test**

For mortgages not covered by the requirements of subsection (b), no provision of this section shall be construed as precluding the establishment of an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property—

- (1) on terms mutually agreeable to the parties to the loan;
- (2) at the discretion of the lender or servicer, as provided by the contract between the lender or servicer and the borrower; or
- (3) pursuant to the requirements for the escrowing of flood insurance payments for regulated lending institutions in section 102(d) of the Flood Disaster Protection Act of 1973 [42 U.S.C. 4012a(d)].

**(g) Administration of mandatory escrow or impound accounts**

**(1) In general**

Except as may otherwise be provided for in this subchapter or in regulations prescribed by the Bureau, escrow or impound accounts established pursuant to subsection (b) shall be established in a federally insured depository institution or credit union.

**(2) Administration**

Except as provided in this section or regulations prescribed under this section, an escrow or impound account subject to this section shall be administered in accordance with—

- (A) the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.] and regulations prescribed under such Act;
- (B) the Flood Disaster Protection Act of 1973 and regulations prescribed under such Act; and
- (C) the law of the State, if applicable, where the real property securing the consumer credit transaction is located.

**(3) Applicability of payment of interest**

If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law.

**(4) Penalty coordination with RESPA**

Any action or omission on the part of any person which constitutes a violation of the Real Estate Settlement Procedures Act of 1974 or any regulation prescribed under such Act for which

the person has paid any fine, civil money penalty, or other damages shall not give rise to any additional fine, civil money penalty, or other damages under this section, unless the action or omission also constitutes a direct violation of this section.

**(h) Disclosures relating to mandatory escrow or impound account**

In the case of any impound, trust, or escrow account that is required under subsection (b), the creditor shall disclose by written notice to the consumer at least 3 business days before the consummation of the consumer credit transaction giving rise to such account or in accordance with timeframes established in prescribed regulations the following information:

(1) The fact that an escrow or impound account will be established at consummation of the transaction.

(2) The amount required at closing to initially fund the escrow or impound account.

(3) The amount, in the initial year after the consummation of the transaction, of the estimated taxes and hazard insurance, including flood insurance, if applicable, and any other required periodic payments or premiums that reflects, as appropriate, either the taxable assessed value of the real property securing the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction) or the replacement costs of the property.

(4) The estimated monthly amount payable to be escrowed for taxes, hazard insurance (including flood insurance, if applicable) and any other required periodic payments or premiums.

(5) The fact that, if the consumer chooses to terminate the account in the future, the consumer will become responsible for the payment of all taxes, hazard insurance, and flood insurance, if applicable, as well as any other required periodic payments or premiums on the property unless a new escrow or impound account is established.

(6) Such other information as the Bureau determines necessary for the protection of the consumer.

**(i) Definitions**

For purposes of this section, the following definitions shall apply:

**(1) Flood insurance**

The term "flood insurance" means flood insurance coverage provided under the national flood insurance program pursuant to the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.].

**(2) Hazard insurance**

The term "hazard insurance" shall have the same meaning as provided for "hazard insurance", "casualty insurance", "homeowner's insurance", or other similar term under the law of the State where the real property securing the consumer credit transaction is located.

**(3) Insured credit union**

The term "insured credit union" has the meaning given the term in section 1752 of title 12.

**(4) Insured depository institution**

The term "insured depository institution" has the meaning given the term in section 1813 of title 12.

**(j) Disclosure notice required for consumers who waive escrow services**

**(1) In general**

If—

(A) an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction; or

(B) a consumer chooses, and provides written notice to the creditor or servicer of such choice, at any time after such an account is established in connection with any such transaction and in accordance with any statute, regulation, or contractual agreement, to close such account,

the creditor or servicer shall provide a timely and clearly written disclosure to the consumer that advises the consumer of the responsibilities of the consumer and implications for the consumer in the absence of any such account.

## **(2) Disclosure requirements**

Any disclosure provided to a consumer under paragraph (1) shall include the following:

(A) Information concerning any applicable fees or costs associated with either the non-establishment of any such account at the time of the transaction, or any subsequent closure of any such account.

(B) A clear and prominent statement that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial.

(C) A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicer and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance.

(D) Such other information as the Bureau determines necessary for the protection of the consumer.

(Pub. L. 90–321, title I, §129D, as added and amended Pub. L. 111–203, title X, §1100A(2), title XIV, §§1461(a), 1462, July 21, 2010, 124 Stat. 2107, 2178, 2181; Pub. L. 114–94, div. G, title LXXXIX, §89003(2), Dec. 4, 2015, 129 Stat. 1801; Pub. L. 115–174, title I, §108, May 24, 2018, 132 Stat. 1304.)

## **EDITORIAL NOTES**

### **REFERENCES IN TEXT**

This part, referred to in subsec. (c)(1)(D), was in the original "this subtitle", and was translated as reading "this chapter", meaning chapter 2 of title I of Pub. L. 90–321, to reflect the probable intent of Congress. Title I of Pub. L. 90–321 does not contain subtitles.

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (g)(2)(A), (4), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 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 2601 of Title 12 and Tables.

The Flood Disaster Protection Act of 1973, referred to in subsec. (g)(2)(B), is Pub. L. 93–234, Dec. 31, 1973, 87 Stat. 975. For complete classification of this Act to the Code, see Short Title of 1973 Amendment note set out under section 4001 of Title 42, The Public Health and Welfare, and Tables.

The National Flood Insurance Act of 1968, referred to in subsec. (i)(1), is title XIII of Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 572, which is classified principally to chapter 50 (§4001 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 4001 of Title 42 and Tables.

## **AMENDMENTS**

**2018**—Subsec. (c). Pub. L. 115–174, §108(1)(A), (B), (D), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1) and realigned margins, and added par. (2).

Subsec. (c)(1). Pub. L. 115–174, §108(1)(B), (C), which directed substitution of "The Bureau" for "The Board" in introductory provisions, and "the Bureau" for "the Board" wherever appearing, duplicated the amendment made by Pub. L. 111–203, §1100A(2), which had already been executed. See 2010 Amendment note below.

Subsec. (i)(3), (4). Pub. L. 115–174, §108(2), added pars. (3) and (4).

**2015**—Subsec. (c)(1). Pub. L. 114–94 struck out "predominantly" after "operates".

**2010**—Pub. L. 111–203, §1100A(2), which directed substitution of "Bureau" for "Board" wherever appearing in Pub. L. 90–321, was executed to this section, which was added to Pub. L. 90–321 by section 1461(a) of Pub. L. 111–203.

Subsec. (j). Pub. L. 111–203, §1462, added subsec. (j).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 1100A(2) of 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.

Amendment by section 1462 of Pub. L. 111–203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as a note under section 1601 of this title.

### EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

### EXEMPTIONS AND MODIFICATIONS

Pub. L. 111–203, title XIV, §1461(b), July 21, 2010, 124 Stat. 2181, provided that: "The Board may prescribe rules that revise, add to, or subtract from the criteria of section 129D(b) of the Truth in Lending Act [15 U.S.C. 1639d(b)] if the Board determines that such rules are in the interest of consumers and in the public interest."

## §1639e. Appraisal independence requirements

### (a) In general

It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence as described in or pursuant to regulations prescribed under this section.

### (b) Appraisal independence

For purposes of subsection (a), acts or practices that violate appraisal independence shall include—

(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties.

### (c) Exceptions

The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of

an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to undertake 1 or more of the following:

- (1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.
- (2) Provide further detail, substantiation, or explanation for the appraiser's value conclusion.
- (3) Correct errors in the appraisal report.

**(d) Prohibitions on conflicts of interest**

No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

**(e) Mandatory reporting**

Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

**(f) No extension of credit**

In connection with a consumer credit transaction secured by a consumer's principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections <sup>1</sup> (b) or (d) shall not extend credit based on such appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

**(g) Rules and interpretive guidelines**

**(1) In general**

Except as provided under paragraph (2), the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue rules, interpretive guidelines, and general statements of policy with respect to acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), (f), (h), and (i).

**(2) Interim final regulations**

The Board shall, for purposes of this section, prescribe interim final regulations no later than 90 days after July 21, 2010, defining with specificity acts or practices that violate appraisal independence in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations. Rules prescribed by the Board under this paragraph shall be deemed to be rules prescribed by the agencies jointly under paragraph (1).

**(h) Appraisal report portability**

Consistent with the requirements of this section, the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau may jointly issue regulations that address the issue of appraisal report portability, including regulations that ensure the portability of the appraisal report between lenders for a consumer credit transaction secured by a 1-4 unit single family residence that is the principal dwelling of the consumer, or mortgage brokerage services for such a transaction.

**(i) Customary and reasonable fee**

**(1) In general**

Lenders and their agents shall compensate fee appraisers at a rate that is customary and reasonable for appraisal services performed in the market area of the property being appraised. Evidence for such fees may be established by objective third-party information, such as government agency fee schedules, academic studies, and independent private sector surveys. Fee studies shall exclude assignments ordered by known appraisal management companies.

**(2) Fee appraiser definition**

**(A) In general**

For purposes of this section, the term "fee appraiser" means a person who is not an employee of the mortgage loan originator or appraisal management company engaging the appraiser and is—

(i) a State licensed or certified appraiser who receives a fee for performing an appraisal and certifies that the appraisal has been prepared in accordance with the Uniform Standards of Professional Appraisal Practice; or

(ii) a company not subject to the requirements of section 3353 of title 12 that utilizes the services of State licensed or certified appraisers and receives a fee for performing appraisals in accordance with the Uniform Standards of Professional Appraisal Practice.

**(B) Rule of construction related to appraisal donations**

If a fee appraiser voluntarily donates appraisal services to an organization eligible to receive tax-deductible charitable contributions, such voluntary donation shall be considered customary and reasonable for the purposes of paragraph (1).

**(3) Exception for complex assignments**

In the case of an appraisal involving a complex assignment, the customary and reasonable fee may reflect the increased time, difficulty, and scope of the work required for such an appraisal and include an amount over and above the customary and reasonable fee for non-complex assignments.

**(j) Sunset**

Effective on the date the interim final regulations are promulgated pursuant to subsection (g), the Home Valuation Code of Conduct announced by the Federal Housing Finance Agency on December 23, 2008, shall have no force or effect.

**(k) Penalties**

**(1) First violation**

In addition to the enforcement provisions referred to in section 1640 of this title, each person who violates this section shall forfeit and pay a civil penalty of not more than \$10,000 for each day any such violation continues.

**(2) Subsequent violations**

In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting "\$20,000" for "\$10,000" with respect to all subsequent violations.

**(3) Assessment**

The agency referred to in subsection (a) or (c) of section 1607 of this title with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.

(Pub. L. 90–321, title I, §129E, as added Pub. L. 111–203, title XIV, §1472(a), July 21, 2010, 124 Stat. 2187; amended Pub. L. 115–174, title I, §102, May 24, 2018, 132 Stat. 1299.)

## EDITORIAL NOTES

### AMENDMENTS

**2018**—Subsec. (i)(2). Pub. L. 115–174 designated existing provisions as subpar. (A) and inserted heading, redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A) and realigned margins, and added subpar. (B).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

*<sup>1</sup> So in original. Probably should be "subsection".*

## **§1639f. Requirements for prompt crediting of home loan payments**

### **(a) In general**

In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer shall fail to credit a payment to the consumer's loan account as of the date of receipt, except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency, except as required in subsection (b).

### **(b) Exception**

If a servicer specifies in writing requirements for the consumer to follow in making payments, but accepts a payment that does not conform to the requirements, the servicer shall credit the payment as of 5 days after receipt.

(Pub. L. 90–321, title I, §129F, as added Pub. L. 111–203, title XIV, §1464(a), July 21, 2010, 124 Stat. 2184.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

## **§1639g. Requests for payoff amounts of home loan**

A creditor or servicer of a home loan shall send an accurate payoff balance within a reasonable time, but in no case more than 7 business days, after the receipt of a written request for such balance from or on behalf of the borrower.

(Pub. L. 90–321, title I, §129G, as added Pub. L. 111–203, title XIV, §1464(b), July 21, 2010, 124 Stat. 2184.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective on the date on which final regulations implementing such section take effect, or on the



date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

## **§1639h. Property appraisal requirements**

### **(a) In general**

A creditor may not extend credit in the form of a higher-risk mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this section.

### **(b) Appraisal requirements**

#### **(1) Physical property visit**

Subject to the rules prescribed under paragraph (4), an appraisal of property to be secured by a higher-risk mortgage does not meet the requirement of this section unless it is performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the mortgaged property.

#### **(2) Second appraisal under certain circumstances**

##### **(A) In general**

If the purpose of a higher-risk mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different certified or licensed appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

##### **(B) No cost to applicant**

The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

#### **(3) Certified or licensed appraiser defined**

For purposes of this section, the term "certified or licensed appraiser" means a person who—

(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 [12 U.S.C. 3331 et seq.], and the regulations prescribed under such title, as in effect on the date of the appraisal.

#### **(4) Regulations**

##### **(A) In general**

The Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, the Federal Housing Finance Agency, and the Bureau shall jointly prescribe regulations to implement this section.

##### **(B) Exemption**

The agencies listed in subparagraph (A) may jointly exempt, by rule, a class of loans from the requirements of this subsection or subsection (a) if the agencies determine that the exemption is in the public interest and promotes the safety and soundness of creditors.

### **(c) Free copy of appraisal**

A creditor shall provide 1 copy of each appraisal conducted in accordance with this section in

connection with a higher-risk mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

**(d) Consumer notification**

At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant.

**(e) Violations**

In addition to any other liability to any person under this subchapter, a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of \$2,000.

**(f) Higher-risk mortgage defined**

For purposes of this section, the term "higher-risk mortgage" means a residential mortgage loan, other than a reverse mortgage loan that is a qualified mortgage, as defined in section 1639c of this title, secured by a principal dwelling—

(1) that is not a qualified mortgage, as defined in section 1639c of this title; and

(2) with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as defined in section 1639c of this title, as of the date the interest rate is set—

(A) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 1454(a)(2) of title 12;

(B) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 1454(a)(2) of title 12; and

(C) by 3.5 or more percentage points for a subordinate lien residential mortgage loan.

(Pub. L. 90–321, title I, §129H, as added Pub. L. 111–203, title XIV, §1471, July 21, 2010, 124 Stat. 2185.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989, referred to in subsec. (b)(3)(B), is Pub. L. 101–73, Aug. 9, 1989, 103 Stat. 183. Title XI of the Act is classified principally to chapter 34A (§3331 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1811 of Title 12 and Tables.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective on the date on which final regulations implementing such section take effect, or on the date that is 18 months after the designated transfer date if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 1601 of this title.

**§1640. Civil liability**

**(a) Individual or class action for damages; amount of award; factors determining amount of award**

Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, subsection (f) or (g) of section 1641 of this title, or part D or E of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, (ii) in the case of an individual action relating to a consumer lease under part E of this subchapter, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than \$200 nor greater than \$2,000, (iii) in the case of an individual action relating to an open end consumer credit plan that is not secured by real property or a dwelling, twice the amount of any finance charge in connection with the transaction, with a minimum of \$500 and a maximum of \$5,000, or such higher amount as may be appropriate in the case of an established pattern or practice of such failures; <sup>1</sup> or (iv) in the case of an individual action relating to a credit transaction not under an open end credit plan that is secured by real property or a dwelling, not less than \$400 or greater than \$4,000; or

(B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of \$1,000,000 or 1 per centum of the net worth of the creditor;

(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 1635 or 1638(e)(7) of this title, the costs of the action, together with a reasonable attorney's fee as determined by the court; and

(4) in the case of a failure to comply with any requirement under section 1639 of this title, paragraph (1) or (2) of section 1639b(c) of this title, or section 1639c(a) of this title, an amount equal to the sum of all finance charges and fees paid by the consumer, unless the creditor demonstrates that the failure to comply is not material.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional. In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, 1637(a) <sup>2</sup> of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title, or for failing to comply with disclosure requirements under State law for any term or item that the Bureau has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms or items referred to in section 1637(a) of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title. In connection with the disclosures referred to in subsection (c) or (d) of section 1637 of this title, a card issuer shall have a liability under this section only to a cardholder who pays a fee described in section 1637(c)(1)(A)(ii)(I) or section 1637(c)(4)(A)(i) of this title or who uses the credit card or charge card. In connection with the disclosures referred to in section 1638 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, of paragraph (2) (insofar as it requires a disclosure of the "amount financed"), (3), (4), (5), (6), or (9) of section 1638(a) of this title, or section 1638(b)(2)(C)(ii) of this title, of subparagraphs (A), (B), (D), (F), or (J) of section 1638(e)(2) of this title (for purposes of paragraph (2) or (4) of section 1638(e) of this title), or paragraph (4)(C), (6), (7), or (8) of section 1638(e) of this title, or for failing to comply with disclosure requirements under State law for any term which the Bureau has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms referred to in any of those paragraphs of section 1638(a) of this title or section 1638(b)(2)(C)(ii) of this title. With respect to any failure to make disclosures required under this part or part D or E of this

subchapter, liability shall be imposed only upon the creditor required to make disclosure, except as provided in section 1641 of this title.

**(b) Correction of errors**

A creditor or assignee has no liability under this section or section 1607 of this title or section 1611 of this title for any failure to comply with any requirement imposed under this part or part E, if within sixty days after discovering an error, whether pursuant to a final written examination report or notice issued under section 1607(e)(1) of this title or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

**(c) Unintentional violations; bona fide errors**

A creditor or assignee may not be held liable in any action brought under this section or section 1635 of this title for a violation of this subchapter if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programing, and printing errors, except that an error of legal judgment with respect to a person's obligations under this subchapter is not a bona fide error.

**(d) Liability in transaction or lease involving multiple obligors**

When there are multiple obligors in a consumer credit transaction or consumer lease, there shall be no more than one recovery of damages under subsection (a)(2) for a violation of this subchapter.

**(e) Jurisdiction of courts; limitations on actions; State attorney general enforcement**

Except as provided in the subsequent sentence, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation or, in the case of a violation involving a private education loan (as that term is defined in section 1650(a) of this title), 1 year from the date on which the first regular payment of principal is due under the loan. Any action under this section with respect to any violation of section 1639, 1639b, or 1639c of this title may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation. This subsection does not bar a person from asserting a violation of this subchapter in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law. An action to enforce a violation of section 1639, 1639b, 1639c, 1639d, 1639e, 1639f, 1639g, or 1639h of this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 1607 of this title and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may—

(1) intervene in the action;

(2) upon intervening—

(A) remove the action to the appropriate United States district court, if it was not originally brought there; and

(B) be heard on all matters arising in the action; and

(3) file a petition for appeal.

**(f) Good faith compliance with rule, regulation, or interpretation of Bureau or with**

**interpretation or approval of duly authorized official or employee of Federal Reserve System**

No provision of this section, section 1607(b) of this title, section 1607(c) of this title, section 1607(e) of this title, or section 1611 of this title imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Bureau to issue such interpretations or approvals under such procedures as the Bureau may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

**(g) Recovery for multiple failures to disclose**

The multiple failure to disclose to any person any information required under this part or part D or E of this subchapter to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsection does not bar any remedy permitted by section 1635 of this title.

**(h) Offset from amount owed to creditor or assignee; rights of defaulting consumer**

A person may not take any action to offset any amount for which a creditor or assignee is potentially liable to such person under subsection (a)(2) against any amount owed by such person, unless the amount of the creditor's or assignee's liability under this subchapter has been determined by judgment of a court of competent jurisdiction in an action of which such person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this subchapter as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under this subchapter.

**(i) Class action moratorium**

**(1) In general**

During the period beginning on May 18, 1995, and ending on October 1, 1995, no court may enter any order certifying any class in any action under this subchapter—

(A) which is brought in connection with any credit transaction not under an open end credit plan which is secured by a first lien on real property or a dwelling and constitutes a refinancing or consolidation of an existing extension of credit; and

(B) which is based on the alleged failure of a creditor—

(i) to include a charge actually incurred (in connection with the transaction) in the finance charge disclosed pursuant to section 1638 of this title;

(ii) to properly make any other disclosure required under section 1638 of this title as a result of the failure described in clause (i); or

(iii) to provide proper notice of rescission rights under section 1635(a) of this title due to the selection by the creditor of the incorrect form from among the model forms prescribed by the Bureau or from among forms based on such model forms.

**(2) Exceptions for certain alleged violations**

Paragraph (1) shall not apply with respect to any action—

(A) described in clause (i) or (ii) of paragraph (1)(B), if the amount disclosed as the finance charge results in an annual percentage rate that exceeds the tolerance provided in section 1606(c) of this title; or

(B) described in paragraph (1)(B)(iii), if—

(i) no notice relating to rescission rights under section 1635(a) of this title was provided in any form; or

(ii) proper notice was not provided for any reason other than the reason described in such paragraph.

**(j) Private educational lender**

A private educational lender (as that term is defined in section 1650(a) of this title) has no liability under this section for failure to comply with section 1638(e)(3) of this title).<sup>3</sup>

**(k) Defense to foreclosure**

**(1) In general**

Notwithstanding any other provision of law, when a creditor, assignee, or other holder of a residential mortgage loan or anyone acting on behalf of such creditor, assignee, or holder, initiates a judicial or nonjudicial foreclosure of the residential mortgage loan, or any other action to collect the debt in connection with such loan, a consumer may assert a violation by a creditor of paragraph (1) or (2) of section 1639b(c) of this title, or of section 1639c(a) of this title, as a matter of defense by recoupment or set off without regard for the time limit on a private action for damages under subsection (e).

**(2) Amount of recoupment or setoff**

**(A) In general**

The amount of recoupment or set-off under paragraph (1) shall equal the amount to which the consumer would be entitled under subsection (a) for damages for a valid claim brought in an original action against the creditor, plus the costs to the consumer of the action, including a reasonable attorney's fee.

**(B) Special rule**

Where such judgment is rendered after the expiration of the applicable time limit on a private action for damages under subsection (e), the amount of recoupment or set-off under paragraph (1) derived from damages under subsection (a)(4) shall not exceed the amount to which the consumer would have been entitled under subsection (a)(4) for damages computed up to the day preceding the expiration of the applicable time limit.

**(l) Exemption from liability and rescission in case of borrower fraud or deception**

In addition to any other remedy available by law or contract, no creditor or assignee shall be liable to an obligor under this section, if such obligor, or co-obligor has been convicted of obtaining by actual fraud such residential mortgage loan.

(Pub. L. 90–321, title I, §130, May 29, 1968, 82 Stat. 157; Pub. L. 93–495, title IV, §§406, 407, 408(a)–(d), Oct. 28, 1974, 88 Stat. 1518; Pub. L. 94–222, §3(b), Feb. 27, 1976, 90 Stat. 197; Pub. L. 94–240, §4, Mar. 23, 1976, 90 Stat. 260; Pub. L. 96–221, title VI, §615, Mar. 31, 1980, 94 Stat. 180; Pub. L. 100–583, §3, Nov. 3, 1988, 102 Stat. 2966; Pub. L. 103–325, title I, §153(a), (b), Sept. 23, 1994, 108 Stat. 2195; Pub. L. 104–12, §2, May 18, 1995, 109 Stat. 161; Pub. L. 104–29, §6, Sept. 30, 1995, 109 Stat. 274; Pub. L. 110–289, div. B, title V, §2502(b), July 30, 2008, 122 Stat. 2857; Pub. L. 110–315, title X, §1012(a), Aug. 14, 2008, 122 Stat. 3482; Pub. L. 111–22, div. A, title IV, §404(b), May 20, 2009, 123 Stat. 1658; Pub. L. 111–24, title I, §107, title II, §201(b), May 22, 2009, 123 Stat. 1743, 1745; Pub. L. 111–203, title X, §1100A(2), title XIV, §§1413, 1416, 1417, 1422, July 21, 2010, 124 Stat. 2107, 2148, 2153, 2157.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2010**—Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing.

Subsec. (a)(2)(A)(ii). Pub. L. 111–203, §1416(a)(1), substituted "\$200" for "\$100" and "\$2,000" for "\$1,000".

Subsec. (a)(2)(B). Pub. L. 111–203, §1416(a)(2), substituted "\$1,000,000" for "\$500,000".

Subsec. (a)(4). Pub. L. 111–203, §1416(a)(3), inserted ", paragraph (1) or (2) of section 1639b(c) of this title, or section 1639c(a) of this title" after "section 1639 of this title".

Subsec. (e). Pub. L. 111–203, §1422, substituted "section 1639, 1639b, 1639c, 1639d, 1639e, 1639f, 1639g, or 1639h of this title may also" for "section 1639 of this title may also".

Pub. L. 111–203, §1416(b), in first sentence substituted "Except as provided in the subsequent sentence,

any action" for "Any action" and inserted after first sentence "Any action under this section with respect to any violation of section 1639, 1639b, or 1639c of this title may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation."

Subsec. (k). Pub. L. 111-203, §1413, added subsec. (k).

Subsec. (l). Pub. L. 111-203, §1417, added subsec. (l).

**2009**—Subsec. (a). Pub. L. 111-24, §201(b), in concluding provisions, substituted "In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, 1637(a) of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title, or for failing to comply with disclosure requirements under State law for any term or item that the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms or items referred to in section 1637(a) of this title, or any of paragraphs (4) through (13) of section 1637(b) of this title." for "In connection with the disclosures referred to in subsections (a) and (b) of section 1637 of this title, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 1635 of this title, section 1637(a) of this title, or of paragraph (4), (5), (6), (7), (8), (9), or (10) of section 1637(b) of this title or for failing to comply with disclosure requirements under State law for any term or item which the Board has determined to be substantially the same in meaning under section 1610(a)(2) of this title as any of the terms or items referred to in section 1637(a) of this title or any of those paragraphs of section 1637(b) of this title."

Pub. L. 111-22, §404(b), which directed insertion of "subsection (f) or (g) of section 1641 of this title," after "section 1635 of this title," was executed by making the insertion only in the introductory provisions to reflect the probable intent of Congress.

Subsec. (a)(2)(A)(iii), (iv). Pub. L. 111-24, §107, added cl. (iii) and redesignated former cl. (iii) as (iv).

**2008**—Subsec. (a). Pub. L. 110-315, §1012(a)(1)(B), in fourth sentence of concluding provisions, substituted "1635 of this title," for "1635 of this title or" and inserted "of subparagraphs (A), (B), (D), (F), or (J) of section 1638(e)(2) of this title (for purposes of paragraph (2) or (4) of section 1638(e) of this title), or paragraph (4)(C), (6), (7), or (8) of section 1638(e) of this title," before "or for failing".

Pub. L. 110-289, §2502(b)(2), in concluding provisions, inserted "or section 1638(b)(2)(C)(ii) of this title," before "or for failing to comply" and "or section 1638(b)(2)(C)(ii) of this title" before ". With respect to".

Subsec. (a)(2)(A)(iii). Pub. L. 110-289, §2502(b)(1), substituted "not less than \$400 or greater than \$4,000" for "not less than \$200 or greater than \$2,000".

Subsec. (a)(3). Pub. L. 110-315, §1012(a)(1)(A), inserted "or 1638(e)(7)" after "section 1635".

Subsec. (e). Pub. L. 110-315, §1012(a)(2), inserted before period at end of first sentence "or, in the case of a violation involving a private education loan (as that term is defined in section 1650(a) of this title), 1 year from the date on which the first regular payment of principal is due under the loan".

Subsec. (j). Pub. L. 110-315, §1012(a)(3), added subsec. (j).

**1995**—Subsec. (a)(2)(A)(iii). Pub. L. 104-29 added cl. (iii).

Subsec. (i). Pub. L. 104-12 added subsec. (i).

**1994**—Subsec. (a)(4). Pub. L. 103-325, §153(a), added par. (4).

Subsec. (e). Pub. L. 103-325, §153(b), inserted at end "An action to enforce a violation of section 1639 of this title may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. The State attorney general shall provide prior written notice of any such civil action to the Federal agency responsible for enforcement under section 1607 of this title and shall provide the agency with a copy of the complaint. If prior notice is not feasible, the State attorney general shall provide notice to such agency immediately upon instituting the action. The Federal agency may—

"(1) intervene in the action;

"(2) upon intervening—

"(A) remove the action to the appropriate United States district court, if it was not originally brought there; and

"(B) be heard on all matters arising in the action; and

"(3) file a petition for appeal."

**1988**—Subsec. (a). Pub. L. 100-583 substituted "in subsections (a) and (b) of section 1637" for "in section 1637" in third sentence and inserted provisions limiting liability of card issuer under this section to cardholders who pay fee or use credit card or charge card.

**1980**—Subsec. (a). Pub. L. 96-221, §615(b), in introductory text inserted provisions respecting applicability of section 1635 of this title, and in text following numbered pars. inserted provisions relating to

disclosures required under sections 1637 and 1638 of this title.

Subsec. (a)(2)(B). Pub. L. 96-221, §615(a)(1), substituted provisions respecting recovery under this subparagraph in any class action or series of class actions, for provisions respecting recovery in a class action.

Subsec. (a)(3). Pub. L. 96-221, §615(a)(2), inserted provisions relating to right of rescission under section 1635 of this title.

Subsec. (b). Pub. L. 96-221, §615(a)(3), substituted provisions relating to correction of errors within sixty days by a creditor or assignee, for provisions relating to correction of errors within fifteen days by a creditor.

Subsec. (c). Pub. L. 96-221, §615(a)(3), substituted provisions relating to liability of a creditor or assignee in any action brought under this section or section 1635 of this title, for provisions relating to liability of a creditor in any action brought under this section.

Subsec. (d). Pub. L. 96-221, §615(a)(3), substituted provisions relating to liability in transaction or lease involving multiple obligors, for provisions relating to liability of subsequent assignees original creditor.

Subsec. (e). Pub. L. 96-221, §615(a)(4), inserted provisions relating to limitations on actions.

Subsec. (f). Pub. L. 96-221, §615(a)(5), inserted references to section 1607(b), (c), and (e) of this title.

Subsec. (g). Pub. L. 96-221, §615(a)(6), inserted provisions relating to remedy under section 1635 of this title.

Subsec. (h). Pub. L. 96-221, §615(a)(7), substituted provisions relating to offset from amounts owed to the creditor or assignee, and rights of defaulting consumer, for provisions relating to offset from amounts owed to the creditor.

**1976**—Subsec. (a). Pub. L. 94-240, §4(1), inserted "or E" after "part D".

Subsec. (a)(2)(A). Pub. L. 94-240, §4(2), designated existing provision as cl. (i) and added cl. (ii).

Subsec. (a)(2)(B). Pub. L. 94-240, §4(3), substituted "lesser of \$500,000" for "lesser of \$100,000".

Subsec. (b). Pub. L. 94-240, §4(4), inserted "or part E of this subchapter" after "this part" and struck out "finance" after "required to pay a".

Subsec. (f). Pub. L. 94-222 inserted "or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor" after "by the Board", and substituted "interpretation, or approval" for "or interpretation" before "is amended".

Subsec. (g). Pub. L. 94-240, §4(5), inserted "or part D or E of this subchapter" after "this part", and "consumer lease" after "consumer loan".

**1974**—Subsec. (a). Pub. L. 93-495, §408(a), substituted provisions setting forth determination of amount of liability of any creditor failing to comply with any requirement imposed under part D of this subchapter or this part, for provisions setting forth determination of amount of liability of any creditor failing to disclose in connection with any consumer credit transaction any information required under this part to be disclosed to specified persons.

Subsec. (b). Pub. L. 93-495, §408(b), inserted "for any failure to comply with any requirement imposed under this part," before "if within".

Subsec. (c). Pub. L. 93-495, §408(c), substituted "subchapter" for "part".

Subsec. (f). Pub. L. 93-495, §406, added subsec. (f).

Subsec. (g). Pub. L. 93-495, §407, added subsec. (g).

Subsec. (h). Pub. L. 93-495, §408(d), added subsec. (h).

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by section 1100A(2) of 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.

Amendment by sections 1413, 1416, 1417, and 1422 of Pub. L. 111-203 effective on the date on which final regulations implementing that amendment take effect, or on the date that is 18 months after the designated transfer date, if such regulations have not been issued by that date, see section 1400(c) of Pub. L. 111-203, set out as a note under section 1601 of this title.

### **EFFECTIVE DATE OF 2009 AMENDMENT**

Amendment by Pub. L. 111-24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111-24, set out as a note under section 1602 of this title.

### **EFFECTIVE DATE OF 2008 AMENDMENT**



Pub. L. 110–315, title X, §1012(b), Aug. 14, 2008, 122 Stat. 3482, provided that: "The amendments made by this section [amending this section] shall have the same effective date as provisions referred to in section 1003(b) [set out as a note under section 1638 of this title]."

#### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

#### **EFFECTIVE DATE OF 1976 AMENDMENT**

Amendment by Pub. L. 94–240 effective on expiration of one year after Mar. 23, 1976, see section 6 of Pub. L. 94–240, set out as an Effective Date note under section 1667 of this title.

#### **EFFECTIVE DATE OF 1974 AMENDMENT**

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

#### **DETERMINATION OF LIABILITY PRIOR TO OCTOBER 28, 1974**

Pub. L. 93–495, title IV, §408(e), Oct. 28, 1974, 88 Stat. 1519, provided that: "The amendments made by sections 406, 407, and 408 [amending this section] shall apply in determining the liability of any person under chapter 2 or 4 of the Truth in Lending Act [this part or part D of this subchapter], unless prior to the date of enactment of this Act [Oct. 28, 1974] such liability has been determined by final judgment of a court of competent jurisdiction and no further review of such judgment may be had by appeal or otherwise."

<sup>1</sup> *So in original. The semicolon probably should be a comma.*

<sup>2</sup> *So in original. Probably should be preceded by "section".*

<sup>3</sup> *So in original. The closing parenthesis probably should not appear.*

### **§1641. Liability of assignees**

#### **(a) Prerequisites**

Except as otherwise specifically provided in this subchapter, any civil action for a violation of this subchapter or proceeding under section 1607 of this title which may be brought against a creditor may be maintained against any assignee of such creditor only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement, except where the assignment was involuntary. For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to (1) a disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned, or (2) a disclosure which does not use the terms required to be used by this subchapter.

#### **(b) Proof of compliance with statutory provisions**

Except as provided in section 1635(c) of this title, in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgement of receipt by a person to whom a statement is required to be given pursuant to this subchapter shall be conclusive proof of the delivery thereof and, except as provided in subsection (a), of compliance with this part. This section does not affect the rights of the obligor in any action against the original creditor.

#### **(c) Right of rescission by consumer unaffected**

Any consumer who has the right to rescind a transaction under section 1635 of this title may rescind the transaction as against any assignee of the obligation.

**(d) Rights upon assignment of certain mortgages**

**(1) In general**

Any person who purchases or is otherwise assigned a mortgage referred to in section 1602(aa) <sup>1</sup> of this title shall be subject to all claims and defenses with respect to that mortgage that the consumer could assert against the creditor of the mortgage, unless the purchaser or assignee demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary due diligence, could not determine, based on the documentation required by this subchapter, the itemization of the amount financed, and other disclosure of disbursements that the mortgage was a mortgage referred to in section 1602(aa) <sup>1</sup> of this title. The preceding sentence does not affect rights of a consumer under subsection (a), (b), or (c) of this section or any other provision of this subchapter.

**(2) Limitation on damages**

Notwithstanding any other provision of law, relief provided as a result of any action made permissible by paragraph (1) may not exceed—

(A) with respect to actions based upon a violation of this subchapter, the amount specified in section 1640 of this title; and

(B) with respect to all other causes of action, the sum of—

(i) the amount of all remaining indebtedness; and

(ii) the total amount paid by the consumer in connection with the transaction.

**(3) Offset**

The amount of damages that may be awarded under paragraph (2)(B) shall be reduced by the amount of any damages awarded under paragraph (2)(A).

**(4) Notice**

Any person who sells or otherwise assigns a mortgage referred to in section 1602(aa) <sup>1</sup> of this title shall include a prominent notice of the potential liability under this subsection as determined by the Bureau.

**(e) Liability of assignee for consumer credit transactions secured by real property**

**(1) In general**

Except as otherwise specifically provided in this subchapter, any civil action against a creditor for a violation of this subchapter, and any proceeding under section 1607 of this title against a creditor, with respect to a consumer credit transaction secured by real property may be maintained against any assignee of such creditor only if—

(A) the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement provided in connection with such transaction pursuant to this subchapter; and

(B) the assignment to the assignee was voluntary.

**(2) Violation apparent on the face of the disclosure described**

For the purpose of this section, a violation is apparent on the face of the disclosure statement if—

(A) the disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement, any itemization of the amount financed, the note, or any other disclosure of disbursement; or

(B) the disclosure statement does not use the terms or format required to be used by this subchapter.

**(f) Treatment of servicer**

**(1) In general**

A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as an assignee of such obligation for purposes of this section unless the servicer is or was

the owner of the obligation.

**(2) Servicer not treated as owner on basis of assignment for administrative convenience**

A servicer of a consumer obligation arising from a consumer credit transaction shall not be treated as the owner of the obligation for purposes of this section on the basis of an assignment of the obligation from the creditor or another assignee to the servicer solely for the administrative convenience of the servicer in servicing the obligation. Upon written request by the obligor, the servicer shall provide the obligor, to the best knowledge of the servicer, with the name, address, and telephone number of the owner of the obligation or the master servicer of the obligation.

**(3) "Servicer" defined**

For purposes of this subsection, the term "servicer" has the same meaning as in section 2605(i)(2) of title 12.

**(4) Applicability**

This subsection shall apply to all consumer credit transactions in existence or consummated on or after September 30, 1995.

**(g) Notice of new creditor**

**(1) In general**

In addition to other disclosures required by this subchapter, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—

- (A) the identity, address, telephone number of the new creditor;
- (B) the date of transfer;
- (C) how to reach an agent or party having authority to act on behalf of the new creditor;
- (D) the location of the place where transfer of ownership of the debt is recorded; and
- (E) any other relevant information regarding the new creditor.

**(2) Definition**

As used in this subsection, the term "mortgage loan" means any consumer credit transaction that is secured by the principal dwelling of a consumer.

(Pub. L. 90–321, title I, §131, May 29, 1968, 82 Stat. 157; Pub. L. 96–221, title VI, §616(a), Mar. 31, 1980, 94 Stat. 182; Pub. L. 103–325, title I, §153(c), Sept. 23, 1994, 108 Stat. 2195; Pub. L. 104–29, §7, Sept. 30, 1995, 109 Stat. 274; Pub. L. 111–22, div. A, title IV, §404(a), May 20, 2009, 123 Stat. 1658; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

Section 1602(aa) of this title, referred to in subsec. (d)(1), (4), was redesignated section 1602(bb) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

**AMENDMENTS**

**2010**—Subsec. (d)(4). Pub. L. 111–203 substituted "Bureau" for "Board".

**2009**—Subsec. (g). Pub. L. 111–22 added subsec. (g).

**1995**—Subsec. (e). Pub. L. 104–29, §7(a), added subsec. (e).

Subsec. (f). Pub. L. 104–29, §7(b), added subsec. (f).

**1994**—Subsec. (d). Pub. L. 103–325 added subsec. (d).

**1980**—Pub. L. 96–221 added subsecs. (a) and (c), designated existing provisions as subsec. (b), substituted "excepted as provided in subsection (a)" for "unless the violation is apparent on the face of the statement", and struck out exception for actions under section 1640(d) of this title.

**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 OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

<sup>1</sup> [\*See References in Text note below.\*](#)

## §1642. Issuance of credit cards

No credit card shall be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card.

(Pub. L. 90–321, title I, §132, as added Pub. L. 91–508, title V, §502(a), Oct. 26, 1970, 84 Stat. 1126.)

### STATUTORY NOTES AND RELATED SUBSIDIARIES

#### EFFECTIVE DATE

Pub. L. 91–508, title V, §503(1), Oct. 26, 1970, 84 Stat. 1127, provided that: "Section 132 of such Act [this section] takes effect on date of enactment of this title [Oct. 26, 1970]."

## §1643. Liability of holder of credit card

### (a) Limits on liability

(1) A cardholder shall be liable for the unauthorized use of a credit card only if—

(A) the card is an accepted credit card;

(B) the liability is not in excess of \$50;

(C) the card issuer gives adequate notice to the cardholder of the potential liability;

(D) the card issuer has provided the cardholder with a description of a means by which the card issuer may be notified of loss or theft of the card, which description may be provided on the face or reverse side of the statement required by section 1637(b) of this title or on a separate notice accompanying such statement;

(E) the unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise; and

(F) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it.

(2) For purposes of this section, a card issuer has been notified when such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information have been taken, whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

### (b) Burden of proof

In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized

use of a credit card, as set forth in subsection (a), have been met.

**(c) Liability imposed by other laws or by agreement with issuer**

Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

**(d) Exclusiveness of liability**

Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

(Pub. L. 90-321, title I, §133, as added Pub. L. 91-508, title V, §502(a), Oct. 26, 1970, 84 Stat. 1126; amended Pub. L. 96-221, title VI, §617, Mar. 31, 1980, 94 Stat. 182.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1980**—Subsec. (a). Pub. L. 96-221 revised existing provisions into pars. (1) and (2) and, as so revised, in par. (1) made changes in structure and phraseology and revised means of notice and verification, and in par. (2) made changes in phraseology.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96-221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96-221, set out as a note under section 1602 of this title.

**EFFECTIVE DATE**

Pub. L. 91-508, title V, §503(2), Oct. 26, 1970, 84 Stat. 1127, provided that: "Section 133 of such Act [this section] takes effect upon the expiration of 90 days after such date of enactment [Oct. 26, 1970]."

**§1644. Fraudulent use of credit cards; penalties**

**(a) Use, attempt or conspiracy to use card in transaction affecting interstate or foreign commerce**

Whoever knowingly in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating \$1,000 or more; or

**(b) Transporting, attempting or conspiring to transport card in interstate commerce**

Whoever, with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

**(c) Use of interstate commerce to sell or transport card**

Whoever, with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

**(d) Receipt, concealment, etc., of goods obtained by use of card**

Whoever knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (1) within any one-year period has a value aggregating \$1,000 or more, (2) has moved in or is part of, or which constitutes interstate or foreign commerce, and (3) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card; or

**(e) Receipt, concealment, etc., of tickets for interstate or foreign transportation obtained by use of card**

Whoever knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (1) within any one-year period have a value aggregating \$500 or more, and (2) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit cards; or

**(f) Furnishing of money, etc., through use of card**

Whoever in a transaction affecting interstate or foreign commerce furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating \$1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

(Pub. L. 90–321, title I, §134, as added Pub. L. 91–508, title V, §502(a), Oct. 26, 1970, 84 Stat. 1127; amended Pub. L. 93–495, title IV, §414, Oct. 28, 1974, 88 Stat. 1520.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1974**—Pub. L. 93–495 generally reorganized provisions by designating former unlettered paragraph cls. (a) to (f), and as so designated, expanded prohibitions relating to fraudulent use of credit cards, decreased amount required for fraudulent use from a retail value aggregating \$5,000, or more, to enumerated amounts for particular activities, and increased the punishment from a sentence of not more than five years to a sentence of not more than ten years.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE OF 1974 AMENDMENT**

Amendment by Pub. L. 93–495 effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as an Effective Date note under section 1665a of this title.

**EFFECTIVE DATE**

Pub. L. 91–508, title V, §503(3), Oct. 26, 1970, 84 Stat. 1127, provided that: "Section 134 of such Act [this section] applies to offenses committed on or after such date of enactment [Oct. 26, 1970]."

**§1645. Business credit cards; limits on liability of employees**

The exemption provided by section 1603(1) of this title does not apply to the provisions of sections 1642, 1643, and 1644 of this title, except that a card issuer and a business or other organization which provides credit cards issued by the same card issuer to ten or more of its employees may by contract agree as to liability of the business or other organization with respect to unauthorized use of such credit cards without regard to the provisions of section 1643 of this title, but in no case may such business or other organization or card issuer impose liability upon any employee with respect to unauthorized use of such a credit card except in accordance with and subject to the limitations of section 1643 of this title.

(Pub. L. 90–321, title I, §135, as added Pub. L. 93–495, title IV, §410(a), Oct. 28, 1974, 88 Stat.

1519.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Section effective Oct. 28, 1974, see section 416 of Pub. L. 93–495, set out as a note under section 1665a of this title.

## **§1646. Dissemination of annual percentage rates; implementation, etc.**

### **(a) Annual percentage rates**

The Bureau shall collect, publish, and disseminate to the public, on a demonstration basis in a number of standard metropolitan statistical areas to be determined by the Bureau, the annual percentage rates charged for representative types of nonsale credit by creditors in such areas. For the purpose of this section, the Bureau is authorized to require creditors in such areas to furnish information necessary for the Bureau to collect, publish, and disseminate such information.

### **(b) Credit card price and availability information**

#### **(1) Collection required**

The Bureau shall collect, on a semiannual basis, credit card price and availability information, including the information required to be disclosed under section 1637(c) of this title, from a broad sample of financial institutions which offer credit card services.

#### **(2) Sample requirements**

The broad sample of financial institutions required under paragraph (1) shall include—

(A) the 25 largest issuers of credit cards; and

(B) not less than 125 additional financial institutions selected by the Bureau in a manner that ensures—

(i) an equitable geographical distribution within the sample; and

(ii) the representation of a wide spectrum of institutions within the sample.

#### **(3) Report of information from sample**

Each financial institution in the broad sample established pursuant to paragraph (2) shall report the information to the Bureau in accordance with such regulations or orders as the Bureau may prescribe.

#### **(4) Public availability of collected information; report to Congress**

The Bureau shall—

(A) make the information collected pursuant to this subsection available to the public upon request; and

(B) report such information semiannually to Congress.

### **(c) Implementation**

The Bureau is authorized to enter into contracts or other arrangements with appropriate persons, organizations, or State agencies to carry out its functions under subsections (a) and (b) and to furnish financial assistance in support thereof.

(Pub. L. 90–321, title I, §136, as added Pub. L. 96–221, title VI, §618(a), Mar. 31, 1980, 94 Stat. 183; amended Pub. L. 100–583, §5, Nov. 3, 1988, 102 Stat. 2967; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

**1988**—Subsecs. (b), (c). Pub. L. 100–583 added subsec. (b), redesignated former subsec. (b) as (c), and substituted "subsections (a) and (b)" for "subsection (a)".

## **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**

Section effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as an Effective Date of 1980 Amendment note under section 1602 of this title.

## **§1647. Home equity plans**

### **(a) Index requirement**

In the case of extensions of credit under an open end consumer credit plan which are subject to a variable rate and are secured by a consumer's principal dwelling, the index or other rate of interest to which changes in the annual percentage rate are related shall be based on an index or rate of interest which is publicly available and is not under the control of the creditor.

### **(b) Grounds for acceleration of outstanding balance**

A creditor may not unilaterally terminate any account under an open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling and require the immediate repayment of any outstanding balance at such time, except in the case of—

- (1) fraud or material misrepresentation on the part of the consumer in connection with the account;
- (2) failure by the consumer to meet the repayment terms of the agreement for any outstanding balance; or
- (3) any other action or failure to act by the consumer which adversely affects the creditor's security for the account or any right of the creditor in such security.

This subsection does not apply to reverse mortgage transactions.

### **(c) Change in terms**

#### **(1) In general**

No open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling may contain a provision which permits a creditor to change unilaterally any term required to be disclosed under section 1637a(a) of this title or any other term, except a change in insignificant terms such as the address of the creditor for billing purposes.

#### **(2) Certain changes not precluded**

Notwithstanding the provisions of subsection <sup>1</sup>(1), a creditor may make any of the following changes:

(A) Change the index and margin applicable to extensions of credit under such plan if the index used by the creditor is no longer available and the substitute index and margin would result in a substantially similar interest rate.

(B) Prohibit additional extensions of credit or reduce the credit limit applicable to an account under the plan during any period in which the value of the consumer's principal dwelling which secures any outstanding balance is significantly less than the original appraisal value of the dwelling.



(C) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the creditor has reason to believe that the consumer will be unable to comply with the repayment requirements of the account due to a material change in the consumer's financial circumstances.

(D) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the consumer is in default with respect to any material obligation of the consumer under the agreement.

(E) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which—

(i) the creditor is precluded by government action from imposing the annual percentage rate provided for in the account agreement; or

(ii) any government action is in effect which adversely affects the priority of the creditor's security interest in the account to the extent that the value of the creditor's secured interest in the property is less than 120 percent of the amount of the credit limit applicable to the account.

(F) Any change that will benefit the consumer.

### **(3) Material obligations**

Upon the request of the consumer and at the time an agreement is entered into by a consumer to open an account under an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, the consumer shall be given a list of the categories of contract obligations which are deemed by the creditor to be material obligations of the consumer under the agreement for purposes of paragraph (2)(D).

### **(4) Consumer benefit**

#### **(A) In general**

For purposes of paragraph (2)(F), a change shall be deemed to benefit the consumer if the change is unequivocally beneficial to the borrower and the change is beneficial through the entire term of the agreement.

#### **(B) Bureau categorization**

The Bureau may, by regulation, determine categories of changes that benefit the consumer.

### **(d) Terms changed after application**

If any term or condition described in section 1637a(a) of this title which is disclosed to a consumer in connection with an application to open an account under an open end consumer credit plan described in such section (other than a variable feature of the plan) changes before the account is opened, and if, as a result of such change, the consumer elects not to enter into the plan agreement, the creditor shall refund all fees paid by the consumer in connection with such application.

### **(e) Additional requirements relating to refunds and imposition of nonrefundable fees**

#### **(1) In general**

No nonrefundable fee may be imposed by a creditor or any other person in connection with any application by a consumer to establish an account under any open end consumer credit plan which provides for extensions of credit which are secured by a consumer's principal dwelling before the end of the 3-day period beginning on the date such consumer receives the disclosure required under section 1637a(a) of this title and the pamphlet required under section 1637a(e) of this title with respect to such application.

#### **(2) Constructive receipt**

For purposes of determining when a nonrefundable fee may be imposed in accordance with this subsection if the disclosures and pamphlet referred to in paragraph (1) are mailed to the consumer, the date of the receipt of the disclosures by such consumer shall be deemed to be 3 business days after the date of mailing by the creditor.

(Pub. L. 90–321, title I, §137, as added Pub. L. 100–709, §3, Nov. 23, 1988, 102 Stat. 4731; amended Pub. L. 103–325, title I, §154(c), Sept. 23, 1994, 108 Stat. 2197; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Subsec. (c)(4)(B). Pub. L. 111–203 substituted "Bureau" for "Board" in heading and text.

**1994**—Subsec. (b). Pub. L. 103–325 inserted at end "This subsection does not apply to reverse mortgage transactions."

## 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

For effective date of section, see Regulations; Effective Date note below.

### REGULATIONS; EFFECTIVE DATE

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709 [enacting this section], and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set out as a note under section 1637a of this title.

<sup>1</sup> So in original. Probably should be "paragraph".

## §1648. Reverse mortgages

### (a) In general

In addition to the disclosures required under this subchapter, for each reverse mortgage, the creditor shall, not less than 3 days prior to consummation of the transaction, disclose to the consumer in conspicuous type a good faith estimate of the projected total cost of the mortgage to the consumer expressed as a table of annual interest rates. Each annual interest rate shall be based on a projected total future credit extension balance under a projected appreciation rate for the dwelling and a term for the mortgage. The disclosure shall include—

(1) statements of the annual interest rates for not less than 3 projected appreciation rates and not less than 3 credit transaction periods, as determined by the Bureau, including—

- (A) a short-term reverse mortgage;
- (B) a term equaling the actuarial life expectancy of the consumer; and
- (C) such longer term as the Bureau deems appropriate; and

(2) a statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosure required under this section or has signed an application for the reverse mortgage.

### (b) Projected total cost

In determining the projected total cost of the mortgage to be disclosed to the consumer under subsection (a), the creditor shall take into account—

- (1) any shared appreciation or equity that the lender will, by contract, be entitled to receive;
- (2) all costs and charges to the consumer, including the costs of any associated annuity that the consumer elects or is required to purchase as part of the reverse mortgage transaction;
- (3) all payments to and for the benefit of the consumer, including, in the case in which an

associated annuity is purchased (whether or not required by the lender as a condition of making the reverse mortgage), the annuity payments received by the consumer and financed from the proceeds of the loan, instead of the proceeds used to finance the annuity; and

(4) any limitation on the liability of the consumer under reverse mortgage transactions (such as nonrecourse limits and equity conservation agreements).

(Pub. L. 90–321, title I, §138, as added Pub. L. 103–325, title I, §154(b), Sept. 23, 1994, 108 Stat. 2196; amended Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2010**—Subsec. (a)(1). Pub. L. 111–203 substituted "Bureau" for "Board" in two places.

## **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.

## **§1649. Certain limitations on liability**

### **(a) Limitations on liability**

For any closed end consumer credit transaction that is secured by real property or a dwelling, that is subject to this subchapter, and that is consummated before September 30, 1995, a creditor or any assignee of a creditor shall have no civil, administrative, or criminal liability under this subchapter for, and a consumer shall have no extended rescission rights under section 1635(f) of this title with respect to—

(1) the creditor's treatment, for disclosure purposes, of—

(A) taxes described in section 1605(d)(3) of this title;

(B) fees described in section 1605(e)(2) and (5) of this title;

(C) fees and amounts referred to in the 3rd sentence of section 1605(a) of this title; or

(D) borrower-paid mortgage broker fees referred to in section 1605(a)(6) of this title;

(2) the form of written notice used by the creditor to inform the obligor of the rights of the obligor under section 1635 of this title if the creditor provided the obligor with a properly dated form of written notice published and adopted by the Bureau or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice; or

(3) any disclosure relating to the finance charge imposed with respect to the transaction if the amount or percentage actually disclosed—

(A) may be treated as accurate for purposes of this subchapter if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$200;

(B) may, under section 1605(f)(2) of this title, be treated as accurate for purposes of section 1635 of this title; or

(C) is greater than the amount or percentage required to be disclosed under this subchapter.

### **(b) Exceptions**

Subsection (a) shall not apply to—

(1) any individual action or counterclaim brought under this subchapter which was filed before June 1, 1995;

(2) any class action brought under this subchapter for which a final order certifying a class was entered before January 1, 1995;

(3) the named individual plaintiffs in any class action brought under this subchapter which was

filed before June 1, 1995; or

(4) any consumer credit transaction with respect to which a timely notice of rescission was sent to the creditor before June 1, 1995.

(Pub. L. 90–321, title I, §139, as added Pub. L. 104–29, §4(a), Sept. 30, 1995, 109 Stat. 273; amended Pub. L. 104–208, div. A, title II, §2107(a), Sept. 30, 1996, 110 Stat. 3009–402; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2010**—Subsec. (a)(2). Pub. L. 111–203 substituted "Bureau" for "Board".

**1996**—Subsec. (a). Pub. L. 104–208 substituted "For any closed end consumer credit transaction that is secured by real property or a dwelling, that is subject to this subchapter, and" for "For any consumer credit transaction subject to this subchapter".

## **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 OF 1996 AMENDMENT**

Pub. L. 104–208, div. A, title II, §2107(b), Sept. 30, 1996, 110 Stat. 3009–402, provided that: "The amendment made by subsection (a) [amending this section] shall be effective as of September 30, 1995."

## **§1650. Preventing unfair and deceptive private educational lending practices and eliminating conflicts of interest**

### **(a) Definitions**

As used in this section—

(1) the term "cosigner"—

(A) means any individual who is liable for the obligation of another without compensation, regardless of how designated in the contract or instrument with respect to that obligation, other than an obligation under a private education loan extended to consolidate a consumer's pre-existing private education loans;

(B) includes any person the signature of which is requested as condition to grant credit or to forbear on collection; and

(C) does not include a spouse of an individual described in subparagraph (A), the signature of whom is needed to perfect the security interest in a loan.

(2) the term "covered educational institution"—

(A) means any educational institution that offers a postsecondary educational degree, certificate, or program of study (including any institution of higher education); and

(B) includes an agent, officer, or employee of the educational institution;

(3) the term "gift"—

(A)(i) means any gratuity, favor, discount, entertainment, hospitality, loan, or other item having more than a de minimis monetary value, including services, transportation, lodging, or meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred; and

(ii) includes an item described in clause (i) provided to a family member of an officer, employee, or agent of a covered educational institution, or to any other individual based on that

individual's relationship with the officer, employee, or agent, if—

(I) the item is provided with the knowledge and acquiescence of the officer, employee, or agent; and

(II) the officer, employee, or agent has reason to believe the item was provided because of the official position of the officer, employee, or agent; and

(B) does not include—

(i) standard informational material related to a loan, default aversion, default prevention, or financial literacy;

(ii) food, refreshments, training, or informational material furnished to an officer, employee, or agent of a covered educational institution, as an integral part of a training session or through participation in an advisory council that is designed to improve the service of the private educational lender to the covered educational institution, if such training or participation contributes to the professional development of the officer, employee, or agent of the covered educational institution;

(iii) favorable terms, conditions, and borrower benefits on a private education loan provided to a student employed by the covered educational institution, if such terms, conditions, or benefits are not provided because of the student's employment with the covered educational institution;

(iv) the provision of financial literacy counseling or services, including counseling or services provided in coordination with a covered educational institution, to the extent that such counseling or services are not undertaken to secure—

(I) applications for private education loans or private education loan volume;

(II) applications or loan volume for any loan made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); or

(III) the purchase of a product or service of a specific private educational lender;

(v) philanthropic contributions to a covered educational institution from a private educational lender that are unrelated to private education loans and are not made in exchange for any advantage related to private education loans; or

(vi) State education grants, scholarships, or financial aid funds administered by or on behalf of a State;

(4) the term "institution of higher education" has the same meaning as in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);

(5) the term "postsecondary educational expenses" means any of the expenses that are included as part of the cost of attendance of a student, as defined under section 472 of the Higher Education Act of 1965 (20 U.S.C. 10871l);

(6) the term "preferred lender arrangement" has the same meaning as in section 151 of the Higher Education Act of 1965 [20 U.S.C. 1019];

(7) the term "private educational lender" means—

(A) a financial institution, as defined in section 1813 of title 12 that solicits, makes, or extends private education loans;

(B) a Federal credit union, as defined in section 1752 of title 12 that solicits, makes, or extends private education loans; and

(C) any other person engaged in the business of soliciting, making, or extending private education loans;

(8) the term "private education loan"—

(A) means a loan provided by a private educational lender that—

(i) is not made, insured, or guaranteed under of [1](#) title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.); and

(ii) is issued expressly for postsecondary educational expenses to a borrower, regardless of

whether the loan is provided through the educational institution that the subject student attends or directly to the borrower from the private educational lender; and

(B) does not include an extension of credit under an open end consumer credit plan, a reverse mortgage transaction, a residential mortgage transaction, or any other loan that is secured by real property or a dwelling; and

(9) the term "revenue sharing" means an arrangement between a covered educational institution and a private educational lender under which—

(A) a private educational lender provides or issues private education loans with respect to students attending the covered educational institution;

(B) the covered educational institution recommends to students or others the private educational lender or the private education loans of the private educational lender; and

(C) the private educational lender pays a fee or provides other material benefits, including profit sharing, to the covered educational institution in connection with the private education loans provided to students attending the covered educational institution or a borrower acting on behalf of a student.

**(b) Prohibition on certain gifts and arrangements**

A private educational lender may not, directly or indirectly—

(1) offer or provide any gift to a covered educational institution in exchange for any advantage or consideration provided to such private educational lender related to its private education loan activities; or

(2) engage in revenue sharing with a covered educational institution.

**(c) Prohibition on co-branding**

A private educational lender may not use the name, emblem, mascot, or logo of the covered educational institution, or other words, pictures, or symbols readily identified with the covered educational institution, in the marketing of private education loans in any way that implies that the covered educational institution endorses the private education loans offered by the private educational lender.

**(d) Advisory Board compensation**

Any person who is employed in the financial aid office of a covered educational institution, or who otherwise has responsibilities with respect to private education loans or other financial aid of the institution, and who serves on an advisory board, commission, or group established by a private educational lender or group of such lenders shall be prohibited from receiving anything of value from the private educational lender or group of lenders. Nothing in this subsection prohibits the reimbursement of reasonable expenses incurred by an employee of a covered educational institution as part of their service on an advisory board, commission, or group described in this subsection.

**(e) Prohibition on prepayment or repayment fees or penalty**

It shall be unlawful for any private educational lender to impose a fee or penalty on a borrower for early repayment or prepayment of any private education loan.

**(f) Credit card protections for college students**

**(1) Disclosure required**

An institution of higher education shall publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

**(2) Inducements prohibited**

No card issuer or creditor may offer to a student at an institution of higher education any tangible item to induce such student to apply for or participate in an open end consumer credit plan offered by such card issuer or creditor, if such offer is made—

(A) on the campus of an institution of higher education;

(B) near the campus of an institution of higher education, as determined by rule of the Bureau; or

(C) at an event sponsored by or related to an institution of higher education.

**(3) Sense of the Congress**

It is the sense of the Congress that each institution of higher education should consider adopting the following policies relating to credit cards:

(A) That any card issuer that markets a credit card on the campus of such institution notify the institution of the location at which such marketing will take place.

(B) That the number of locations on the campus of such institution at which the marketing of credit cards takes place be limited.

(C) That credit card and debt education and counseling sessions be offered as a regular part of any orientation program for new students of such institution.

**(g) Additional protections relating to borrower or cosigner of a private education loan**

**(1) Prohibition on automatic default in case of death or bankruptcy of non-student obligor**

With respect to a private education loan involving a student obligor and 1 or more cosigners, the creditor shall not declare a default or accelerate the debt against the student obligor on the sole basis of a bankruptcy or death of a cosigner.

**(2) Cosigner release in case of death of borrower**

**(A) Release of cosigner**

The holder of a private education loan, when notified of the death of a student obligor, shall release within a reasonable timeframe any cosigner from the obligations of the cosigner under the private education loan.

**(B) Notification of release**

A holder or servicer of a private education loan, as applicable, shall within a reasonable time-frame notify any cosigners for the private education loan if a cosigner is released from the obligations of the cosigner for the private education loan under this paragraph.

**(C) Designation of individual to act on behalf of the borrower**

Any lender that extends a private education loan shall provide the student obligor an option to designate an individual to have the legal authority to act on behalf of the student obligor with respect to the private education loan in the event of the death of the student obligor.

(Pub. L. 90–321, title I, §140, as added Pub. L. 110–315, title X, §1011(a), Aug. 14, 2008, 122 Stat. 3479; amended Pub. L. 111–24, title III, §304, May 22, 2009, 123 Stat. 1749; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107; Pub. L. 115–174, title VI, §601(a), May 24, 2018, 132 Stat. 1365.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

The Higher Education Act of 1965, referred to in subsec. (a)(3)(B)(iv)(II), (8)(A)(i), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219. Title IV of the Act is classified generally to subchapter IV (§1070 et seq.) 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**

**2018**—Subsec. (a). Pub. L. 115–174, §601(a)(1), added par. (1) and redesignated former pars. (1) to (8) as (2) to (9), respectively.

Subsec. (g). Pub. L. 115–174, §601(a)(2), added subsec. (g).

**2010**—Subsec. (f)(2)(B). Pub. L. 111–203 substituted "Bureau" for "Board".

**2009**—Subsec. (f). Pub. L. 111–24 added subsec. (f).

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–174, title VI, §601(b), May 24, 2018, 132 Stat. 1365, provided that: "The amendments made by subsection (a) [amending this section] shall only apply to private education loan agreements entered into on or after the date that is 180 days after the date of enactment of this Act [May 24, 2018]."

### 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 OF 2009 AMENDMENT

Amendment by Pub. L. 111–24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as a note under section 1602 of this title.

### EFFECTIVE DATE

Subsec. (c) of this section effective on the earlier of the date on which regulations issued under section 1002 of Pub. L. 110–315 (set out as a Regulations note under section 1638 of this title) become effective or 18 months after Aug. 14, 2008, see section 1003(b) of Pub. L. 110–315, set out as an Effective Date of 2008 Amendment note under section 1638 of this title. Such regulations were issued effective Sept. 14, 2009, with compliance optional until Feb. 14, 2010.

*<sup>1</sup> So in original. The word "of" probably should not appear.*

## §1651. Procedure for timely settlement of estates of decedent obligors

The Bureau, in consultation with the Bureau <sup>1</sup> and each other agency referred to in section 1607(a) of this title, shall prescribe regulations to require any creditor, with respect to any credit card account under an open end consumer credit plan, to establish procedures to ensure that any administrator of an estate of any deceased obligor with respect to such account can resolve outstanding credit balances in a timely manner.

(Pub. L. 90–321, title I, §140A, as added Pub. L. 111–24, title V, §504(a), May 22, 2009, 123 Stat. 1756; amended Pub. L. 111–203, title X, §1100A(2), (3), July 21, 2010, 124 Stat. 2107.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Pub. L. 111–203, §1100A(3), substituted "the Bureau" for "the Federal Trade Commission".  
Pub. L. 111–203, §1100A(2), substituted "The Bureau" for "The Board".

## 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

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

*<sup>1</sup> So in original.*

## PART C—CREDIT ADVERTISING AND LIMITS ON CREDIT CARD FEES



## **§1661. Catalogs and multiple-page advertisements**

For the purposes of this part, a catalog or other multiple-page advertisement shall be considered a single advertisement if it clearly and conspicuously displays a credit terms table on which the information required to be stated under this part is clearly set forth.

(Pub. L. 90–321, title I, §141, May 29, 1968, 82 Stat. 158.)

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE**

Pub. L. 90–321, title V, §504(b), May 29, 1968, 82 Stat. 167, provided that chapter 3 of title I, which enacted sections 1661 to 1665 of this title, is effective July 1, 1969.

## **§1662. Advertising of downpayments and installments**

No advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit may state

(1) that a specific periodic consumer credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount.

(2) that a specified downpayment is required in connection with any extension of consumer credit, unless the creditor usually and customarily arranges downpayments in that amount.

(Pub. L. 90–321, title I, §142, May 29, 1968, 82 Stat. 158.)

## **§1663. Advertising of open end credit plans**

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open end credit plan may set forth any of the specific terms of that plan unless it also clearly and conspicuously sets forth all of the following items:

(1) Any minimum or fixed amount which could be imposed.

(2) In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(3) Any other term that the Bureau may by regulation require to be disclosed.

(Pub. L. 90–321, title I, §143, May 29, 1968, 82 Stat. 158; Pub. L. 96–221, title VI, §§613(f), 619(a), Mar. 31, 1980, 94 Stat. 177, 183; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

### **EDITORIAL NOTES**

#### **AMENDMENTS**

**2010**—Par. (3). Pub. L. 111–203 substituted "Bureau" for "Board".

**1980**—Pub. L. 96–221 in existing introductory text struck out applicability of rate determined under section 1637(a)(5) of this title, and amended section generally substituting items setting forth minimum or fixed amount, etc., set out in pars. (1) to (3), for items time period, etc., set out in pars. (1) to (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.

## EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

### **§1664. Advertising of credit other than open end plans**

#### **(a) Exclusion of open end credit plans**

Except as provided in subsection (b), this section applies to any advertisement to aid, promote, or assist directly or indirectly any consumer credit sale, loan, or other extension of credit subject to the provisions of this subchapter, other than an open end credit plan.

#### **(b) Advertisements of residential real estate**

The provisions of this section do not apply to advertisements of residential real estate except to the extent that the Bureau may by regulation require.

#### **(c) Rate of finance charge expressed as annual percentage rate**

If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

#### **(d) Requisite disclosures in advertisement**

If any advertisement to which this section applies states the amount of the downpayment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

- (1) The downpayment, if any.
- (2) The terms of repayment.
- (3) The rate of the finance charge expressed as an annual percentage rate.

#### **(e) Credit transaction secured by principal dwelling of consumer**

Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

- (1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and
- (2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(Pub. L. 90–321, title I, §144, May 29, 1968, 82 Stat. 158; Pub. L. 96–221, title VI, §619(b), Mar. 31, 1980, 94 Stat. 183; Pub. L. 109–8, title XIII, §1302(b)(2), Apr. 20, 2005, 119 Stat. 209; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Subsec. (b). Pub. L. 111–203 substituted "Bureau" for "Board".

**2005**—Subsec. (e). Pub. L. 109–8 added subsec. (e).

**1980**—Subsec. (d). Pub. L. 97–221 substituted items setting forth downpayment, etc., set out in pars. (1) to (3), for items setting forth cash price or amount of loan, etc., set out in pars. (1) to (4).

## 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 OF 2005 AMENDMENT**

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

#### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

### **§1665. Nonliability of advertising media**

There is no liability under this part on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(Pub. L. 90–321, title I, §145, May 29, 1968, 82 Stat. 159.)

### **§1665a. Use of annual percentage rate in oral disclosures; exceptions**

In responding orally to any inquiry about the cost of credit, a creditor, regardless of the method used to compute finance charges, shall state rates only in terms of the annual percentage rate, except that in the case of an open end credit plan, the periodic rate also may be stated and, in the case of an other than open end credit plan where a major component of the finance charge consists of interest computed at a simple annual rate, the simple annual rate also may be stated. The Bureau may, by regulation, modify the requirements of this section or provide an exception from this section for a transaction or class of transactions for which the creditor cannot determine in advance the applicable annual percentage rate.

(Pub. L. 90–321, title I, §146, as added Pub. L. 93–495, title IV, §401(a), Oct. 28, 1974, 88 Stat. 1517; amended Pub. L. 96–221, title VI, §623(a), Mar. 31, 1980, 94 Stat. 185; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

#### **EDITORIAL NOTES**

##### **AMENDMENTS**

**2010**—Pub. L. 111–203 substituted "Bureau" for "Board".

**1980**—Pub. L. 96–221 substituted provisions relating to use of annual percentage rate in oral disclosures by creditors, for provisions setting forth requirements for advertisements concerning consumer credit repayable in more than four installments.

#### **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 OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the

regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96-221, set out as a note under section 1602 of this title.

#### **EFFECTIVE DATE**

Pub. L. 93-495, title IV, §416, Oct. 28, 1974, 88 Stat. 1521, provided that: "This title [enacting this section and sections 1614 and 1645 of this title, amending sections 1603, 1607, 1635, 1637, 1640, and 1644 of this title, and enacting provision set out as a note under section 1640 of this title] takes effect upon the date of its enactment [Oct. 28, 1974], except that sections 409 [amending section 1631 of this title] and 411 [amending section 1637 of this title] take effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]."

### **§1665b. Advertising of open end consumer credit plans secured by consumer's principal dwelling**

#### **(a) In general**

If any advertisement to aid, promote, or assist, directly or indirectly, the extension of consumer credit through an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling states, affirmatively or negatively, any of the specific terms of the plan, including any periodic payment amount required under such plan, such advertisement shall also clearly and conspicuously set forth the following information, in such form and manner as the Bureau may require:

##### **(1) Loan fees and opening cost estimates**

Any loan fee the amount of which is determined as a percentage of the credit limit applicable to an account under the plan and an estimate of the aggregate amount of other fees for opening the account, based on the creditor's experience with the plan and stated as a single amount or as a reasonable range.

##### **(2) Periodic rates**

In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as an annual percentage rate.

##### **(3) Highest annual percentage rate**

The highest annual percentage rate which may be imposed under the plan.

##### **(4) Other information**

Any other information the Bureau may by regulation require.

#### **(b) Tax deductibility**

##### **(1) In general**

If any advertisement described in subsection (a) contains a statement that any interest expense incurred with respect to the plan is or may be tax deductible, the advertisement shall not be misleading with respect to such deductibility.

##### **(2) Credit in excess of fair market value**

Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

#### **(c) Certain terms prohibited**

No advertisement described in subsection (a) with respect to any home equity account may refer to

such loan as "free money" or use other terms determined by the Bureau by regulation to be misleading.

**(d) Discounted initial rate**

**(1) In general**

If any advertisement described in subsection (a) includes an initial annual percentage rate that is not determined by the index or formula used to make later interest rate adjustments, the advertisement shall also state with equal prominence the current annual percentage rate that would have been applied using the index or formula if such initial rate had not been offered.

**(2) Quoted rate must be reasonably current**

The annual percentage rate required to be disclosed under the paragraph (1) rate must be current as of a reasonable time given the media involved.

**(3) Period during which initial rate is in effect**

Any advertisement to which paragraph (1) applies shall also state the period of time during which the initial annual percentage rate referred to in such paragraph will be in effect.

**(e) Balloon payment**

If any advertisement described in subsection (a) contains a statement regarding the minimum monthly payment under the plan, the advertisement shall also disclose, if applicable, the fact that the plan includes a balloon payment.

**(f) "Balloon payment" defined**

For purposes of this section and section 1637a of this title, the term "balloon payment" means, with respect to any open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, any repayment option under which—

(1) the account holder is required to repay the entire amount of any outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the agreement pursuant to which such credit is extended; and

(2) the aggregate amount of the minimum periodic payments required would not fully amortize such outstanding balance by such date or at the end of such period.

(Pub. L. 90–321, title I, §147, as added Pub. L. 100–709, §2(c), Nov. 23, 1988, 102 Stat. 4730; amended Pub. L. 109–8, title XIII, §1302(a)(2), Apr. 20, 2005, 119 Stat. 208; Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2010**—Subsecs. (a), (c). Pub. L. 111–203 substituted "Bureau" for "Board" wherever appearing.

**2005**—Subsec. (b). Pub. L. 109–8 designated existing provisions as par. (1), inserted par. heading, and added par. (2).

**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 OF 2005 AMENDMENT**

Amendment by Pub. L. 109–8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109–8, set out as a note under section 101 of Title 11.

**EFFECTIVE DATE**

For effective date of section, see Regulations; Effective Date note below.

## REGULATIONS; EFFECTIVE DATE

For provisions relating to promulgation of regulations to implement amendment by Pub. L. 100–709 [enacting this section], and effective date of such amendment in connection with those regulations, see section 7 of Pub. L. 100–709, set out as a note under section 1637a of this title.

### §1665c. Interest rate reduction on open end consumer credit plans

#### (a) In general

If a creditor increases the annual percentage rate applicable to a credit card account under an open end consumer credit plan, based on factors including the credit risk of the obligor, market conditions, or other factors, the creditor shall consider changes in such factors in subsequently determining whether to reduce the annual percentage rate for such obligor.

#### (b) Requirements

With respect to any credit card account under an open end consumer credit plan, the creditor shall—

- (1) maintain reasonable methodologies for assessing the factors described in subsection (a);
- (2) not less frequently than once every 6 months, review accounts as to which the annual percentage rate has been increased since January 1, 2009, to assess whether such factors have changed (including whether any risk has declined);
- (3) reduce the annual percentage rate previously increased when a reduction is indicated by the review; and
- (4) in the event of an increase in the annual percentage rate, provide in the written notice required under section 1637(i) of this title a statement of the reasons for the increase.

#### (c) Rule of construction

This section shall not be construed to require a reduction in any specific amount.

#### (d) Rulemaking

The Bureau <sup>1</sup> shall issue final rules not later than 9 months after May 22, 2009, to implement the requirements of and evaluate compliance with this section, and subsections (a), (b), and (c) shall become effective 15 months after May 22, 2009.

(Pub. L. 90–321, title I, §148, as added Pub. L. 111–24, title I, §101(c), May 22, 2009, 123 Stat. 1737; amended Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Subsec. (d). Pub. L. 111–203 substituted "Bureau" for "Board".

## 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

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

<sup>1</sup> *So in original. Probably should be "Board".*

## **§1665d. Reasonable penalty fees on open end consumer credit plans**

### **(a) In general**

The amount of any penalty fee or charge that a card issuer may impose with respect to a credit card account under an open end consumer credit plan in connection with any omission with respect to, or violation of, the cardholder agreement, including any late payment fee, over-the-limit fee, or any other penalty fee or charge, shall be reasonable and proportional to such omission or violation.

### **(b) Rulemaking required**

The Bureau, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, shall issue final rules not later than 9 months after May 22, 2009, to establish standards for assessing whether the amount of any penalty fee or charge described under subsection (a) is reasonable and proportional to the omission or violation to which the fee or charge relates. Subsection (a) shall become effective 15 months after May 22, 2009.

### **(c) Considerations**

In issuing rules required by this section, the Bureau shall consider—

- (1) the cost incurred by the creditor from such omission or violation;
- (2) the deterrence of such omission or violation by the cardholder;
- (3) the conduct of the cardholder; and
- (4) such other factors as the Bureau may deem necessary or appropriate.

### **(d) Differentiation permitted**

In issuing rules required by this subsection, the Bureau may establish different standards for different types of fees and charges, as appropriate.

### **(e) Safe harbor rule authorized**

The Bureau, in consultation with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, and the National Credit Union Administration Board, may issue rules to provide an amount for any penalty fee or charge described under subsection (a) that is presumed to be reasonable and proportional to the omission or violation to which the fee or charge relates.

(Pub. L. 90–321, title I, §149, as added Pub. L. 111–24, title I, §102(b)(1), May 22, 2009, 123 Stat. 1740; amended Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2010**—Subsecs. (b) to (e). Pub. L. 111–203, §1100A(2), which directed amendment of this section by substituting "Bureau" for "Board" wherever appearing, was executed by making the substitution for "Board" the first time appearing in subsecs. (b) and (e), and wherever appearing in subsecs. (c) and (d), to reflect the probable intent of Congress.

## **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**

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

### **§1665e. Consideration of ability to repay**

A card issuer may not open any credit card account for any consumer under an open end consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the ability of the consumer to make the required payments under the terms of such account.

(Pub. L. 90–321, title I, §150, as added Pub. L. 111–24, title I, §109(a), May 22, 2009, 123 Stat. 1743.)

## **STATUTORY NOTES AND RELATED SUBSIDIARIES**

### **EFFECTIVE DATE**

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

## **PART D—CREDIT BILLING**

### **§1666. Correction of billing errors**

#### **(a) Written notice by obligor to creditor; time for and contents of notice; procedure upon receipt of notice by creditor**

If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 1637(b)(10) of this title a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 1637(a)(7) of this title) from the obligor in which the obligor—

- (1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,
- (2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and
- (3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

(A) not later than thirty days after the receipt of the notice, send a written acknowledgment thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the



transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

**(b) Billing error**

For the purpose of this section, a "billing error" consists of any of the following:

(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.

(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.

(4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.

(5) A computation error or similar error of an accounting nature of the creditor on a statement.

(6) Failure to transmit the statement required under section 1637(b) of this title to the last address of the obligor which has been disclosed to the creditor, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(7) Any other error described in regulations of the Bureau.

**(c) Action by creditor to collect amount or any part thereof regarded by obligor to be a billing error**

For the purposes of this section, "action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)" does not include the sending of statements of account, which may include finance charges on amounts in dispute, to the obligor following written notice from the obligor as specified under subsection (a), if—

(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a), and

(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section.

Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

**(d) Restricting or closing by creditor of account regarded by obligor to contain a billing error**

Pursuant to regulations of the Bureau, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

**(e) Effect of noncompliance with requirements by creditor**

Any creditor who fails to comply with the requirements of this section or section 1666a of this title forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed \$50.

(Pub. L. 90-321, title I, §161, as added Pub. L. 93-495, title III, §306, Oct. 28, 1974, 88 Stat. 1512; amended Pub. L. 96-221, title VI §§613(g), 620, Mar. 31, 1980, 94 Stat. 177, 184; Pub. L. 111-203, title X, §§1087, 1100A(2), July 21, 2010, 124 Stat. 2086, 2107.)

## EDITORIAL NOTES

### CODIFICATION

Pub L. 111–203, §1100A(2), which directed the substitution of "Bureau" for "Board" wherever appearing in title I of Pub. L. 90–321, was executed to this section, which is section 161 of title I of Pub. L. 90–321. Section 1087 of Pub. L. 111–203, which directed the making of an identical amendment in title III of Pub. L. 93–495, which added this section to title I of Pub. L. 90–321, has not been executed.

### AMENDMENTS

**2010**—Subsecs. (b)(7), (d). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board". See Codification note above.

**1980**—Subsec. (a). Pub. L. 96–221, §613(g), substituted "(b)(10)" for "(b)(11)" and "(a)(7)" for "(a)(8)".

Subsec. (b)(6), (7). Pub. L. 96–221, §620(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (c). Pub. L. 96–221, §620(b), inserted provisions respecting finance charges on amounts in dispute.

## 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 OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

### EFFECTIVE DATE

Pub. L. 93–495, title III, §308, Oct. 28, 1974, 88 Stat. 1517, provided that: "This title [enacting this section and sections 1666a to 1666j of this title, amending sections 1601, 1602, 1610, 1631, 1632, and 1637 of this title, and enacting provision set out as a note under section 1601 of this title] takes effect upon the expiration of one year after the date of its enactment [Oct. 28, 1974]."

### SHORT TITLE

Title III of Pub. L. 93–495, which is classified principally to this part, is known as the "Fair Credit Billing Act". For complete classification of Title III to the Code, see Short Title of 1974 Amendment note set out under section 1601 of this title and Tables.

## **§1666a. Regulation of credit reports**

### **(a) Reports by creditor on obligor's failure to pay amount regarded as billing error**

After receiving a notice from an obligor as provided in section 1666(a) of this title, a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 1666(a)(2) of this title, and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 1666 of this title and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

### **(b) Reports by creditor on delinquent amounts in dispute; notification of obligor of parties notified of delinquency**

If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an

amount which he has indicated under section 1666(a)(2) of this title, unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

**(c) Reports by creditor of subsequent resolution of delinquent amounts**

A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) to the parties to whom such delinquencies were initially reported.

(Pub. L. 90–321, title I, §162, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1513.)

**§1666b. Timing of payments**

**(a) Time to make payments**

A creditor may not treat a payment on a credit card account under an open end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement including the information required by section 1637(b) of this title is mailed or delivered to the consumer not later than 21 days before the payment due date.

**(b) Grace period**

If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part, unless a statement which includes the amount upon which the finance charge for the period is based was mailed or delivered to the consumer not later than 21 days before the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

(Pub. L. 90–321, title I, §163, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1514; amended Pub. L. 111–24, title I, §106(b)(1), May 22, 2009, 123 Stat. 1742; Pub. L. 111–93, §2, Nov. 6, 2009, 123 Stat. 2998.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2009**—Pub. L. 111–24 amended section generally, adding provisions relating to late payments and delivery of periodic statements, substituting provisions requiring a 21-day statement delivery period for provisions requiring a 14-day period before the imposition of additional finance charges, and striking provisions relating to excusable cause for creditor's failure to make timely mailing or delivery of periodic statements.

Subsec. (a). Pub. L. 111–93 inserted "a credit card account under" after "payment on".

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Pub. L. 111–24, title I, §106(b)(2), May 22, 2009, 123 Stat. 1742, provided that: "Notwithstanding section 3 [see Effective Date of 2009 Amendment note set out under section 1602 of this title], section 163 of the Truth in Lending Act [15 U.S.C. 1666b], as amended by this subsection, shall become effective 90 days after the date of enactment of this Act [May 22, 2009]."

**§1666c. Prompt and fair crediting of payments**

**(a) In general**

Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Bureau. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has

received the obligor's payment in readily identifiable form, by 5:00 p.m. on the date on which such payment is due, in the amount, manner, and location indicated by the creditor to avoid the imposition thereof.

**(b) Application of payments**

**(1) In general**

Upon receipt of a payment from a cardholder, the card issuer shall apply amounts in excess of the minimum payment amount first to the card balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.

**(2) Clarification relating to certain deferred interest arrangements**

A creditor shall allocate the entire amount paid by the consumer in excess of the minimum payment amount to a balance on which interest is deferred during the last 2 billing cycles immediately preceding the expiration of the period during which interest is deferred.

**(c) Changes by card issuer**

If a card issuer makes a material change in the mailing address, office, or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a cardholder payment made during the 60-day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account to which such payment was credited.

(Pub. L. 90–321, title I, §164, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1514; amended Pub. L. 111–24, title I, §104, May 22, 2009, 123 Stat. 1741; Pub. L. 111–203, title X, §§1087, 1100A(2), July 21, 2010, 124 Stat. 2086, 2107.)

**EDITORIAL NOTES**

**CODIFICATION**

Pub L. 111–203, §1100A(2), which directed the substitution of "Bureau" for "Board" wherever appearing in title I of Pub. L. 90–321, was executed to this section, which is section 164 of title I of Pub. L. 90–321. Section 1087 of Pub. L. 111–203, which directed the making of an identical amendment in title III of Pub. L. 93–495, which added this section to title I of Pub. L. 90–321, has not been executed.

**AMENDMENTS**

**2010**—Subsec. (a). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board". See Codification note above.

**2009**—Pub. L. 111–24, §104(1), substituted "Prompt and fair crediting of payments" for "Prompt crediting of payments" in section catchline, designated existing provisions as subsec. (a), and inserted subsec. (a) heading.

Subsec. (a). Pub. L. 111–24, §104(2), (3), inserted ", by 5:00 p.m. on the date on which such payment is due," after "in readily identifiable form" and substituted "manner, and location" for "manner, location, and time".

Subsecs. (b), (c). Pub. L. 111–24, §104(4), added subsecs. (b) and (c).

**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 OF 2009 AMENDMENT**

Amendment by Pub. L. 111–24 effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as a note under section 1602 of this title.

### **§1666d. Treatment of credit balances**

Whenever a credit balance in excess of \$1 is created in connection with a consumer credit transaction through (1) transmittal of funds to a creditor in excess of the total balance due on an account, (2) rebates of unearned finance charges or insurance premiums, or (3) amounts otherwise owed to or held for the benefit of an obligor, the creditor shall—

(A) credit the amount of the credit balance to the consumer's account;

(B) refund any part of the amount of the remaining credit balance, upon request of the consumer; and

(C) make a good faith effort to refund to the consumer by cash, check, or money order any part of the amount of the credit balance remaining in the account for more than six months, except that no further action is required in any case in which the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number.

(Pub. L. 90–321, title I, §165, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1514; amended Pub. L. 96–221, title VI, §621(a), Mar. 31, 1980, 94 Stat. 184.)

### **EDITORIAL NOTES**

#### **AMENDMENTS**

**1980**—Pub. L. 96–221 substituted provisions relating to duties of creditor whenever a credit balance in excess of \$1 is created in connection with a consumer credit transaction, for provisions relating to duties of creditor whenever an obligor transmits funds to creditor in excess of the total balance due on an open end consumer credit account.

### **STATUTORY NOTES AND RELATED SUBSIDIARIES**

#### **EFFECTIVE DATE OF 1980 AMENDMENT**

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

### **§1666e. Notification of credit card issuer by seller of return of goods, etc., by obligor; credit for account of obligor**

With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

(Pub. L. 90–321, title I, §166, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1514.)

### **§1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; finance charge for sales transactions involving cash discounts**

#### **(a) Cash discounts**

With respect to credit <sup>1</sup> card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder

to pay by cash, check, or similar means rather than use a credit card.

**(b) Finance charge**

With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means not involving the use of an open-end credit plan or a credit card shall not constitute a finance charge as determined under section 1605 of this title if such discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously.

(Pub. L. 90-321, title I, §167, as added Pub. L. 93-495, title III, §306, Oct. 28, 1974, 88 Stat. 1515; amended Pub. L. 94-222, §3(c)(1), Feb. 27, 1976, 90 Stat. 197; Pub. L. 97-25, title I, §101, July 27, 1981, 95 Stat. 144.)

**EDITORIAL NOTES**

**AMENDMENTS**

**1981**—Subsec. (b). Pub. L. 97-25 substituted "With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means not involving the use of an open-end credit plan or a credit card shall not constitute a finance charge as determined under section 1605 of this title if such discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously" for "With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 1605 of this title, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board".

**1976**—Subsec. (a). Pub. L. 94-222 temporarily designated existing provisions as par. (1) and added par. (2). See Termination Date of 1976 Amendment note below.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**TERMINATION DATE OF 1976 AMENDMENT**

Section 3(c)(2) of Pub. L. 94-222, as amended by Pub. L. 95-630, title XV, §1501, Nov. 10, 1978, 92 Stat. 3713; Pub. L. 97-25, title II, §201, July 27, 1981, 95 Stat. 44, provided that: "The amendments made by paragraph (1) [amending this section] shall cease to be effective on February 27, 1984."

**NULLIFICATION OF BOARD RULES AND REGULATIONS UNDER SUBSECTION (B) OF THIS SECTION IN EFFECT ON JULY 26, 1981**

Pub. L. 97-25, title I, §103, July 27, 1981, 95 Stat. 144, provided that: "Any rule or regulation of the Board of Governors of the Federal Reserve System pursuant to section 167(b) of the Truth in Lending Act [subsec. (b) of this section], as such section was in effect on the day before the date of enactment of this Act [July 27, 1981], is null and void."

*<sup>1</sup> So in original. Probably should be preceded by "a".*

**§1666g. Tie-in services prohibited for issuance of credit card**

Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

(Pub. L. 90-321, title I, §168, as added Pub. L. 93-495, title III, §306, Oct. 28, 1974, 88 Stat. 1515.)

**§1666h. Offset of cardholder's indebtedness by issuer of credit card with funds deposited with issuer by cardholder; remedies of creditors under State law**

**not affected**

**(a) Offset against consumer's funds**

A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

(2) such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

In the case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

**(b) Attachments and levies**

This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

(Pub. L. 90-321, title I, §169, as added Pub. L. 93-495, title III, §306, Oct. 28, 1974, 88 Stat. 1515.)

**EDITORIAL NOTES**

**REFERENCES IN TEXT**

For effective date of this section, referred to in subsec. (a), see Effective Date note set out under section 1666 of this title.

**§1666i. Assertion by cardholder against card issuer of claims and defenses arising out of credit card transaction; prerequisites; limitation on amount of claims or defenses**

**(a) Claims and defenses assertible**

Subject to the limitation contained in subsection (b), a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial transaction exceeds \$50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by

the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

**(b) Amount of claims and defenses assertible**

The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

(Pub. L. 90-321, title I, §170, as added Pub. L. 93-495, title III, §306, Oct. 28, 1974, 88 Stat. 1515.)

**§1666i-1. Limits on interest rate, fee, and finance charge increases applicable to outstanding balances**

**(a) In general**

In the case of any credit card account under an open end consumer credit plan, no creditor may increase any annual percentage rate, fee, or finance charge applicable to any outstanding balance, except as permitted under subsection (b).

**(b) Exceptions**

The prohibition under subsection (a) shall not apply to—

(1) an increase in an annual percentage rate upon the expiration of a specified period of time, provided that—

(A) prior to commencement of that period, the creditor disclosed to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period;

(B) the increased annual percentage rate does not exceed the rate disclosed pursuant to subparagraph (A); and

(C) the increased annual percentage rate is not applied to transactions that occurred prior to commencement of the period;

(2) an increase in a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public;

(3) an increase due to the completion of a workout or temporary hardship arrangement by the obligor or the failure of the obligor to comply with the terms of a workout or temporary hardship arrangement, provided that—

(A) the annual percentage rate, fee, or finance charge applicable to a category of transactions following any such increase does not exceed the rate, fee, or finance charge that applied to that category of transactions prior to commencement of the arrangement; and

(B) the creditor has provided the obligor, prior to the commencement of such arrangement, with clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure); or

(4) an increase due solely to the fact that a minimum payment by the obligor has not been received by the creditor within 60 days after the due date for such payment, provided that the creditor shall—

(A) include, together with the notice of such increase required under section 1637(i) of this title, a clear and conspicuous written statement of the reason for the increase and that the increase will terminate not later than 6 months after the date on which it is imposed, if the



creditor receives the required minimum payments on time from the obligor during that period; and

(B) terminate such increase not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period.

**(c) Repayment of outstanding balance**

**(1) In general**

The creditor shall not change the terms governing the repayment of any outstanding balance, except that the creditor may provide the obligor with one of the methods described in paragraph (2) of repaying any outstanding balance, or a method that is no less beneficial to the obligor than one of those methods.

**(2) Methods**

The methods described in this paragraph are—

(A) an amortization period of not less than 5 years, beginning on the effective date of the increase set forth in the notice required under section 1637(i) of this title; or

(B) a required minimum periodic payment that includes a percentage of the outstanding balance that is equal to not more than twice the percentage required before the effective date of the increase set forth in the notice required under section 1637(i) of this title.

**(d) Outstanding balance defined**

For purposes of this section, the term "outstanding balance" means the amount owed on a credit card account under an open end consumer credit plan as of the end of the 14th day after the date on which the creditor provides notice of an increase in the annual percentage rate, fee, or finance charge in accordance with section 1637(i) of this title.

(Pub. L. 90–321, title I, §171, as added Pub. L. 111–24, title I, §101(b)(2), May 22, 2009, 123 Stat. 1736.)

**EDITORIAL NOTES**

**PRIOR PROVISIONS**

A prior section 171 of Pub. L. 90–321 was renumbered section 173 and is classified to section 1666j of this title.

**STATUTORY NOTES AND RELATED SUBSIDIARIES**

**EFFECTIVE DATE**

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

**§1666i–2. Additional limits on interest rate increases**

**(a) Limitation on increases within first year**

Except in the case of an increase described in paragraph (1), (2), (3), or (4) of section 1666i–1(b) of this title, no increase in any annual percentage rate, fee, or finance charge on any credit card account under an open end consumer credit plan shall be effective before the end of the 1-year period beginning on the date on which the account is opened.

**(b) Promotional rate minimum term**

No increase in any annual percentage rate applicable to a credit card account under an open end consumer credit plan that is a promotional rate (as that term is defined by the Bureau) shall be effective before the end of the 6-month period beginning on the date on which the promotional rate takes effect, subject to such reasonable exceptions as the Bureau may establish, by rule.

(Pub. L. 90–321, title I, §172, as added Pub. L. 111–24, title I, §101(d), May 22, 2009, 123 Stat. 1738; amended Pub. L. 111–203, title X, §1100A(2), July 21, 2010, 124 Stat. 2107.)

## **EDITORIAL NOTES**

### **AMENDMENTS**

**2010**—Subsec. (b). Pub. L. 111–203 substituted "Bureau" for "Board" in two places.

## **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**

Section effective 9 months after May 22, 2009, except as otherwise specifically provided, see section 3 of Pub. L. 111–24, set out as an Effective Date of 2009 Amendment note under section 1602 of this title.

## **§1666j. Applicability of State laws**

### **(a) Consistency of provisions**

This part does not annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with, the laws of any State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this part, and then only to the extent of the inconsistency. The Bureau is authorized to determine whether such inconsistencies exist. The Bureau may not determine that any State law is inconsistent with any provision of this part if the Bureau determines that such law gives greater protection to the consumer.

### **(b) Exemptions by Bureau from credit billing requirements**

The Bureau shall by regulation exempt from the requirements of this part any class of credit 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 part or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

### **(c) Finance charge or other charge for credit for sales transactions involving cash discounts**

Notwithstanding any other provisions of this subchapter, any discount offered under section 1666f(b) of this title shall not be considered a finance charge or other charge for credit under the usury laws of any State or under the laws of any State relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element or elements of charges permissible under such laws in connection with the extension or use of credit.

(Pub. L. 90–321, title I, §173, formerly §171, as added Pub. L. 93–495, title III, §306, Oct. 28, 1974, 88 Stat. 1516; amended Pub. L. 94–222, §3(d), Feb. 27, 1976, 90 Stat. 198; renumbered §173, Pub. L. 111–24, title I, §101(b)(1), May 22, 2009, 123 Stat. 1736; Pub. L. 111–203, title X, §§1087, 1100A(2), July 21, 2010, 124 Stat. 2086, 2107.)

## **EDITORIAL NOTES**

### **CODIFICATION**

Pub L. 111–203, §1100A(2), which directed the substitution of "Bureau" for "Board" wherever appearing in title I of Pub. L. 90–321, was executed to this section, which is section 173 of title I of Pub. L. 90–321. Section 1087 of Pub. L. 111–203, which directed the making of an identical amendment in title III of Pub. L. 93–495, which added this section to title I of Pub. L. 90–321, has not been executed.

## AMENDMENTS

**2010**—Subsecs. (a), (b). Pub. L. 111–203, §1100A(2), substituted "Bureau" for "Board" wherever appearing. See Codification note above.

**1976**—Subsec. (c). Pub. L. 94–222 added subsec. (c).

## 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.

## PART E—CONSUMER LEASES

### §1667. Definitions

For purposes of this part—

(1) The term "consumer lease" means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding \$50,000,<sup>1</sup> primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 1602(g)<sup>2</sup> of this title. Such term does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(2) The term "lessee" means a natural person who leases or is offered a consumer lease.

(3) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

(4) The term "personal property" means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

(5) The terms "security" and "security interest" mean any interest in property which secures payment or performance of an obligation.

(Pub. L. 90–321, title I, §181, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 257; amended Pub. L. 111–203, title X, §1100E(a)(2), July 21, 2010, 124 Stat. 2111.)

## EDITORIAL NOTES

### REFERENCES IN TEXT

Section 1602(g) of this title, referred to in par. (1), was redesignated section 1602(h) of this title by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

## AMENDMENTS

**2010**—Par. (1). Pub. L. 111–203 substituted "\$50,000" for "\$25,000".

## 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. 94–240, §6, Mar. 23, 1976, 90 Stat. 261, provided that: "This Act [enacting this section and sections

1667a to 1667e of this title, amending sections 1601 and 1640 of this title, and enacting provisions set out as a note under section 1601 of this title] takes effect one year after the date of its enactment [Mar. 23, 1976]."

### ADJUSTMENTS FOR INFLATION

On and after Dec. 31, 2011, dollar amount described in par. (1) of this section to be adjusted annually by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, see section 1100E(b) of Pub. L. 111–203, set out as a note under section 1603 of this title.

<sup>1</sup> [See Adjustments for Inflation note below.](#)

<sup>2</sup> [See References in Text note below.](#)

### §1667a. Consumer lease disclosures

Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

- (1) A brief description or identification of the leased property;
- (2) The amount of any payment by the lessee required at the inception of the lease;
- (3) The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;
- (4) The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability;
- (5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;
- (6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;
- (7) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;
- (8) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;
- (9) The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;
- (10) Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and
- (11) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.

The disclosures required under this section may be made in the lease contract to be signed by the lessee. The Bureau may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the lessor is not in a position to know exact information.

(Pub. L. 90–321, title I, §182, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 258; amended Pub. L. 111–203, title X, §1100A(2), (10)(B), July 21, 2010, 124 Stat. 2107, 2109.)

## AMENDMENTS

**2010**—Pub. L. 111–203, §1100A(2), (10)(B), made similar amendments, resulting in the substitution of "The Bureau" for "The Board" in concluding 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.

## **§1667b. Lessee's liability on expiration or termination of lease**

### **(a) Estimated residual value of property as basis; presumptions; action by lessor for excess liability; mutually agreeable final adjustment**

Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

### **(b) Penalties and charges for delinquency, default, or early termination**

Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

### **(c) Independent professional appraisal of residual value of property at termination of lease; finality**

If a lease has a residual value provision at the termination of the lease, the lessee may obtain at his expense, a professional appraisal of the leased property by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties.

(Pub. L. 90–321, title I, §183, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 259.)

## **§1667c. Consumer lease advertising; liability of advertising media**

### **(a) In general**

If an advertisement for a consumer lease includes a statement of the amount of any payment or a statement that any or no initial payment is required, the advertisement shall clearly and conspicuously state, as applicable—

- (1) the transaction advertised is a lease;
- (2) the total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later;
- (3) that a security deposit is required;
- (4) the number, amount, and timing of scheduled payments; and
- (5) with respect to a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the property, that an extra charge may be imposed at the end of the lease term.

**(b) Advertising medium not liable**

No owner or employee of any entity that serves as a medium in which an advertisement appears or through which an advertisement is disseminated, shall be liable under this section.

**(c) Radio advertisements**

**(1) In general**

An advertisement by radio broadcast to aid, promote, or assist, directly or indirectly, any consumer lease shall be deemed to be in compliance with the requirements of subsection (a) if such advertisement clearly and conspicuously—

(A) states the information required by paragraphs (1) and (2) of subsection (a);

(B) states the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease;

(C) includes—

(i) a referral to—

(I) a toll-free telephone number established in accordance with paragraph (2) that may be used by consumers to obtain the information required under subsection (a); or

(II) a written advertisement that—

(aa) appears in a publication in general circulation in the community served by the radio station on which such advertisement is broadcast during the period beginning 3 days before any such broadcast and ending 10 days after such broadcast; and

(bb) includes the information required to be disclosed under subsection (a); and

(ii) the name and dates of any publication referred to in clause (i)(II); and

(D) includes any other information which the Bureau determines necessary to carry out this part.

**(2) Establishment of toll-free number**

**(A) In general**

In the case of a radio broadcast advertisement described in paragraph (1) that includes a referral to a toll-free telephone number, the lessor who offers the consumer lease shall—

(i) establish such a toll-free telephone number not later than the date on which the advertisement including the referral is broadcast;

(ii) maintain such telephone number for a period of not less than 10 days, beginning on the date of any such broadcast; and

(iii) provide the information required under subsection (a) with respect to the lease to any person who calls such number.

**(B) Form of information**

The information required to be provided under subparagraph (A)(iii) shall be provided verbally or, if requested by the consumer, in written form.

**(3) No effect on other law**

Nothing in this subsection shall affect the requirements of Federal law as such requirements apply to advertisement by any medium other than radio broadcast.

(Pub. L. 90–321, title I, §184, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 259; amended Pub. L. 103–325, title III, §336(a), Sept. 23, 1994, 108 Stat. 2234; Pub. L. 104–208, div. A, title II, §2605(c), Sept. 30, 1996, 110 Stat. 3009–473; Pub. L. 111–203, title X, §1100A(2), (10)(A), July 21, 2010, 124 Stat. 2107, 2109.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Subsec. (c)(1)(D). Pub. L. 111–203, §1100A(2), (10)(A), made similar amendments, resulting in the substitution of "the Bureau" for "the Board".

**1996**—Subsec. (a). Pub. L. 104–208, §2605(c)(1), (3), added subsec. (a) and struck out former subsec. (a) consisting of introductory provisions and 5 pars. relating to contents of lease agreements required if consumer lease advertisement stated amount of payment, number of required payments, or that any or no payments were required at lease inception.

Subsec. (b). Pub. L. 104–208, §2605(c)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–208, §2605(c)(1), (2), redesignated subsec. (b) as (c) and struck out former subsec. (c) which read as follows: "There is no liability under this section on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated."

**1994**—Subsecs. (b), (c). Pub. L. 103–325 added subsec. (b) and redesignated former subsec. (b) as (c).

## 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.

### STUDY OF ADVERTISING RULES

Pub. L. 103–325, title III, §336(b), Sept. 23, 1994, 108 Stat. 2235, provided that not later than 365 days after Sept. 23, 1994, the Board of Governors of the Federal Reserve System shall submit a report to the Congress on credit advertising rules.

## §1667d. Civil liability of lessors

### (a) Grounds for maintenance of action

Any lessor who fails to comply with any requirement imposed under section 1667a or 1667b of this title with respect to any person is liable to such person as provided in section 1640 of this title.

### (b) Additional grounds for maintenance of action; "creditor" defined

Any lessor who fails to comply with any requirement imposed under section 1667c of this title with respect to any person who suffers actual damage from the violation is liable to such person as provided in section 1640 of this title. For the purposes of this section, the term "creditor" as used in sections 1640 and 1641 of this title shall include a lessor as defined in this part.

### (c) Jurisdiction of courts; time limitation

Notwithstanding section 1640(e) of this title, any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this part shall be brought within one year of the termination of the lease agreement.

(Pub. L. 90–321, title I, §185, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 260; amended Pub. L. 96–221, title VI, §624, Mar. 31, 1980, 94 Stat. 185.)

## EDITORIAL NOTES

### AMENDMENTS

**1980**—Subsec. (b). Pub. L. 96–221 struck out applicability of section 1614 of this title to term "creditor".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–221 effective on expiration of two years and six months after Mar. 31, 1980, with all regulations, forms, and clauses required to be prescribed to be promulgated at least one year prior to such effective date, and allowing any creditor to comply with any amendments, in accordance with the regulations, forms, and clauses prescribed by the Board prior to such effective date, see section 625 of Pub. L. 96–221, set out as a note under section 1602 of this title.

## **§1667e. Applicability of State laws; exemptions by Bureau from leasing requirements**

(a) This part does not annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with, the laws of any State with respect to consumer leases, except to the extent that those laws are inconsistent with any provision of this part, and then only to the extent of the inconsistency. The Bureau is authorized to determine whether such inconsistencies exist. The Bureau may not determine that any State law is inconsistent with any provision of this part if the Bureau determines that such law gives greater protection and benefit to the consumer.

(b) The Bureau shall by regulation exempt from the requirements of this part any class of lease 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 part or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement.

(Pub. L. 90–321, title I, §186, as added Pub. L. 94–240, §3, Mar. 23, 1976, 90 Stat. 260; amended Pub. L. 111–203, title X, §1100A(2), (10), July 21, 2010, 124 Stat. 2107, 2109.)

## EDITORIAL NOTES

### AMENDMENTS

**2010**—Pub. L. 111–203, §1100A(2), (10), substituted "Bureau" for "Board", "the Bureau" for "the Board", and "The Bureau" for "The Board" 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.

## **§1667f. Regulations**

### **(a) Regulations authorized**

#### **(1) In general**

The Bureau shall prescribe regulations to update and clarify the requirements and definitions applicable to lease disclosures and contracts, and any other issues specifically related to consumer leasing, to the extent that the Bureau determines such action to be necessary—

(A) to carry out this part;

(B) to prevent any circumvention of this part; or

(C) to facilitate compliance with the requirements of the [1](#) part.

#### **(2) Classifications, adjustments**



Any regulations prescribed under paragraph (1) may contain classifications and differentiations, and may provide for adjustments and exceptions for any class of transactions, as the Bureau considers appropriate.

**(b) Model disclosure**

**(1) Publication**

The Bureau shall establish and publish model disclosure forms to facilitate compliance with the disclosure requirements of this part and to aid the consumer in understanding the transaction to which the subject disclosure form relates.

**(2) Use of automated equipment**

In establishing model forms under this subsection, the Bureau shall consider the use by lessors of data processing or similar automated equipment.

**(3) Use optional**

A lessor may utilize a model disclosure form established by the Bureau under this subsection for purposes of compliance with this part, at the discretion of the lessor.

**(4) Effect of use**

Any lessor who properly uses the material aspects of any model disclosure form established by the Bureau under this subsection shall be deemed to be in compliance with the disclosure requirements to which the form relates.

(Pub. L. 90–321, title I, §187, as added Pub. L. 104–208, div. A, title II, §2605(b)(1), Sept. 30, 1996, 110 Stat. 3009–471; amended Pub. L. 111–203, title X, §1100A(2), (10), July 21, 2010, 124 Stat. 2107, 2109.)

**EDITORIAL NOTES**

**AMENDMENTS**

**2010**—Pub. L. 111–203, §1100A(2), (10), substituted "Bureau" for "Board", "the Bureau" for "the Board", and "The Bureau" for "The Board " 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.

**EFFECTIVE DATE**

Section 2605(b)(2) of div. A of Pub. L. 104–208 provided that:

"(A) IN GENERAL.—Any regulation of the Board, or any amendment or interpretation of any regulation of the Board issued pursuant to section 187 of the Truth in Lending Act [15 U.S.C. 1667f] (as added by paragraph (1) of this subsection), shall become effective on the first October 1 that follows the date of promulgation of that regulation, amendment, or interpretation by not less than 6 months.

"(B) LONGER PERIOD.—The Board may, at the discretion of the Board, extend the time period referred to in subparagraph (A) in accordance with subparagraph (C), to permit lessors to adjust their disclosure forms to accommodate the requirements of section 127 [187] of the Truth in Lending Act (as added by paragraph (1) of this subsection).

"(C) SHORTER PERIOD.—The Board may shorten the time period referred to in subparagraph (A), if the Board makes a specific finding that such action is necessary to comply with the findings of a court or to prevent an unfair or deceptive practice.

"(D) COMPLIANCE BEFORE EFFECTIVE DATE.—Any lessor may comply with any means of disclosure provided for in section 127 [187] of the Truth in Lending Act (as added by paragraph (1) of this subsection) before the effective date of such requirement.

"(E) DEFINITIONS.—For purposes of this subsection, the term 'lessor' has the same meaning as in section 181 of the Truth in Lending Act [15 U.S.C. 1667]."

## CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES

Section 2605(a) of div. A of Pub. L. 104–208 provided that:

"(1) FINDINGS.—The Congress finds that—

"(A) competition among the various financial institutions and other firms engaged in the business of consumer leasing is greatest when there is informed use of leasing;

"(B) the informed use of leasing results from an awareness of the cost of leasing by consumers; and

"(C) there has been a continued trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that leasing product advances have occurred such that lessors have been unable to provide consistent industry-wide disclosures to fully account for the competitive progress that has occurred.

"(2) PURPOSES.—The purposes of this section are—

"(A) to assure a simple, meaningful disclosure of leasing terms so that the consumer will be able to compare more readily the various leasing terms available to the consumer and avoid the uninformed use of leasing, and to protect the consumer against inaccurate and unfair leasing practices;

"(B) to provide for adequate cost disclosures that reflect the marketplace without impairing competition and the development of new leasing products; and

"(C) to provide the Board with the regulatory authority to assure a simplified, meaningful definition and disclosure of the terms of certain leases of personal property for personal, family, or household purposes so as to—

"(i) enable the lessee to compare more readily the various lease terms available to the lessee;

"(ii) enable comparison of lease terms with credit terms, as appropriate; and

"(iii) assure meaningful and accurate disclosures of lease terms in advertisements."

<sup>1</sup> So in original. Probably should be "this".

## SUBCHAPTER II—RESTRICTIONS ON GARNISHMENT

### §1671. Congressional findings and declaration of purpose

#### (a) Disadvantages of garnishment

The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

#### (b) Necessity for regulation

On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this subchapter are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws.

(Pub. L. 90–321, title III, §301, May 29, 1968, 82 Stat. 163.)

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE

Pub. L. 90–321, title V, §504(c), May 29, 1968, 82 Stat. 167, provided that: "Title III [enacting this section and sections 1672 to 1677 of this title] takes effect on July 1, 1970."

## **§1672. Definitions**

For the purposes of this subchapter:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt.

(Pub. L. 90-321, title III, §302, May 29, 1968, 82 Stat. 163.)

## **§1673. Restriction on garnishment**

### **(a) Maximum allowable garnishment**

Except as provided in subsection (b) and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a)(1) of title 29 in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

### **(b) Exceptions**

(1) The restrictions of subsection (a) do not apply in the case of

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of the United States having jurisdiction over cases under chapter 13 of title 11.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum specified in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

### **(c) Execution or enforcement of garnishment order or process prohibited**

No court of the United States or any State, and no State (or officer or agency thereof), may make,

execute, or enforce any order or process in violation of this section.

(Pub. L. 90-321, title III, §303, May 29, 1968, 82 Stat. 163; Pub. L. 95-30, title V, §501(e)(1)-(3), May 23, 1977, 91 Stat. 161, 162; Pub. L. 95-598, title III, §312(a), Nov. 6, 1978, 92 Stat. 2676.)

## EDITORIAL NOTES

### AMENDMENTS

**1978**—Subsec. (b)(1)(B). Pub. L. 95-598 substituted "court of the United States having jurisdiction over cases under chapter 13 of title 11" for "court of bankruptcy under chapter XIII of the Bankruptcy Act".

**1977**—Subsec. (b). Pub. L. 95-30, §501(e)(1), (2), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C) thereof, substituted "for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review" for "of any court for the support of any person" in subpar. (A) as so redesignated, and added par. (2).

Subsec. (c). Pub. L. 95-30, §501(e)(3), inserted ", and no State (or officer or agency thereof)," after "or any State".

## STATUTORY NOTES AND RELATED SUBSIDIARIES

### EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

### EFFECTIVE DATE OF 1977 AMENDMENT

Pub. L. 95-30, title V, §501(e)(5), May 23, 1977, 91 Stat. 162, provided that: "The amendments made by this subsection [amending this section and section 1675 of this title] shall take effect on the first day of the first calendar month which begins after the date of enactment of this Act [May 23, 1977]."

## **§1674. Restriction on discharge from employment by reason of garnishment**

### **(a) Termination of employment**

No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

### **(b) Penalties**

Whoever willfully violates subsection (a) of this section shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

(Pub. L. 90-321, title III, §304, May 29, 1968, 82 Stat. 163.)

## **§1675. Exemption for State-regulated garnishments**

The Secretary of Labor may by regulation exempt from the provisions of section 1673(a) and (b)(2) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 1673(a) and (b)(2) of this title.

(Pub. L. 90-321, title III, §305, May 29, 1968, 82 Stat. 164; Pub. L. 95-30, title V, §501(e)(4), May 23, 1977, 91 Stat. 162.)

## EDITORIAL NOTES

### AMENDMENTS

**1977**—Pub. L. 95-30 substituted "section 1673(a) and (b)(2) of this title" for "section 1673(a) of this title"