

TITLE 15—COMMERCE AND TRADE

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**CHAPTER 1—MONOPOLIES AND COMBINATIONS IN RESTRAINT OF
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Sec.

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EDITORIAL NOTES

HISTORICAL NOTE

This chapter includes among other statutory provisions the Sherman Act, comprising sections 1 to 7 of this title, the Clayton Act, comprising sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title and sections 52 and 53 of Title 29, Labor, the Wilson Tariff Act, comprising sections 8 and 9 of this title, the Robinson-Patman Price Discrimination Act, comprising sections 13, 13a, 13b, and 21a of this title, the "Expediting Act", sections 28 and 29 of this title, and the "Hart-Scott-Rodino Antitrust Improvements Act of 1976", comprising sections 15c to 15h, 18a, and 66 of this title. For complete classification of the Hart-Scott-Rodino Act, see Short Title note under section 1 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONGRESSIONAL INVESTIGATION OF MONOPOLY

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

EXECUTIVE DOCUMENTS

EXECUTIVE ORDER NO. 12022

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Apr. 7, 1978, 43 F.R. 15133, which related to the National Commission for the Review of Antitrust Laws and Procedures, was revoked by Ex.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

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

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

(July 2, 1890, ch. 647, §1, 26 Stat. 209; Aug. 17, 1937, ch. 690, title VIII, 50 Stat. 693; July 7, 1955,

ch. 281, 69 Stat. 282; Pub. L. 93–528, §3, Dec. 21, 1974, 88 Stat. 1708; Pub. L. 94–145, §2, Dec. 12, 1975, 89 Stat. 801; Pub. L. 101–588, §4(a), Nov. 16, 1990, 104 Stat. 2880; Pub. L. 108–237, title II, §215(a), June 22, 2004, 118 Stat. 668.)

EDITORIAL NOTES

AMENDMENTS

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

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

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

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2001 AMENDMENT

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

EFFECTIVE DATE OF 1975 AMENDMENT

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

SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117–328, div. GG, §101, Dec. 29, 2022, 136 Stat. 5967, provided that: "This division [enacting section 18b of this title, amending section 1407 of Title 28, Judiciary and Judicial Procedure, enacting provisions set out as a note under section 18b of this title, and amending provisions set out as a note under section 18a of this title] may be cited as the 'Merger Filing Fee Modernization Act of 2022'."

[Another section 101 of div. GG of Pub. L. 117–328 amended provisions set out as a note under section 18a of this title.]

SHORT TITLE OF 2020 AMENDMENT

Pub. L. 116–257, §1, Dec. 23, 2020, 134 Stat. 1147, provided that: "This Act [enacting section 7a–3 of this title] may be cited as the 'Criminal Antitrust Anti-Retaliation Act of 2019'."

Pub. L. 116–159, div. D, title III, §4301, Oct. 1, 2020, 134 Stat. 742, provided that: "This title [enacting provisions set out as notes under section 7a of this title and amending and repealing provisions set out as notes under this section] may be cited as the 'Antitrust Criminal Penalty Enhancement and Reform Permanent Extension Act'."

SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114–44, §1, Aug. 6, 2015, 129 Stat. 472, provided that: "This Act [amending provisions set out as a note under this section] may be cited as the 'Need-Based Educational Aid Act of 2015'."

SHORT TITLE OF 2009 AMENDMENT

Pub. L. 111–30, §1, June 19, 2009, 123 Stat. 1775, provided that: "This Act [enacting and amending provisions set out as notes under this section] may be cited as the 'Antitrust Criminal Penalty Enhancement and Reform Act of 2004 Extension Act'."

SHORT TITLE OF 2008 AMENDMENT

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

SHORT TITLE OF 2007 AMENDMENT

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

SHORT TITLE OF 2004 AMENDMENT

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

SHORT TITLE OF 2002 AMENDMENT

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

SHORT TITLE OF 2001 AMENDMENT

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

SHORT TITLE OF 1998 AMENDMENT

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

SHORT TITLE OF 1997 AMENDMENTS

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

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

SHORT TITLE OF 1995 AMENDMENT

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

SHORT TITLE OF 1990 AMENDMENT

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

SHORT TITLE OF 1984 AMENDMENT

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

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–290, title IV, §401, Oct. 8, 1982, 96 Stat. 1246, provided that: "This title [enacting section 6a of this title and amending section 45 of this title] may be cited as the 'Foreign Trade Antitrust Improvements Act of 1982'."

SHORT TITLE OF 1980 AMENDMENT

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

SHORT TITLE OF 1976 AMENDMENT

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

SHORT TITLE OF 1975 AMENDMENT

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

SHORT TITLE OF 1974 AMENDMENT

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

SHORT TITLE

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

ANTITRUST ENFORCEMENT ENHANCEMENTS AND COOPERATION INCENTIVES

Pub. L. 108–237, title II, §211, June 22, 2004, 118 Stat. 666, as amended by Pub. L. 111–30, §2, June 19, 2009, 123 Stat. 1775; Pub. L. 111–190, §1, June 9, 2010, 124 Stat. 1275, which provided a sunset date for sections 211 to 214 of Pub. L. 108–237, with exceptions, was repealed by Pub. L. 116–159, div. D, title III, §4303(a), Oct. 1, 2020, 134 Stat. 742, with continuity provision for markers and agreements existing on or before June 22, 2020.

Pub. L. 108–237, title II, §212, June 22, 2004, 118 Stat. 666, as amended by Pub. L. 111–190, §2, June 9, 2010, 124 Stat. 1275; Pub. L. 116–159, div. D, title III, §4303(b)(2), Oct. 1, 2020, 134 Stat. 742, which defined terms for sections 211 to 215 of Pub. L. 108–237, was transferred to section 7a of this title.

Pub. L. 108–237, title II, §213, June 22, 2004, 118 Stat. 666, as amended by Pub. L. 111–190, §3, June 9, 2010, 124 Stat. 1275, which provided limitation on recovery, was transferred to section 7a–1 of this title.

Pub. L. 108–237, title II, §214, June 22, 2004, 118 Stat. 667, as amended by Pub. L. 111–190, §4, June 9, 2010, 124 Stat. 1276, which provided rights, authorities, and liabilities not affected by sections 211 to 215 of Pub. L. 108–237, was transferred to section 7a–2 of this title.

ANTITRUST MODERNIZATION COMMISSION

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

"SEC. 11051. SHORT TITLE.

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

"SEC. 11052. ESTABLISHMENT.

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

"SEC. 11053. DUTIES OF THE COMMISSION.

"The duties of the Commission are—

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

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

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

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

"SEC. 11054. MEMBERSHIP.

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

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

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

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

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

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

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

"(c) TERM OF APPOINTMENT.—

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

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

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

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

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

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

"(e) APPOINTMENT DEADLINE.—Initial appointments under subsection (a) shall be made not later than 60 days after the date of enactment of this Act [Nov. 2, 2002].

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

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

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

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

"SEC. 11055. COMPENSATION OF THE COMMISSION.

"(a) PAY.—

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

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

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

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

"(a) STAFF.—

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

perform its duties. The appointment of an executive director shall be subject to approval by the Commission.

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

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

"SEC. 11057. POWERS OF THE COMMISSION.

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

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

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

"(d) EXPENDITURES AND CONTRACTS.—The Commission or, on authorization of the Commission, a member of the Commission may make expenditures and enter into contracts for the procurement of such supplies, services, and property as the Commission or such member considers to be appropriate for the purpose of carrying out the duties of the Commission. Such expenditures and contracts may be made only to such extent or in such amounts as are provided in advance in appropriation Acts.

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

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

"SEC. 11058. REPORT.

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

"SEC. 11059. TERMINATION OF COMMISSION.

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

"SEC. 11060. AUTHORIZATION OF APPROPRIATIONS.

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

YEAR 2000 INFORMATION AND READINESS DISCLOSURE

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

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

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

"(a) STUDY.—

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

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

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

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

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

"(3) MATTERS STUDIED.—

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

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

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

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

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

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

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

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

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

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

"(B) ASSESSMENT.—

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

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

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

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

"(b) REPORT.—

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

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

"(c) RECORDKEEPING REQUIREMENT.—

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

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

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

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

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

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

Pub. L. 103–382, title V, §568(a)–(d), Oct. 20, 1994, 108 Stat. 4060, 4061, as amended by Pub. L. 105–43, §2(a), Sept. 17, 1997, 111 Stat. 1140; Pub. L. 105–244, title I, §102(a)(3), Oct. 7, 1998, 112 Stat. 1618; Pub. L. 107–72, §2, Nov. 20, 2001, 115 Stat. 648; Pub. L. 110–327, §2, Sept. 30, 2008, 122 Stat. 3566; Pub. L. 114–44, §2, Aug. 6, 2015, 129 Stat. 472, provided that:

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

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

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

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

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

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

"(2) any contract, combination, or conspiracy with respect to the amount or terms of any prospective financial aid award to a specific individual.

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

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

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

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

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

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

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

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

"(d) EXPIRATION.—Subsection (a) shall expire on September 30, 2022."

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

EXECUTIVE DOCUMENTS

EX. ORD. NO. 14036. PROMOTING COMPETITION IN THE AMERICAN ECONOMY

Ex. Ord. No. 14036, July 9, 2021, 86 F.R. 36987, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote the interests of American workers, businesses, and consumers, it is hereby ordered as follows:

SECTION 1. *Policy.* A fair, open, and competitive marketplace has long been a cornerstone of the American economy, while excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers.

The American promise of a broad and sustained prosperity depends on an open and competitive economy. For workers, a competitive marketplace creates more high-quality jobs and the economic freedom to switch jobs or negotiate a higher wage. For small businesses and farmers, it creates more choices among suppliers and major buyers, leading to more take-home income, which they can reinvest in their enterprises. For

entrepreneurs, it provides space to experiment, innovate, and pursue the new ideas that have for centuries powered the American economy and improved our quality of life. And for consumers, it means more choices, better service, and lower prices.

Robust competition is critical to preserving America's role as the world's leading economy.

Yet over the last several decades, as industries have consolidated, competition has weakened in too many markets, denying Americans the benefits of an open economy and widening racial, income, and wealth inequality. Federal Government inaction has contributed to these problems, with workers, farmers, small businesses, and consumers paying the price.

Consolidation has increased the power of corporate employers, making it harder for workers to bargain for higher wages and better work conditions. Powerful companies require workers to sign non-compete agreements that restrict their ability to change jobs. And, while many occupational licenses are critical to increasing wages for workers and especially workers of color, some overly restrictive occupational licensing requirements can impede workers' ability to find jobs and to move between States.

Consolidation in the agricultural industry is making it too hard for small family farms to survive. Farmers are squeezed between concentrated market power in the agricultural input industries—seed, fertilizer, feed, and equipment suppliers—and concentrated market power in the channels for selling agricultural products. As a result, farmers' share of the value of their agricultural products has decreased, and poultry farmers, hog farmers, cattle ranchers, and other agricultural workers struggle to retain autonomy and to make sustainable returns.

The American information technology sector has long been an engine of innovation and growth, but today a small number of dominant internet platforms use their power to exclude market entrants, to extract monopoly profits, and to gather intimate personal information that they can exploit for their own advantage. Too many small businesses across the economy depend on those platforms and a few online marketplaces for their survival. And too many local newspapers have shuttered or downsized, in part due to the internet platforms' dominance in advertising markets.

Americans are paying too much for prescription drugs and healthcare services—far more than the prices paid in other countries. Hospital consolidation has left many areas, particularly rural communities, with inadequate or more expensive healthcare options. And too often, patent and other laws have been misused to inhibit or delay—for years and even decades—competition from generic drugs and biosimilars, denying Americans access to lower-cost drugs.

In the telecommunications sector, Americans likewise pay too much for broadband, cable television, and other communications services, in part because of a lack of adequate competition. In the financial-services sector, consumers pay steep and often hidden fees because of industry consolidation. Similarly, the global container shipping industry has consolidated into a small number of dominant foreign-owned lines and alliances, which can disadvantage American exporters.

The problem of economic consolidation now spans these sectors and many others, endangering our ability to rebuild and emerge from the coronavirus disease 2019 (COVID-19) pandemic with a vibrant, innovative, and growing economy. Meanwhile, the United States faces new challenges to its economic standing in the world, including unfair competitive pressures from foreign monopolies and firms that are state-owned or state-sponsored, or whose market power is directly supported by foreign governments.

We must act now to reverse these dangerous trends, which constrain the growth and dynamism of our economy, impair the creation of high-quality jobs, and threaten America's economic standing in the world.

This order affirms that it is the policy of my Administration to enforce the antitrust laws to combat the excessive concentration of industry, the abuses of market power, and the harmful effects of monopoly and monopsony—especially as these issues arise in labor markets, agricultural markets, Internet platform industries, healthcare markets (including insurance, hospital, and prescription drug markets), repair markets, and United States markets directly affected by foreign cartel activity.

It is also the policy of my Administration to enforce the antitrust laws to meet the challenges posed by new industries and technologies, including the rise of the dominant Internet platforms, especially as they stem from serial mergers, the acquisition of nascent competitors, the aggregation of data, unfair competition in attention markets, the surveillance of users, and the presence of network effects.

Whereas decades of industry consolidation have often led to excessive market concentration, this order reaffirms that the United States retains the authority to challenge transactions whose previous consummation was in violation of the Sherman Antitrust Act (26 Stat. 209, 15 U.S.C. 1 *et seq.*) (Sherman Act), the Clayton Antitrust Act (Public Law 63-212, 38 Stat. 730, 15 U.S.C. 12 *et seq.*) (Clayton Act), or other laws. *See* 15 U.S.C. 18; *Standard Oil Co. v. United States*, 221 U.S. 1 (1911).

This order reasserts as United States policy that the answer to the rising power of foreign monopolies and cartels is not the tolerance of domestic monopolization, but rather the promotion of competition and

innovation by firms small and large, at home and worldwide.

It is also the policy of my Administration to support aggressive legislative reforms that would lower prescription drug prices, including by allowing Medicare to negotiate drug prices, by imposing inflation caps, and through other related reforms. It is further the policy of my Administration to support the enactment of a public health insurance option.

My Administration further reaffirms the policy stated in Executive Order 13725 of April 15, 2016 (Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy) [5 U.S.C. 601 note], and the Federal Government's commitment to the principles that led to the passage of the Sherman Act, the Clayton Act, the Packers and Stockyards Act, 1921 (Public Law 67–51, 42 Stat. 159, 7 U.S.C. 181 *et seq.*) (Packers and Stockyards Act), the Celler-Kefauver Antimerger Act (Public Law 81–899, 64 Stat. 1125), the Bank Merger Act (Public Law 86–463, 74 Stat. 129, 12 U.S.C. 1828), and the Telecommunications Act of 1996 (Public Law 104–104, 110 Stat. 56), among others.

SEC. 2. *The Statutory Basis of a Whole-of-Government Competition Policy.* (a) The antitrust laws, including the Sherman Act, the Clayton Act, and the Federal Trade Commission Act (Public Law 63–203, 38 Stat. 717, 15 U.S.C. 41 *et seq.*), are a first line of defense against the monopolization of the American economy.

(b) The antitrust laws reflect an underlying policy favoring competition that transcends those particular enactments. As the Supreme Court has stated, for instance, the Sherman Act "rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions." *Northern Pac. Ry. Co. v. United States*, 356 U.S. 1, 4 (1958).

(c) Consistent with these broader policies, and in addition to the traditional antitrust laws, the Congress has also enacted industry-specific fair competition and anti-monopolization laws that often provide additional protections. Such enactments include the Packers and Stockyards Act, the Federal Alcohol Administration Act (Public Law 74–401, 49 Stat. 977, 27 U.S.C. 201 *et seq.*), the Bank Merger Act, the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417, 98 Stat. 1585), the Shipping Act of 1984 (Public Law 98–237, 98 Stat. 67, 46 U.S.C. 40101 *et seq.*) (Shipping Act), the ICC Termination Act of 1995 (Public Law 104–88, 109 Stat. 803), the Telecommunications Act of 1996, the Fairness to Contact Lens Consumers Act (Public Law 108–164, 117 Stat. 2024, 15 U.S.C. 7601 *et seq.*), and the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203, 124 Stat. 1376) (Dodd-Frank Act).

(d) These statutes independently charge a number of executive departments and agencies (agencies) to protect conditions of fair competition in one or more ways, including by:

- (i) policing unfair, deceptive, and abusive business practices;
- (ii) resisting consolidation and promoting competition within industries through the independent oversight of mergers, acquisitions, and joint ventures;
- (iii) promulgating rules that promote competition, including the market entry of new competitors; and
- (iv) promoting market transparency through compelled disclosure of information.

(e) The agencies that administer such or similar authorities include the Department of the Treasury, the Department of Agriculture, the Department of Health and Human Services, the Department of Transportation, the Federal Reserve System, the Federal Trade Commission (FTC), the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Federal Communications Commission, the Federal Maritime Commission, the Commodity Futures Trading Commission, the Federal Energy Regulatory Commission, the Consumer Financial Protection Bureau, and the Surface Transportation Board.

(f) Agencies can influence the conditions of competition through their exercise of regulatory authority or through the procurement process. *See* 41 U.S.C. 1705.

(g) This order recognizes that a whole-of-government approach is necessary to address overconcentration, monopolization, and unfair competition in the American economy. Such an approach is supported by existing statutory mandates. Agencies can and should further the policies set forth in section 1 of this order by, among other things, adopting pro-competitive regulations and approaches to procurement and spending, and by rescinding regulations that create unnecessary barriers to entry that stifle competition.

SEC. 3. *Agency Cooperation in Oversight, Investigation, and Remedies.* (a) The Congress frequently has created overlapping agency jurisdiction in the policing of anticompetitive conduct and the oversight of mergers. It is the policy of my Administration that, when agencies have overlapping jurisdiction, they should endeavor to cooperate fully in the exercise of their oversight authority, to benefit from the respective expertise of the agencies and to improve Government efficiency.

(b) Where there is overlapping jurisdiction over particular cases, conduct, transactions, or industries, agencies are encouraged to coordinate their efforts, as appropriate and consistent with applicable law, with

respect to:

- (i) the investigation of conduct potentially harmful to competition;
- (ii) the oversight of proposed mergers, acquisitions, and joint ventures; and
- (iii) the design, execution, and oversight of remedies.

(c) The means of cooperation in cases of overlapping jurisdiction should include, as appropriate and consistent with applicable law:

- (i) sharing relevant information and industry data;
- (ii) in the case of major transactions, soliciting and giving significant consideration to the views of the Attorney General or the Chair of the FTC, as applicable; and
- (iii) cooperating with any concurrent Department of Justice or FTC oversight activities under the Sherman Act or Clayton Act.

(d) Nothing in subsections (a) through (c) of this section shall be construed to suggest that the statutory standard applied by an agency, or its independent assessment under that standard, should be displaced or substituted by the judgment of the Attorney General or the Chair of the FTC. When their views are solicited, the Attorney General and the Chair of the FTC are encouraged to provide a response to the agency in time for the agency to consider it in advance of any statutory deadline for agency action.

SEC. 4. *The White House Competition Council.* (a) There is established a White House Competition Council (Council) within the Executive Office of the President.

(b) The Council shall coordinate, promote, and advance Federal Government efforts to address overconcentration, monopolization, and unfair competition in or directly affecting the American economy, including efforts to:

- (i) implement the administrative actions identified in this order;
- (ii) develop procedures and best practices for agency cooperation and coordination on matters of overlapping jurisdiction, as described in section 3 of this order;
- (iii) identify and advance any additional administrative actions necessary to further the policies set forth in section 1 of this order; and
- (iv) identify any potential legislative changes necessary to further the policies set forth in section 1 of this order.

(c) The Council shall work across agencies to provide a coordinated response to overconcentration, monopolization, and unfair competition in or directly affecting the American economy. The Council shall also work with each agency to ensure that agency operations are conducted in a manner that promotes fair competition, as appropriate and consistent with applicable law.

(d) The Council shall not discuss any current or anticipated enforcement actions.

(e) The Council shall be led by the Assistant to the President for Economic Policy and Director of the National Economic Council, who shall serve as Chair of the Council.

(f) In addition to the Chair, the Council shall consist of the following members:

- (i) the Secretary of the Treasury;
- (ii) the Secretary of Defense;
- (iii) the Attorney General;
- (iv) the Secretary of Agriculture;
- (v) the Secretary of Commerce;
- (vi) the Secretary of Labor;
- (vii) the Secretary of Health and Human Services;
- (viii) the Secretary of Transportation;
- (ix) the Administrator of the Office of Information and Regulatory Affairs; and
- (x) the heads of such other agencies and offices as the Chair may from time to time invite to participate.

(g) The Chair shall invite the participation of the Chair of the FTC, the Chair of the Federal Communications Commission, the Chair of the Federal Maritime Commission, the Director of the Consumer Financial Protection Bureau, and the Chair of the Surface Transportation Board, to the extent consistent with their respective statutory authorities and obligations.

(h) Members of the Council shall designate, not later than 30 days after the date of this order [July 9, 2021], a senior official within their respective agency or office who shall coordinate with the Council and who shall be responsible for overseeing the agency's or office's efforts to address overconcentration, monopolization, and unfair competition. The Chair may coordinate subgroups consisting exclusively of Council members or their designees, as appropriate.

(i) The Council shall meet on a semi-annual basis unless the Chair determines that a meeting is unnecessary.

(j) Each agency shall bear its own expenses for participating in the Council.

SEC. 5. *Further Agency Responsibilities.* (a) The heads of all agencies shall consider using their authorities to further the policies set forth in section 1 of this order, with particular attention to:

- (i) the influence of any of their respective regulations, particularly any licensing regulations, on concentration and competition in the industries under their jurisdiction; and
- (ii) the potential for their procurement or other spending to improve the competitiveness of small businesses and businesses with fair labor practices.

(b) The Attorney General, the Chair of the FTC, and the heads of other agencies with authority to enforce the Clayton Act are encouraged to enforce the antitrust laws fairly and vigorously.

(c) To address the consolidation of industry in many markets across the economy, as described in section 1 of this order, the Attorney General and the Chair of the FTC are encouraged to review the horizontal and vertical merger guidelines and consider whether to revise those guidelines.

(d) To avoid the potential for anticompetitive extension of market power beyond the scope of granted patents, and to protect standard-setting processes from abuse, the Attorney General and the Secretary of Commerce are encouraged to consider whether to revise their position on the intersection of the intellectual property and antitrust laws, including by considering whether to revise the Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments issued jointly by the Department of Justice, the United States Patent and Trademark Office, and the National Institute of Standards and Technology on December 19, 2019.

(e) To ensure Americans have choices among financial institutions and to guard against excessive market power, the Attorney General, in consultation with the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency, is encouraged to review current practices and adopt a plan, not later than 180 days after the date of this order, for the revitalization of merger oversight under the Bank Merger Act and the Bank Holding Company Act of 1956 (Public Law 84-511, 70 Stat. 133, 12 U.S.C. 1841 *et seq.*) that is in accordance with the factors enumerated in 12 U.S.C. 1828(c) and 1842(c).

(f) To better protect workers from wage collusion, the Attorney General and the Chair of the FTC are encouraged to consider whether to revise the Antitrust Guidance for Human Resource Professionals of October 2016.

(g) To address agreements that may unduly limit workers' ability to change jobs, the Chair of the FTC is encouraged to consider working with the rest of the Commission to exercise the FTC's statutory rulemaking authority under the Federal Trade Commission Act to curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.

(h) To address persistent and recurrent practices that inhibit competition, the Chair of the FTC, in the Chair's discretion, is also encouraged to consider working with the rest of the Commission to exercise the FTC's statutory rulemaking authority, as appropriate and consistent with applicable law, in areas such as:

- (i) unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy;
- (ii) unfair anticompetitive restrictions on third-party repair or self-repair of items, such as the restrictions imposed by powerful manufacturers that prevent farmers from repairing their own equipment;
- (iii) unfair anticompetitive conduct or agreements in the prescription drug industries, such as agreements to delay the market entry of generic drugs or biosimilars;
- (iv) unfair competition in major Internet marketplaces;
- (v) unfair occupational licensing restrictions;
- (vi) unfair tying practices or exclusionary practices in the brokerage or listing of real estate; and
- (vii) any other unfair industry-specific practices that substantially inhibit competition.

(i) The Secretary of Agriculture shall:

(i) to address the unfair treatment of farmers and improve conditions of competition in the markets for their products, consider initiating a rulemaking or rulemakings under the Packers and Stockyards Act to strengthen the Department of Agriculture's regulations concerning unfair, unjustly discriminatory, or deceptive practices and undue or unreasonable preferences, advantages, prejudices, or disadvantages, with the purpose of furthering the vigorous implementation of the law established by the Congress in 1921 and fortified by amendments. In such rulemaking or rulemakings, the Secretary of Agriculture shall consider, among other things:

(A) providing clear rules that identify recurrent practices in the livestock, meat, and poultry industries that are unfair, unjustly discriminatory, or deceptive and therefore violate the Packers and Stockyards Act;

(B) reinforcing the long-standing Department of Agriculture interpretation that it is unnecessary under the Packers and Stockyards Act to demonstrate industry-wide harm to establish a violation of the Act and that the "unfair, unjustly discriminatory, or deceptive" treatment of one farmer, the giving to one farmer of

an "undue or unreasonable preference or advantage," or the subjection of one farmer to an "undue or unreasonable prejudice or disadvantage in any respect" violates the Act;

(C) prohibiting unfair practices related to grower ranking systems—systems in which the poultry companies, contractors, or dealers exercise extraordinary control over numerous inputs that determine the amount farmers are paid and require farmers to assume the risk of factors outside their control, leaving them more economically vulnerable;

(D) updating the appropriate definitions or set of criteria, or application thereof, for undue or unreasonable preferences, advantages, prejudices, or disadvantages under the Packers and Stockyards Act; and

(E) adopting, to the greatest extent possible and as appropriate and consistent with applicable law, appropriate anti-retaliation protections, so that farmers may assert their rights without fear of retribution;

(ii) to ensure consumers have accurate, transparent labels that enable them to choose products made in the United States, consider initiating a rulemaking to define the conditions under which the labeling of meat products can bear voluntary statements indicating that the product is of United States origin, such as "Product of USA";

(iii) to ensure that farmers have greater opportunities to access markets and receive a fair return for their products, not later than 180 days after the date of this order, submit a report to the Chair of the White House Competition Council, with a plan to promote competition in the agricultural industries and to support value-added agriculture and alternative food distribution systems through such means as:

(A) the creation or expansion of useful information for farmers, such as model contracts, to lower transaction costs and help farmers negotiate fair deals;

(B) measures to encourage improvements in transparency and standards so that consumers may choose to purchase products that support fair treatment of farmers and agricultural workers and sustainable agricultural practices;

(C) measures to enhance price discovery, increase transparency, and improve the functioning of the cattle and other livestock markets;

(D) enhanced tools, including any new legislative authorities needed, to protect whistleblowers, monitor agricultural markets, and enforce relevant laws;

(E) any investments or other support that could bolster competition within highly concentrated agricultural markets; and

(F) any other means that the Secretary of Agriculture deems appropriate;

(iv) to improve farmers' and smaller food processors' access to retail markets, not later than 300 days after the date of this order, in consultation with the Chair of the FTC, submit a report to the Chair of the White House Competition Council, on the effect of retail concentration and retailers' practices on the conditions of competition in the food industries, including any practices that may violate the Federal Trade Commission Act, the Robinson-Patman Act (Public Law 74–692, 49 Stat. 1526, 15 U.S.C. 13 *et seq.*), or other relevant laws, and on grants, loans, and other support that may enhance access to retail markets by local and regional food enterprises; and

(v) to help ensure that the intellectual property system, while incentivizing innovation, does not also unnecessarily reduce competition in seed and other input markets beyond that reasonably contemplated by the Patent Act (*see* 35 U.S.C. 100 *et seq.* and 7 U.S.C. 2321 *et seq.*), in consultation with the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, submit a report to the Chair of the White House Competition Council, enumerating and describing any relevant concerns of the Department of Agriculture and strategies for addressing those concerns across intellectual property, antitrust, and other relevant laws.

(j) To protect the vibrancy of the American markets for beer, wine, and spirits, and to improve market access for smaller, independent, and new operations, the Secretary of the Treasury, in consultation with the Attorney General and the Chair of the FTC, not later than 120 days after the date of this order, shall submit a report to the Chair of the White House Competition Council, assessing the current market structure and conditions of competition, including an assessment of any threats to competition and barriers to new entrants, including:

(i) any unlawful trade practices in the beer, wine, and spirits markets, such as certain exclusionary, discriminatory, or anticompetitive distribution practices, that hinder smaller and independent businesses or new entrants from distributing their products;

(ii) patterns of consolidation in production, distribution, or retail beer, wine, and spirits markets; and

(iii) any unnecessary trade practice regulations of matters such as bottle sizes, permitting, or labeling that may unnecessarily inhibit competition by increasing costs without serving any public health, informational, or tax purpose.

(k) To follow up on the foregoing assessment, the Secretary of the Treasury, through the Administrator of the Alcohol and Tobacco Tax and Trade Bureau, shall, not later than 240 days after the date of this order, consider:

(i) initiating a rulemaking to update the Alcohol and Tobacco Tax and Trade Bureau's trade practice regulations;

(ii) rescinding or revising any regulations of the beer, wine, and spirits industries that may unnecessarily inhibit competition; and

(iii) reducing any barriers that impede market access for smaller and independent brewers, winemakers, and distilleries.

(l) To promote competition, lower prices, and a vibrant and innovative telecommunications ecosystem, the Chair of the Federal Communications Commission is encouraged to work with the rest of the Commission, as appropriate and consistent with applicable law, to consider:

(i) adopting through appropriate rulemaking "Net Neutrality" rules similar to those previously adopted under title II of the Communications Act of 1934 (Public Law 73-416, 48 Stat. 1064, 47 U.S.C. 151 *et seq.*), as amended by the Telecommunications Act of 1996, in "Protecting and Promoting the Open internet," 80 Fed.Reg. 19738 (Apr. 13, 2015);

(ii) conducting future spectrum auctions under rules that are designed to help avoid excessive concentration of spectrum license holdings in the United States, so as to prevent spectrum stockpiling, warehousing of spectrum by licensees, or the creation of barriers to entry, and to improve the conditions of competition in industries that depend upon radio spectrum, including mobile communications and radio-based broadband services;

(iii) providing support for the continued development and adoption of 5G Open Radio Access Network (O-RAN) protocols and software, continuing to attend meetings of voluntary and consensus-based standards development organizations, so as to promote or encourage a fair and representative standard-setting process, and undertaking any other measures that might promote increased openness, innovation, and competition in the markets for 5G equipment;

(iv) prohibiting unjust or unreasonable early termination fees for end-user communications contracts, enabling consumers to more easily switch providers;

(v) initiating a rulemaking that requires broadband service providers to display a broadband consumer label, such as that as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16-357), so as to give consumers clear, concise, and accurate information regarding provider prices and fees, performance, and network practices;

(vi) initiating a rulemaking to require broadband service providers to regularly report broadband price and subscription rates to the Federal Communications Commission for the purpose of disseminating that information to the public in a useful manner, to improve price transparency and market functioning; and

(vii) initiating a rulemaking to prevent landlords and cable and Internet service providers from inhibiting tenants' choices among providers.

(m) The Secretary of Transportation shall:

(i) to better protect consumers and improve competition, and as appropriate and consistent with applicable law:

(A) not later than 30 days after the date of this order, appoint or reappoint members of the Advisory Committee for Aviation Consumer Protection to ensure fair representation of consumers, State and local interests, airlines, and airports with respect to the evaluation of aviation consumer protection programs and convene a meeting of the Committee as soon as practicable;

(B) promote enhanced transparency and consumer safeguards, as appropriate and consistent with applicable law, including through potential rulemaking, enforcement actions, or guidance documents, with the aims of:

(1) enhancing consumer access to airline flight information so that consumers can more easily find a broader set of available flights, including by new or lesser known airlines; and

(2) ensuring that consumers are not exposed or subject to advertising, marketing, pricing, and charging of ancillary fees that may constitute an unfair or deceptive practice or an unfair method of competition;

(C) not later than 45 days after the date of this order, submit a report to the Chair of the White House Competition Council, on the progress of the Department of Transportation's investigatory and enforcement activities to address the failure of airlines to provide timely refunds for flights cancelled as a result of the COVID-19 pandemic;

(D) not later than 45 days after the date of this order, publish for notice and comment a proposed rule requiring airlines to refund baggage fees when a passenger's luggage is substantially delayed and other

ancillary fees when passengers pay for a service that is not provided;

(E) not later than 60 days after the date of this order, start development of proposed amendments to the Department of Transportation's definitions of "unfair" and "deceptive" in 49 U.S.C. 41712; and

(F) not later than 90 days after the date of this order, consider initiating a rulemaking to ensure that consumers have ancillary fee information, including "baggage fees," "change fees," and "cancellation fees," at the time of ticket purchase;

(ii) to provide consumers with more flight options at better prices and with improved service, and to extend opportunities for competition and market entry as the industry evolves:

(A) not later than 30 days after the date of this order, convene a working group within the Department of Transportation to evaluate the effectiveness of existing commercial aviation programs, consumer protections, and rules of the Federal Aviation Administration;

(B) consult with the Attorney General regarding means of enhancing effective coordination between the Department of Justice and the Department of Transportation to ensure competition in air transportation and the ability of new entrants to gain access; and

(C) consider measures to support airport development and increased capacity and improve airport congestion management, gate access, implementation of airport competition plans pursuant to 49 U.S.C. 47106(f), and "slot" administration;

(iii) given the emergence of new aerospace-based transportation technologies, such as low-altitude unmanned aircraft system deliveries, advanced air mobility, and high-altitude long endurance operations, that have great potential for American travelers and consumers, yet also the danger of early monopolization or new air traffic control problems, ensure that the Department of Transportation takes action with respect to these technologies to:

(A) facilitate innovation that fosters United States market leadership and market entry to promote competition and economic opportunity and to resist monopolization, while also ensuring safety, providing security and privacy, protecting the environment, and promoting equity; and

(B) provide vigilant oversight over market participants.

(n) To further competition in the rail industry and to provide accessible remedies for shippers, the Chair of the Surface Transportation Board (Chair) is encouraged to work with the rest of the Board to:

(i) consider commencing or continuing a rulemaking to strengthen regulations pertaining to reciprocal switching agreements pursuant to 49 U.S.C. 11102(c), if the Chair determines such rulemaking to be in the public interest or necessary to provide competitive rail service;

(ii) consider rulemakings pertaining to any other relevant matter of competitive access, including bottleneck rates, interchange commitments, or other matters, consistent with the policies set forth in section 1 of this order;

(iii) to ensure that passenger rail service is not subject to unwarranted delays and interruptions in service due to host railroads' failure to comply with the required preference for passenger rail, vigorously enforce new on-time performance requirements adopted pursuant to the Passenger Rail Investment and Improvement Act of 2008 (Public Law 110-423, 122 Stat. 4907) that will take effect on July 1, 2021, and further the work of the passenger rail working group formed to ensure that the Surface Transportation Board will fully meet its obligations; and

(iv) in the process of determining whether a merger, acquisition, or other transaction involving rail carriers is consistent with the public interest under 49 U.S.C. 11323-25, consider a carrier's fulfillment of its responsibilities under 49 U.S.C. 24308 (relating to Amtrak's statutory rights).

(o) The Chair of the Federal Maritime Commission is encouraged to work with the rest of the Commission to:

(i) vigorously enforce the prohibition of unjust and unreasonable practices in the context of detention and demurrage pursuant to the Shipping Act, as clarified in "Interpretive Rule on Demurrage and Detention Under the Shipping Act," 85 Fed. [sic] Reg. 29638 (May 18, 2020);

(ii) request from the National Shipper Advisory Committee recommendations for improving detention and demurrage practices and enforcement of related Shipping Act prohibitions; and

(iii) consider further rulemaking to improve detention and demurrage practices and enforcement of related Shipping Act prohibitions.

(p) The Secretary of Health and Human Services shall:

(i) to promote the wide availability of low-cost hearing aids, not later than 120 days after the date of this order, publish for notice and comment a proposed rule on over-the-counter hearing-aids, as called for by section 709 of the FDA Reauthorization Act of 2017 (Public Law 115-52, 131 Stat. 1005);

(ii) support existing price transparency initiatives for hospitals, other providers, and insurers along with any new price transparency initiatives or changes made necessary by the No Surprises Act (Public Law 116-260,

134 Stat. 2758) or any other statutes;

(iii) to ensure that Americans can choose health insurance plans that meet their needs and compare plan offerings, implement standardized options in the national Health Insurance Marketplace and any other appropriate mechanisms to improve competition and consumer choice;

(iv) not later than 45 days after the date of this order, submit a report to the Assistant to the President for Domestic Policy and Director of the Domestic Policy Council and to the Chair of the White House Competition Council, with a plan to continue the effort to combat excessive pricing of prescription drugs and enhance domestic pharmaceutical supply chains, to reduce the prices paid by the Federal Government for such drugs, and to address the recurrent problem of price gouging;

(v) to lower the prices of and improve access to prescription drugs and biologics, continue to promote generic drug and biosimilar competition, as contemplated by the Drug Competition Action Plan of 2017 and Biosimilar Action Plan of 2018 of the Food and Drug Administration (FDA), including by:

(A) continuing to clarify and improve the approval framework for generic drugs and biosimilars to make generic drug and biosimilar approval more transparent, efficient, and predictable, including improving and clarifying the standards for interchangeability of biological products;

(B) as authorized by the Advancing Education on Biosimilars Act of 2021 (Public Law 117–8, 135 Stat. 254, 42 U.S.C. 263–1), supporting biosimilar product adoption by providing effective educational materials and communications to improve understanding of biosimilar and interchangeable products among healthcare providers, patients, and caregivers;

(C) to facilitate the development and approval of biosimilar and interchangeable products, continuing to update the FDA's biologics regulations to clarify existing requirements and procedures related to the review and submission of Biologics License Applications by advancing the "Biologics Regulation Modernization" rulemaking (RIN 0910–A114); and

(D) with the Chair of the FTC, identifying and addressing any efforts to impede generic drug and biosimilar competition, including but not limited to false, misleading, or otherwise deceptive statements about generic drug and biosimilar products and their safety or effectiveness;

(vi) to help ensure that the patent system, while incentivizing innovation, does not also unjustifiably delay generic drug and biosimilar competition beyond that reasonably contemplated by applicable law, not later than 45 days after the date of this order, through the Commissioner of Food and Drugs, write a letter to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office enumerating and describing any relevant concerns of the FDA;

(vii) to support the market entry of lower-cost generic drugs and biosimilars, continue the implementation of the law widely known as the CREATES Act of 2019 (Public Law 116–94, 133 Stat. 3130), by:

(A) promptly issuing Covered Product Authorizations (CPAs) to assist product developers with obtaining brand-drug samples; and

(B) issuing guidance to provide additional information for industry about CPAs; and

(viii) through the Administrator of the Centers for Medicare and Medicaid Services, prepare for Medicare and Medicaid coverage of interchangeable biological products, and for payment models to support increased utilization of generic drugs and biosimilars.

(q) To reduce the cost of covered products to the American consumer without imposing additional risk to public health and safety, the Commissioner of Food and Drugs shall work with States and Indian Tribes that propose to develop section 804 Importation Programs in accordance with the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173, 117 Stat. 2066), and the FDA's implementing regulations.

(r) The Secretary of Commerce shall:

(i) acting through the Director of the National Institute of Standards and Technology (NIST), consider initiating a rulemaking to require agencies to report to NIST, on an annual basis, their contractors' utilization activities, as reported to the agencies under 35 U.S.C. 202(c)(5);

(ii) acting through the Director of NIST, consistent with the policies set forth in section 1 of this order, consider not finalizing any provisions on march-in rights and product pricing in the proposed rule "Rights to Federally Funded Inventions and Licensing of Government Owned Inventions," 86 Fed. Reg. 35 (Jan. 4, 2021); and

(iii) not later than 1 year after the date of this order, in consultation with the Attorney General and the Chair of the Federal Trade Commission, conduct a study, including by conducting an open and transparent stakeholder consultation process, of the mobile application ecosystem, and submit a report to the Chair of the White House Competition Council, regarding findings and recommendations for improving competition, reducing barriers to entry, and maximizing user benefit with respect to the ecosystem.

(s) The Secretary of Defense shall:

(i) ensure that the Department of Defense's assessment of the economic forces and structures shaping the capacity of the national security innovation base pursuant to section 889(a) and (b) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283, 134 Stat. 3388) is consistent with the policy set forth in section 1 of this order;

(ii) not later than 180 days after the date of this order, submit to the Chair of the White House Competition Council, a review of the state of competition within the defense industrial base, including areas where a lack of competition may be of concern and any recommendations for improving the solicitation process, consistent with the goal of the Competition in Contracting Act of 1984 (Public Law 98-369, 98 Stat. 1175); and

(iii) not later than 180 days after the date of this order, submit a report to the Chair of the White House Competition Council, on a plan for avoiding contract terms in procurement agreements that make it challenging or impossible for the Department of Defense or service members to repair their own equipment, particularly in the field.

(t) The Director of the Consumer Financial Protection Bureau, consistent with the pro-competition objectives stated in section 1021 of the Dodd-Frank Act [12 U.S.C. 5511], is encouraged to consider:

(i) commencing or continuing a rulemaking under section 1033 of the Dodd-Frank Act [12 U.S.C. 5533] to facilitate the portability of consumer financial transaction data so consumers can more easily switch financial institutions and use new, innovative financial products; and

(ii) enforcing the prohibition on unfair, deceptive, or abusive acts or practices in consumer financial products or services pursuant to section 1031 of the Dodd-Frank Act [12 U.S.C. 5531] so as to ensure that actors engaged in unlawful activities do not distort the proper functioning of the competitive process or obtain an unfair advantage over competitors who follow the law.

(u) The Director of the Office of Management and Budget, through the Administrator of the Office of Information and Regulatory Affairs, shall incorporate into its recommendations for modernizing and improving regulatory review required by my Memorandum of January 20, 2021 (Modernizing Regulatory Review) [86 F.R. 7223], the policies set forth in section 1 of this order, including consideration of whether the effects on competition and the potential for creation of barriers to entry should be included in regulatory impact analyses.

(v) The Secretary of the Treasury shall:

(i) direct the Office of Economic Policy, in consultation with the Attorney General, the Secretary of Labor, and the Chair of the FTC, to submit a report to the Chair of the White House Competition Council, not later than 180 days after the date of this order, on the effects of lack of competition on labor markets; and

(ii) submit a report to the Chair of the White House Competition Council, not later than 270 days after the date of this order, assessing the effects on competition of large technology firms' and other non-bank companies' entry into consumer finance markets.

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

(b) Where not already specified, independent agencies are encouraged to comply with the requirements of this order.

(c) Nothing in this order shall be construed to impair or otherwise affect:

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

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

(d) 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.

J.R. BIDEN, JR.

§2. Monopolizing trade a felony; penalty

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

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

title II, §215(b), June 22, 2004, 118 Stat. 668.)

EDITORIAL NOTES

AMENDMENTS

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

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

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

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

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

(a) Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding \$100,000,000 if a corporation, or, if any other person, \$1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

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

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

EDITORIAL NOTES

AMENDMENTS

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

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

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2002 AMENDMENT

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

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

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

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

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

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

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

EDITORIAL NOTES

CODIFICATION

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

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

§5. Bringing in additional parties

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

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

§6. Forfeiture of property in transit

Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this title, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law. (July 2, 1890, ch. 647, §6, 26 Stat. 210.)

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

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

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

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

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

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

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

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

EDITORIAL NOTES

PRIOR PROVISIONS

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

§7. "Person" or "persons" defined

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

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

§7a. Definitions

In sections 7a to 7a–3 of this title:

(1) Antitrust Division

The term "Antitrust Division" means the United States Department of Justice Antitrust Division.

(2) Antitrust leniency agreement

The term "antitrust leniency agreement," or "agreement," means a leniency letter agreement, whether conditional or final, between a person and the Antitrust Division pursuant to the

Corporate Leniency Policy of the Antitrust Division in effect on the date of execution of the agreement.

(3) Antitrust leniency applicant

The term "antitrust leniency applicant," or "applicant," means, with respect to an antitrust leniency agreement, the person that has entered into the agreement.

(4) Claimant

The term "claimant" means a person or class, that has brought, or on whose behalf has been brought, a civil action alleging a violation of section 1 or 3 of this title or any similar State law, except that the term does not include a State or a subdivision of a State with respect to a civil action brought to recover damages sustained by the State or subdivision.

(5) Cooperating individual

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

(6) Person

The term "person" has the meaning given it in subsection (a) of section 12 of this title. (Pub. L. 108–237, title II, §212, June 22, 2004, 118 Stat. 666; Pub. L. 111–190, §2, June 9, 2010, 124 Stat. 1275; Pub. L. 116–159, div. D, title III, §4303(b)(2), Oct. 1, 2020, 134 Stat. 742.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 7a to 7a–3 of this title, referred to in text, was in the original "this subtitle", meaning subtitle A (§§211–216) of title II of Pub. L. 108–237, June 22, 2004, 118 Stat. 666, which enacted this section and sections 7a–1 to 7a–3 of this title, amended sections 1, 2, and 3 of this title, and enacted provisions formerly set out in a note under section 1 of this title. For complete classification of subtitle A to the Code, see Tables.

CODIFICATION

Section was formerly set out in a note under section 1 of this title, prior to transfer to this section upon repeal of sunset provision.

AMENDMENTS

2020—Pars. (6), (7). Pub. L. 116–159 redesignated par. (7) as (6) and struck out former par. (6). Prior to amendment, text of par. (6) read as follows: "The term 'marker' means an assurance given by the Antitrust Division to a candidate for corporate leniency that no other company will be considered for leniency, for some finite period of time, while the candidate is given an opportunity to perfect its leniency application."

2010—Pars. (6), (7). Pub. L. 111–190 added par. (6) and redesignated former par. (6) as (7).

STATUTORY NOTES AND RELATED SUBSIDIARIES

FINDINGS; PURPOSE OF 2020 AMENDMENT

Pub. L. 116–159, div. D, title III, §4302, Oct. 1, 2020, 134 Stat. 742, provided that:

"(a) FINDINGS.—Congress finds the following:

"(1) Conspiracies among competitors to fix prices, rig bids, and allocate markets are categorically and irredeemably anticompetitive and contravene the competition policy of the United States.

"(2) Cooperation incentives are important to the efforts of the Antitrust Division of the Department of Justice to prosecute and deter the offenses described in paragraph (1).

"(b) PURPOSE.—The purpose of this Act [probably means title III of div. D (§4301 et seq.) of Pub. L. 116–159, see Tables for classification], and the amendments made by this Act, is to strengthen public and private antitrust enforcement by providing incentives for antitrust violators to cooperate fully with government prosecutors and private litigants through the repeal of the sunset provision of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 [section 211 of Pub. L. 108–237] ([former] 15 U.S.C. 1 note)."

TECHNICAL AND CONFORMING AMENDMENTS

Pub. L. 116–159, div. D, title III, §4303(b)(1), Oct. 1, 2020, 134 Stat. 742, provided that:

"(1) REVIVAL AND RESTORATION.—

"(A) IN GENERAL.—Sections 212, 213, and 214 of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 [title II of Pub. L. 108–237] ([former] 15 U.S.C. 1 note [now 15 U.S.C. 7a, 7a–1, 7a–2, respectively]) as in effect on June 21, 2020, and as amended by the laws described in subparagraph (B), are revived and restored.

"(B) LAWS.—The laws described in this subparagraph are:

"(i) Antitrust Criminal Penalty Enhancement and Reform Act of 2004 Extension Act (Public Law 111–30; 123 Stat. 1775) [amending former section 211 of Pub. L. 108–237].

"(ii) The Act entitled 'An Act to amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act, and for other purposes', approved June 9, 2010 (Public Law 111–90 [sic, probably should be "111–190"]; 124 Stat. 1275) [amending this section, sections 7a–1 and 7a–2 of this title, and former section 211 of Pub. L. 108–237]."

APPLICABILITY OF 2020 AMENDMENT

Pub. L. 116–159, div. D, title III, §4303(c), Oct. 1, 2020, 134 Stat. 742, provided that:

"(1) MARKERS AND AGREEMENTS BEFORE SUNSET.—Notwithstanding the repeal under subsection (a) [repealing section 211 of Pub. L. 108–237], section 211(b) of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 [Pub. L. 108–237] ([former] 15 U.S.C. 1 note), as in effect on the day before the date of enactment of this Act [Oct. 1, 2020], shall continue to apply to any person who received a marker or entered into an antitrust leniency agreement on or before June 22, 2020.

"(2) MARKERS AND AGREEMENTS AFTER SUNSET.—The repeal under subsection (a) shall apply to any person who received a marker or entered into an antitrust leniency agreement on or after June 23, 2020."

§7a–1. Limitation on recovery

(a) In general

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

(b) Requirements

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

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

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

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

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

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

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

(c) Timeliness

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

(d) Cooperation after expiration of stay or protective order

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

(e) Continuation

Nothing in this section shall be construed to modify, impair, or supersede the provisions of sections 15, 15a, and 15c of this title relating to the recovery of costs of suit, including a reasonable attorney's fee, and interest on damages, to the extent that such recovery is authorized by such sections.

(Pub. L. 108–237, title II, §213, June 22, 2004, 118 Stat. 666; Pub. L. 111–190, §3, June 9, 2010, 124 Stat. 1275.)

EDITORIAL NOTES

CODIFICATION

Section was formerly set out in a note under section 1 of this title, prior to transfer to this section upon repeal of sunset provision.

AMENDMENTS

2010—Subsec. (c). Pub. L. 111–190, §3(a), amended subsec. (c) generally. Prior to amendment, text read as follows: "If the initial contact by the antitrust leniency applicant with the Antitrust Division regarding conduct covered by the antitrust leniency agreement occurs after a State, or subdivision of a State, has issued compulsory process in connection with an investigation of allegations of a violation of section 1 or 3 of this title or any similar State law based on conduct covered by the antitrust leniency agreement or after a civil action described in subsection (a) has been filed, then the court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant's initial cooperation with the claimant."

Subsecs. (d), (e). Pub. L. 111–190, §3(b), added subsec. (d) and redesignated former subsec. (d) as (e).

§7a–2. Rights, authorities, and liabilities not affected

Nothing in sections 7a to 7a–3 of this title shall be construed to—

(1) affect the rights of the Antitrust Division to seek a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement to prevent the cooperation described in section 7a–1(b) of this title from impairing or impeding the investigation or prosecution by the Antitrust Division of conduct covered by the agreement;

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

(3) affect, in any way, the joint and several liability of any party to a civil action described in section 7a–1(a) of this title, other than that of the antitrust leniency applicant and cooperating individuals as provided in section 7a–1(a) of this title.

(Pub. L. 108–237, title II, §214, June 22, 2004, 118 Stat. 667; Pub. L. 111–190, §4, June 9, 2010, 124 Stat. 1276.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 7a to 7a–3 of this title, referred to in text, was in the original "this subtitle", meaning subtitle A (§§211–216) of title II of Pub. L. 108–237, June 22, 2004, 118 Stat. 666, which enacted this section and sections 7a, 7a–1, and 7a–3 of this title, amended sections 1, 2, and 3 of this title, and enacted provisions formerly set out in a note under section 1 of this title. For complete classification of subtitle A to the Code, see Tables.

CODIFICATION

Section was formerly set out in a note under section 1 of this title, prior to transfer to this section upon repeal of sunset provision.

AMENDMENTS

2010—Par. (1). Pub. L. 111–190, §4(1), made technical amendment to reference in original act which appears in text as reference to section 7a–1(b) of this title.

Par. (3). Pub. L. 111–190, §4(2), made technical amendment to references in original act which appear in two places in text as references to section 7a–1(a) of this title.

§7a–3. Anti-retaliation protection for whistleblowers

(a) Whistleblower protections for employees, contractors, subcontractors, and agents

(1) In general

No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against a covered individual in the terms and conditions of employment of the covered individual because of any lawful act done by the covered individual—

(A) to provide or cause to be provided to the Federal Government or a person with supervisory authority over the covered individual (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct) information relating to—

(i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

(ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws; or

(B) to cause to be filed, testify in, participate in, or otherwise assist a Federal Government investigation or a Federal Government proceeding filed or about to be filed (with any knowledge of the employer) relating to—

(i) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, the antitrust laws; or

(ii) any violation of, or any act or omission the covered individual reasonably believes to be a violation of, another criminal law committed in conjunction with a potential violation of the antitrust laws or in conjunction with an investigation by the Department of Justice of a potential violation of the antitrust laws.

(2) Limitation on protections

Paragraph (1) shall not apply to any covered individual if—

(A) the covered individual planned and initiated a violation or attempted violation of the antitrust laws;

(B) the covered individual planned and initiated a violation or attempted violation of another criminal law in conjunction with a violation or attempted violation of the antitrust laws; or

(C) the covered individual planned and initiated an obstruction or attempted obstruction of an investigation by the Department of Justice of a violation of the antitrust laws.

(3) Definitions

In this section:

(A) Antitrust laws

The term "antitrust laws" means section 1 or 3 of this title.

(B) Covered individual

The term "covered individual" means an employee, contractor, subcontractor, or agent of an employer.

(C) Employer

The term "employer" means a person, or any officer, employee, contractor, subcontractor, or agent of such person.

(D) Federal Government

The term "Federal Government" means—

- (i) a Federal regulatory or law enforcement agency; or
- (ii) any Member of Congress or committee of Congress.

(E) Person

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

(4) Rule of construction

The term "violation", with respect to the antitrust laws, shall not be construed to include a civil violation of any law that is not also a criminal violation.

(b) Enforcement action

(1) In general

A covered individual who alleges discharge or other discrimination by any employer in violation of subsection (a) may seek relief under subsection (c) by—

(A) filing a complaint with the Secretary of Labor; or

(B) if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

(2) Procedure

(A) In general

A complaint filed with the Secretary of Labor under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49.

(B) Exception

Notification made under section 42121(b)(1) of title 49 shall be made to any individual named in the complaint and to the employer.

(C) Burdens of proof

An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49.

(D) Statute of limitations

A complaint under paragraph (1)(A) shall be filed with the Secretary of Labor not later than

180 days after the date on which the violation occurs.

(E) Civil actions to enforce

If a person fails to comply with an order or preliminary order issued by the Secretary of Labor pursuant to the procedures set forth in section 42121(b) of title 49, the Secretary of Labor or the person on whose behalf the order was issued may bring a civil action to enforce the order in the district court of the United States for the judicial district in which the violation occurred.

(c) Remedies

(1) In general

A covered individual prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the covered individual whole.

(2) Compensatory damages

Relief for any action under paragraph (1) shall include—

(A) reinstatement with the same seniority status that the covered individual would have had, but for the discrimination;

(B) the amount of back pay, with interest; and

(C) compensation for any special damages sustained as a result of the discrimination including litigation costs, expert witness fees, and reasonable attorney's fees.

(d) Rights retained by whistleblowers

Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any covered individual under any Federal or State law, or under any collective bargaining agreement. (Pub. L. 108–237, title II, §216, as added Pub. L. 116–257, §2, Dec. 23, 2020, 134 Stat. 1147.)

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

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

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

EDITORIAL NOTES

AMENDMENTS

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

Section 77, formerly §78, of act Aug. 27, 1894, as added by Pub. L. 94–435, title III, §305(d), Sept. 30, 1976, 90 Stat. 1397; renumbered §77 and amended Pub. L. 107–273, div. C, title IV, §14102(c)(1)(B), Nov. 2,

2002, 116 Stat. 1921, provided that: "Sections 73, 74, 75, and 76 of this Act [enacting sections 8 to 11 of this title] may be cited as the 'Wilson Tariff Act'."

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

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

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

EDITORIAL NOTES

CODIFICATION

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

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

§10. Bringing in additional parties

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

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

§11. Forfeiture of property in transit

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

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

EDITORIAL NOTES

AMENDMENTS

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

§12. Definitions; short title

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

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

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

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, referred to in subsec. (a), is act July 2, 1890, ch. 647, 26 Stat. 209, known as the Sherman Act, which is classified to sections 1 to 7 of this title.

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

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

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

CODIFICATION

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

AMENDMENTS

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2002 AMENDMENT

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

§13. Discrimination in price, services, or facilities

(a) Price; selection of customers

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

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

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

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

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary

is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

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

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

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

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

(f) Knowingly inducing or receiving discriminatory price

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

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

EDITORIAL NOTES

AMENDMENTS

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

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

§13a. Discrimination in rebates, discounts, or advertising service charges; underselling in particular localities; penalties

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

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

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

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

Nothing in this Act shall prevent a cooperative association from returning to its members, producers, or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association. (June 19, 1936, ch. 592, §4, 49 Stat. 1528.)

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, popularly 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.

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

Nothing in the Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit. (May 26, 1938, ch. 283, 52 Stat. 446.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Act approved June 19, 1936, known as the Robinson-Patman Antidiscrimination Act, referred to in text, is act June 19, 1936, ch. 592, 49 Stat. 1526, also known 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.

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

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

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

§15. Suits by persons injured

(a) Amount of recovery; prejudgment interest

Except as provided in subsection (b), any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and

the cost of suit, including a reasonable attorney's fee. The court may award under this section, pursuant to a motion by such person promptly made, simple interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment, or for any shorter period therein, if the court finds that the award of such interest for such period is just in the circumstances. In determining whether an award of interest under this section for any period is just in the circumstances, the court shall consider only—

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

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

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

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

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

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

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

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

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

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

(c) Definitions

For purposes of this section—

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

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

PRIOR PROVISIONS

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

AMENDMENTS

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

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

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

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

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

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

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

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

AMENDMENTS

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE

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

§15b. Limitation of actions

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

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

AMENDMENTS

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

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

§15c. Actions by State attorneys general

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

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

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

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

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

(C) whether such State or the opposing party, or either party's representative, engaged in

conduct primarily for the purpose of delaying the litigation or increasing the cost thereof.

(b) Notice; exclusion election; final judgment

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

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

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

(c) Dismissal or compromise of action

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

(d) Attorneys' fees

In any action under subsection (a)—

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

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

AMENDMENTS

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

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

EFFECTIVE DATE

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

§15d. Measurement of damages

In any action under section 15c(a)(1) of this title, in which there has been a determination that a defendant agreed to fix prices in violation of sections 1 to 7 of this title, damages may be proved and

assessed in the aggregate by statistical or sampling methods, by the computation of illegal overcharges, or by such other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

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

§15e. Distribution of damages

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

- (1) be distributed in such manner as the district court in its discretion may authorize; or
- (2) be deemed a civil penalty by the court and deposited with the State as general revenues;

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

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

§15f. Actions by Attorney General

(a) Notification to State attorney general

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

(b) Availability of files and other materials

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and 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.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

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

§15g. Definitions

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

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

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

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

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

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

§15h. Applicability of parens patriae actions

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

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

§16. Judgments

(a) Prima facie evidence; collateral estoppel

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

collateral estoppel, except that, in any action or proceeding brought under the antitrust laws, collateral estoppel effect shall not be given to any finding made by the Federal Trade Commission under the antitrust laws or under section 45 of this title which could give rise to a claim for relief under the antitrust laws.

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

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

- (1) the nature and purpose of the proceeding;
- (2) a description of the practices or events giving rise to the alleged violation of the antitrust laws;
- (3) an explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;
- (4) the remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;
- (5) a description of the procedures available for modification of such proposal; and
- (6) a description and evaluation of alternatives to such proposal actually considered by the United States.

(c) Publication of summaries in newspapers

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

- (i) a summary of the terms of the proposal for consent judgment,
- (ii) a summary of the competitive impact statement filed under subsection (b),
- (iii) and a list of the materials and documents under subsection (b) which the United States shall make available for purposes of meaningful public comment, and the place where such materials and documents are available for public inspection.

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

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

authorize an alternative method of public dissemination of the public comments received and the response to those comments.

(e) Public interest determination

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

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

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

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

(f) Procedure for public interest determination

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

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

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

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

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

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

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

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

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

Proceedings before the district court under subsections (e) and (f) of this section, and the competitive impact statement filed under subsection (b) of this section, shall not be admissible against any defendant in any action or proceeding brought by any other party against such defendant

under the antitrust laws or by the United States under section 15a of this title nor constitute a basis for the introduction of the consent judgment as prima facie evidence against such defendant in any such action or proceeding.

(i) Suspension of limitations

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

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

SUSPENSION OF LIMITATION

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

FINDINGS AND PURPOSES OF 2004 AMENDMENT

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

"(1) FINDINGS.—Congress finds that—

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

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

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

§17. Antitrust laws not applicable to labor organizations

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

§18. Acquisition by one corporation of stock of another

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

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

This section shall not apply to persons purchasing such stock solely for investment and not using

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

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

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

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

AMENDMENTS

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

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

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–88 effective Jan. 1, 1996, see section 2 of Pub. L. 104–88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

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

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), 7291, and 7293 of Title 42, The Public Health and Welfare.

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.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

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

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

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, by section 103 of Reorg. Plan No. 7 of 1961, which was repealed by Pub. L. 109–304, §19, Oct. 6, 2006, 120 Stat. 1710 and formerly set out in the Appendix to Title 5, or to Secretary of Commerce, by section 202 of Reorg. Plan No. 7 of 1961, set out in the Appendix to Title 5.

¹ [*See References in Text note below.*](#)

§18a. Premerger notification and waiting period

(a) Filing

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

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

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

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

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

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

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

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

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

(b) Waiting period; publication; voting securities

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

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

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

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

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

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

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

(3) As used in this section—

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

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

(c) Exempt transactions

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

- (1) acquisitions of goods or realty transferred in the ordinary course of business;
- (2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;
- (3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisition;
- (4) transfers to or from a Federal agency or a State or political subdivision thereof;
- (5) transactions specifically exempted from the antitrust laws by Federal statute;
- (6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;
- (7) transactions which require agency approval under section 1467a(e) of title 12, section 1828(c) of title 12, or section 1842 of title 12, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1842 of title 12;
- (8) transactions which require agency approval under section 1843 of title 12 or section 1464 of title 12, if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction, except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1843 of title 12;
- (9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;
- (10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;
- (11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and
- (12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B).

(d) Commission rules

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

- (1) shall require that the notification required under subsection (a) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisition may, if consummated, violate the antitrust laws; and
- (2) may—
 - (A) define the terms used in this section;
 - (B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and
 - (C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

(e) Additional information; waiting period extensions

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

notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

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

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

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

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

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

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

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

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

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

(III) the effects of such reforms.

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

(f) Preliminary injunctions; hearings

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

(g) Civil penalty; compliance; power of court

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

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

(A) may order compliance;

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

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

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

(h) Disclosure exemption

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

(i) Construction with other laws

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

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

(j) Omitted

(k) Extensions of time

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

This Act, referred to in subsec. (i)(1), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and 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.

The Federal Trade Commission Act, referred to in subsec. (i)(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.

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

CODIFICATION

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

Subsec. (c)(8). Pub. L. 106-102, §133(c)(2), inserted before semicolon at end ", except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 1843(k) of title 12; and (B) does not require agency approval under section 1843 of title 12".

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

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

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

EFFECTIVE DATE OF 2000 AMENDMENT

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

EFFECTIVE DATE OF 1999 AMENDMENT

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE

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

DEPARTMENT OF DEFENSE NOTIFICATION OF CERTAIN TRANSACTIONS

Pub. L. 118–31, div. A, title VIII, §857, Dec. 22, 2023, 137 Stat. 346, provided that: "The parties to a proposed merger or acquisition that will require a review by the Department of Defense who are required to file the notification and provide supplementary information to the Department of Justice or the Federal Trade Commission under section 7A of the Clayton Act (15 U.S.C. 18a) shall concurrently provide such information to the Department of Defense during the waiting period under section 7A of the Clayton Act (15 U.S.C. 18a)."

ASSESSMENT AND COLLECTION OF FILING FEES

Pub. L. 101–162, title VI, §605, Nov. 21, 1989, 103 Stat. 1031, as amended by Pub. L. 101–302, title II, May 25, 1990, 104 Stat. 217; Pub. L. 102–395, title I, Oct. 6, 1992, 106 Stat. 1847; Pub. L. 103–317, title I, Aug. 26, 1994, 108 Stat. 1739; Pub. L. 106–553, §1(a)(2) [title VI, §630(b)], Dec. 21, 2000, 114 Stat. 2762, 2762A–109; Pub. L. 117–328, div. GG, title I, §101, Dec. 29, 2022, 136 Stat. 5967, provided that:

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

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

"(1) \$30,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is less than \$161,500,000 (as adjusted and published for each fiscal year beginning after September 30, 2023, in the same manner as provided in section 8(a)(5) of the Clayton Act (15 U.S.C. 19(a)(5)) to reflect the percentage change in the gross national product for such fiscal year compared to the gross national product for the year ending September 30, 2022);

"(2) \$100,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$161,500,000 (as so adjusted and published) but is less than \$500,000,000 (as so adjusted and published);

"(3) \$250,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$500,000,000 (as so adjusted and published) but is less than \$1,000,000,000 (as so adjusted and published);

"(4) \$400,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$1,000,000,000 (as so adjusted and published) but is less than \$2,000,000,000 (as so adjusted and published);

"(5) \$800,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$2,000,000,000 (as so adjusted and published) but is less than

\$5,000,000,000 (as so adjusted and published); and

"(6) \$2,250,000 if the aggregate total amount determined under section 7A(a)(2) of the Clayton Act (15 U.S.C. 18a(a)(2)) is not less than \$5,000,000,000 (as so adjusted and published).

"(c)(1) For each fiscal year commencing after September 30, 2023, the filing fees in this section shall be increased by an amount equal to the percentage increase, if any, in the Consumer Price Index, as determined by the Department of Labor or its successor, for the year then ended over the level so established for the year ending September 30, 2022.

"(2) As soon as practicable, but not later than January 31 of each year, the Federal Trade Commission shall publish the adjusted amounts required by paragraph (1).

"(3) The Federal Trade Commission shall not adjust amounts required by paragraph (1) if the percentage increase described in paragraph (1) is less than 1 percent.

"(4) An amount adjusted under this section shall be rounded to the nearest multiple of \$5,000."

[Another section 101 of div. GG of Pub. L. 117–328 is set out as a note under section 1 of this title.]

§18b. Mergers involving foreign government subsidies

(a) Definition

In this section, the term "foreign entity of concern" has the meaning given the term in section 18741 of title 42.

(b) Accounting for foreign government subsidies

A person required to file a notification under section 18a of this title that received a subsidy from a foreign entity of concern shall include in such notification content regarding such subsidy.

(c) Authority of antitrust regulators

The Federal Trade Commission, with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, and in consultation with the Chairperson of the Committee on Foreign Investment in the United States, the Secretary of Commerce, the Chair of the United States International Trade Commission, the United States Trade Representative, and the heads of other appropriate agencies, and by rule in accordance with section 553 of title 5, shall require that the notification required under subsection (b) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice to determine whether such acquisition may, if consummated, violate the antitrust laws.

(d) Effective date

Subsection (b) shall take effect on the date on which the rule described in subsection (c) takes effect.

(Pub. L. 117–328, div. GG, title II, §202, Dec. 29, 2022, 136 Stat. 5970.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

FINDINGS AND PURPOSE

Pub. L. 117–328, div. GG, title II, §201, Dec. 29, 2022, 136 Stat. 5969, provided that:

"(a) FINDINGS.—Congress finds the following:

"(1) Foreign subsidies, which can take the form of direct subsidies, grants, loans (including below-market loans), loan guarantees, tax concessions, preferential government procurement policies, or government ownership or control, can distort the competitive process by enabling the subsidized firm to submit a bid higher than other firms in the market, or otherwise change the incentives of the firm in ways that undermine competition following an acquisition.

"(2) Foreign subsidies are particularly problematic when granted by countries or entities that constitute a strategic or economic threat to United States interests.

"(3) The Made in China 2025 plan, states that the Chinese Communist Party will 'support enterprises to carry out mergers and acquisitions (M&A), equity investment, and venture capital overseas'.

"(4) The 2020 report to Congress from the bipartisan U.S.-China Economic and Security Review Commission concluded that the Chinese Government subsidizes companies with a goal of their expanding into the United States and other countries, finding that '[t]his process assists Chinese national champions in surpassing and supplanting global market leaders'. The report warns that the risk is particularly acute when it comes to emerging technologies, where China seeks to 'surpass and displace the United States altogether [and that] [f]ailure to appreciate the gravity of this challenge and defend U.S. competitiveness would be dire . . . [and] risks setting back U.S. economic and technological progress for decades'.

"(5) In remarks before the Hudson Institute on December 8, 2020, FTC Commissioner Noah Phillips stated, '[O]ne area where antitrust needs to reckon with the strategic interests of other nations is when we scrutinize mergers or conduct involving state-owned entities . . . companies that are controlled, to varying degrees, by the state . . . [and] often are a government tool for implementing industrial policies or to protect national security'.

"(b) PURPOSE.—The purpose of this section [probably means "this title", enacting this section and this note] is to require parties providing pre-merger notifications to include in the notification required under section 7A of the Clayton Act (15 U.S.C. 18a) information concerning subsidies they receive from countries or entities that are strategic or economic threats to the United States."

§19. Interlocking directorates and officers

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

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

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

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

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

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

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

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

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

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

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

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

(b) When any person elected or chosen as a director or officer of any corporation subject to the provisions hereof is eligible at the time of his election or selection to act for such corporation in such

capacity, his eligibility to act in such capacity shall not be affected by any of the provisions hereof by reason of any change in the capital, surplus and undivided profits, or affairs of such corporation from whatever cause, until the expiration of one year from the date on which the event causing ineligibility occurred.

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

AMENDMENTS

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

1990—Pub. L. 101-588 amended section generally, completely revising it in form by substituting text divided into a subsec. (a) consisting of five numbered paragraphs and a subsec. (b) consisting of a single unnumbered paragraph for former provisions which had consisted of a series of five undesignated paragraphs, and in substance by increasing the jurisdictional threshold for application of the section to corporations from \$1,000,000 in net worth to \$10,000,000 in net worth, creating three "de minimis" exceptions to applications of the section in cases of insignificant competitive overlaps, and expanding the section to cover officers elected or chosen by the Board of Directors.

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

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

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

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

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

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

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

§21. Enforcement provisions

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

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

(b) Issuance of complaints for violations; hearing; intervention; filing of testimony; report;

cease and desist orders; reopening and alteration of reports or orders

Whenever the Commission, Board, or Secretary vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections 13, 14, 18, and 19 of this title, it shall issue and serve upon such person and the Attorney General a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission, Board, or Secretary requiring such person to cease and desist from the violation of the law so charged in said complaint. The Attorney General shall have the right to intervene and appear in said proceeding and any person may make application, and upon good cause shown may be allowed by the Commission, Board, or Secretary, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission, Board, or Secretary. If upon such hearing the Commission, Board, or Secretary, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing, in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock, or other share capital, or assets, held or rid itself of the directors chosen contrary to the provisions of sections 18 and 19 of this title, if any there be, in the manner and within the time fixed by said order. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission, Board, or Secretary may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission, Board, or Secretary may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission, Board, or Secretary conditions of fact or of law have so changed as to require such action or if the public interest shall so require: *Provided, however,* That the said person may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

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

Any person required by such order of the commission, board, or Secretary to cease and desist from any such violation may obtain a review of such order in the court of appeals of the United States for any circuit within which such violation occurred or within which such person resides or carries on business, by filing in the court, within sixty days after the date of the service of such order, a written petition praying that the order of the commission, board, or Secretary be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the commission, board, or Secretary, and thereupon the commission, board, or Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the commission, board, or Secretary until the filing of the record, and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the commission, board, or Secretary, and enforcing the same to the extent that such order is affirmed, and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the commission, board, or Secretary as to the facts, if supported by substantial evidence, shall be conclusive. To the extent that the order of the commission, board, or Secretary is affirmed, the court shall issue its own order commanding obedience to the terms of such order of the commission, board, or Secretary. If either party shall

apply to the court for leave to adduce additional evidence, and shall show 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, board, or Secretary, the court may order such additional evidence to be taken before the commission, board, or Secretary, 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, board, or Secretary may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and shall file such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Exclusive jurisdiction of Court of Appeals

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

(e) Liability under antitrust laws

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

(f) Service of complaints, orders and other processes

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

(g) Finality of orders generally

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

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

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

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

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

(h) Finality of orders modified by Supreme Court

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

(i) Finality of orders modified by Court of Appeals

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

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

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

(k) "Mandate" defined

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Penalties

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

CODIFICATION

In subsec. (a), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" 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.

AMENDMENTS

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

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

where applicable to air carriers and foreign air carriers subject to the Civil Aeronautics Act of 1938".

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

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

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

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

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

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

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

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

Pub. L. 85-791, §4(c), substituted in second sentence of fourth par., "transmitted by the clerk of the court to" for "served upon" and "shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "forthwith shall certify and file in the court a transcript of the record in the proceeding, as hereinbefore provided", and in third sentence of fourth paragraph substituted "such petition" for "the transcript" and inserted "determined as provided in section 1009(e) of title 5,".

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

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

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

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

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

EFFECTIVE DATE OF 1984 AMENDMENTS

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

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 1959 AMENDMENT

Section 2 of Pub. L. 86-107 provided that: "The amendments made by section 1 [amending this section]

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

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.

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

Nothing herein contained shall affect rights of action arising, or litigation pending, or orders of the Federal Trade Commission issued and in effect or pending on review, based on section 13 of this title, prior to June 19, 1936: *Provided*, That where, prior to June 19, 1936, the Federal Trade Commission has issued an order requiring any person to cease and desist from a violation of section 13 of this title, and such order is pending on review or is in effect, either as issued or as affirmed or modified by a court of competent jurisdiction, and the Commission shall have reason to believe that such person has committed, used or carried on, since June 19, 1936, or is committing, using or carrying on, any act, practice or method in violation of any of the provisions of said section 13 of this title, it may reopen such original proceedings and may issue and serve upon such person its complaint, supplementary to the original complaint, stating its charges in that respect. Thereupon the same proceedings shall be had upon such supplementary complaint as provided in section 21 of this title. If upon such hearing the Commission shall be of the opinion that any act, practice, or method charged in said supplementary complaint has been committed, used, or carried on since June 19, 1936, or is being committed, used or carried on, in violation of said section 13 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and serve upon such person its order modifying or amending its original order to include any additional violations of law so found. Thereafter the provisions of section 21 of this title, as to review and enforcement of orders of the Commission shall in all things apply to such modified or amended order. If upon review as provided in said section 21 of this title the court shall set aside such modified or amended order, the original order shall not be affected thereby, but it shall be and remain in force and effect as fully and to the same extent as if such supplementary proceedings had not been taken.

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

EDITORIAL NOTES

REFERENCES IN TEXT

Nothing herein contained, referred to in text, probably means nothing contained in act June 19, 1936, ch. 592, 49 Stat. 1526, popularly 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.

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.

§22. District in which to sue corporation

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

§23. Suits by United States; subpoenas for witnesses

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

§24. Liability of directors and agents of corporation

Whenever a corporation shall violate any of the penal provisions of the antitrust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

§25. Restraining violations; procedure

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several United States attorneys, in their

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of this title, and 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.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

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

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

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

AMENDMENTS

1995—Pub. L. 104-88 substituted "for injunctive relief against any common carrier subject to the jurisdiction of the Surface Transportation Board under subtitle IV of title 49" for "in equity for injunctive

relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission."

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-88 effective Jan. 1, 1996, see section 2 of Pub. L. 104-88, set out as an Effective Date note under section 1301 of Title 49, Transportation.

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

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

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

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

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

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

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

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

(3) Nothing in this section shall—

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

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

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

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

(c) "United States" defined

As used in this section, "United States" includes the several States, the District of Columbia, any

territory of the United States, and any insular possession or other place under the jurisdiction of the United States.

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE

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

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

(a) Major league baseball subject to antitrust laws

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

(b) Limitation of section

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

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

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

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

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

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

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

(c) Standing to sue

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

section, a major league baseball player is—

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

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

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

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

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

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

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

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

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

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

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

CODIFICATION

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

PURPOSE

Pub. L. 105–297, §2, Oct. 27, 1998, 112 Stat. 2824, provided that: "It is the purpose of this legislation to state that major league baseball players are covered under the antitrust laws (i.e., that major league baseball players will have the same rights under the antitrust laws as do other professional athletes, e.g., football and basketball players), along with a provision that makes it clear that the passage of this Act [enacting this section and provisions set out as a note under section 1 of this title] does not change the application of the antitrust laws in any other context or with respect to any other person or entity."

§27. Effect of partial invalidity

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

This Act, referred to in text, is act Oct. 15, 1914, ch. 323, 38 Stat. 730, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 21, and 22 to 27 of this title, and 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.

§27a. Transferred

EDITORIAL NOTES

CODIFICATION

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

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

§29. Appeals

(a) Court of appeals; review by Supreme Court

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

(b) Direct appeals to Supreme Court

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

CODIFICATION

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

AMENDMENTS

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

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

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1948 AMENDMENT

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

EFFECTIVE DATE OF 1944 AMENDMENT

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

SHORT TITLE

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

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

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Repeal effective on 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.

SAVINGS PROVISION

Repeal of sections by Pub. L. 91-452 not to affect any immunity to which any individual was entitled under sections by reason of any testimony given before the 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.

§34. Definitions applicable to sections 34 to 36

For purposes of sections 34 to 36 of this title—

(1) the term "local government" means—

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

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

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

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

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

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

(a) Prohibition in general

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

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

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

The Clayton Act, referred to in subsecs. (a) and (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.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

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

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

(a) Prohibition in general

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

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

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

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

§37. Immunity from antitrust laws

(a) Inapplicability of antitrust laws

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

(b) Immunity

Except as provided in subsection (d), any person subjected to any legal proceeding for damages, injunction, penalties, or other relief of any kind under the antitrust laws, or any State law similar to any of the antitrust laws, on account of setting or agreeing to rates of return or other terms for, negotiating, issuing, participating in, implementing, or otherwise being involved in the planning,

issuance, or payment of charitable gift annuities or charitable remainder trusts shall have immunity from suit under the antitrust laws, including the right not to bear the cost, burden, and risk of discovery and trial, for the conduct set forth in this subsection.

(c) Treatment of certain annuities and trusts

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

- (1) in any filing by the donor with the Internal Revenue Service; or
- (2) in any schedule, form, or written document provided by or on behalf of the donee to the donor;

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

(d) Limitation

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

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

EDITORIAL NOTES

REFERENCES IN TEXT

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

AMENDMENTS

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE

Pub. L. 104–63, §4, Dec. 8, 1995, 109 Stat. 688, provided that: "This Act [enacting this section, section 37a of this title, and provisions set out as a note under section 1 of this title] shall apply with respect to conduct occurring before, on, or after the date of the enactment of this Act [Dec. 8, 1995]."

STUDY AND REPORT

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

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

"(b) **DETAILS OF STUDY AND REPORT.**—The report referred to in subsection (a) shall include any

information on possible inappropriate activity resulting from this Act and any recommendations for legislative changes, including recommendations for additional enforcement resources.

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

§37a. Definitions

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

(1) Antitrust laws

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.

(2) Charitable remainder trust

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

(3) Charitable gift annuity

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

(4) Final determination

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

(5) Person

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

(6) State

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

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

EDITORIAL NOTES

AMENDMENTS

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

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1997 AMENDMENT

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

EFFECTIVE DATE

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

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

(a) Findings and purposes

(1) Findings

Congress makes the following findings:

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

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

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

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

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

(2) Purposes

It is the purpose of this section to—

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

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

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

(1) Definitions

In this subsection:

(A) Antitrust laws

The term "antitrust laws"—

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

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

(B) Graduate medical education program

The term "graduate medical education program" means—

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

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

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

(C) Graduate medical education residency matching program

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

(D) Student

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

(2) Confirmation of antitrust status

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

(3) Applicability

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

(c) Effective date

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

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

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

(a) Whenever used in this section—

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

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

(b) Nothing contained in the "antitrust laws" as designated in section 12 of this title, shall be construed as declaring illegal an association entered into by marine insurance companies for the following purposes: To transact a marine insurance and reinsurance business in the United States and in foreign countries and to reinsure or otherwise apportion among its membership the risks undertaken by such association or any of the component members.

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

EDITORIAL NOTES

CODIFICATION

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

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

SUBCHAPTER I—FEDERAL TRADE COMMISSION

- Sec.
- 41. Federal Trade Commission established; membership; vacancies; seal.
 - 42. Employees; expenses.
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 - 44. Definitions.
 - 45. Unfair methods of competition unlawful; prevention by Commission.
 - 45a. Labels on products.
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- 57b-4. Good faith reliance on actions of Board of Governors.
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- 57c. Authorization of appropriations.
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- 61. Export trade; definitions.
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SUBCHAPTER III—LABELING OF WOOL PRODUCTS

- 68. Definitions.
- 68a. Misbranding declared unlawful.
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- 69. Definitions.
- 69a. Violations of Federal Trade Commission Act.
- 69b. Misbranded fur products.
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- 69d. Fur products imported into United States.
- 69e. Name guide for fur products.
- 69f. Enforcement of subchapter.
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- 69j. Application of other laws.

SUBCHAPTER V—TEXTILE FIBER PRODUCTS IDENTIFICATION

- 70. Definitions.
- 70a. Violations of Federal Trade Commission Act.
- 70b. Misbranded and falsely advertised textile fiber products.
- 70c. Removal of stamp, tag, label, or other identification.
- 70d. Records.
- 70e. Enforcement.
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SUBCHAPTER VI—PREVENTION OF UNFAIR METHODS OF COMPETITION

- 71. "Person" defined.
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- 73. Agreements involving restrictions in favor of imported goods.
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- 77. Discrimination against neutral Americans in time of war.

SUBCHAPTER I—FEDERAL TRADE COMMISSION

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

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

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

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

EDITORIAL NOTES

AMENDMENTS

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

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

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

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

CLARIFICATION OF STATUS OF SUBSIDIARIES AND AFFILIATES

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

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

"(b) SAVINGS PROVISION.—No provision of this section [amending section 18a of this title] shall be

construed as restricting the authority of any Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]) under any Federal banking law, including section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818]."

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

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

REORGANIZATION PLAN NO. 8 OF 1950

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

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.].

FEDERAL TRADE COMMISSION

SECTION 1. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

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

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

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

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

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

SEC. 2. PERFORMANCE OF TRANSFERRED FUNCTIONS

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

SEC. 3. DESIGNATION OF CHAIRMAN

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

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

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

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

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.

REORGANIZATION PLAN NO. 4 OF 1961

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

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

FEDERAL TRADE COMMISSION

SECTION 1. AUTHORITY TO DELEGATE

(a) In addition to its existing authority, the Federal Trade Commission, hereinafter referred to as the "Commission", shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter; *Provided, however*, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended [see 5 U.S.C. 556].

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

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

SEC. 2. TRANSFER OF FUNCTIONS TO THE CHAIRMAN

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

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

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

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

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

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

Inasmuch as the assignment of delegated functions in particular cases and with reference to particular problems to divisions of the Commission, to Commissioners, to hearing examiners, to employees and boards of employees must require continuous and flexible handling, depending both upon the amount and nature of

the business, that function is placed in the Chairman by section 2 of the plan.

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

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

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

JOHN F. KENNEDY.

¹ *So in original.*

§42. Employees; expenses

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

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

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

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

The Government Accountability Office shall receive and examine all accounts of expenditures of the Commission.

(Sept. 26, 1914, ch. 311, §2, 38 Stat. 718; June 10, 1921, ch. 18, title III, §304, 42 Stat. 24; 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

EDITORIAL NOTES

REFERENCES IN TEXT

The classified civil service, referred to in second par., means the "competitive service", see section 2102 of Title 5, Government Organization and Employees. Rules and regulations of the Civil Service Commission for entry into the service are prescribed generally under authority of section 3301 et seq. of Title 5.

CODIFICATION

In the first par., provisions that fixed the salary of the commissioners have been omitted as obsolete. The positions of chairman and members of the commission are now under the Executive Schedule, see sections 5414 and 5315 of Title 5, Government Organization and Employees.

Provisions that fixed the salary of the secretary of the commission, payable in like manner, have been omitted as obsolete. The position is now subject to chapter 51 and subchapter III of chapter 53 (relating to classification and General Schedule pay rates) and section 5504 (relating to biweekly pay periods) of Title 5.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TRANSFER OF FUNCTIONS

"Government Accountability Office" substituted in text for "General Accounting Office" pursuant to section 8(b) of Pub. L. 108-271, set out as a note under section 702 of Title 31, Money and Finance, which redesignated the General Accounting Office and any references thereto as the Government Accountability Office. Previously, "General Accounting Office" substituted in text for "Auditor for the State and Other Departments" pursuant to act June 10, 1921, which transferred all powers and duties of the Comptroller, six auditors, and certain other employees of the Treasury to the General Accounting Office. See section 701 et seq. of Title 31.

EXECUTIVE DOCUMENTS

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted in text for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

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.

§43. Office and place of meeting

The principal office of the Commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The Commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

(Sept. 26, 1914, ch. 311, §3, 38 Stat. 719.)

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.

§44. Definitions

The words defined in this section shall have the following meaning when found in this subchapter, to wit:

"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 and any State or Territory or foreign nation.

"Corporation" shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

"Documentary evidence" includes all documents, papers, correspondence, books of account, and financial and corporate records.

"Acts to regulate commerce" means subtitle IV of title 49 and the Communications Act of 1934

[47 U.S.C. 151 et seq.] and all Acts amendatory thereof and supplementary thereto.

"Antitrust Acts" means the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890; also sections 73 to 76, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894; also the Act entitled "An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes' ", approved February 12, 1913; and also the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914.

"Banks" means the types of banks and other financial institutions referred to in section 57a(f)(2) of this title.

"Foreign law enforcement agency" means—

(1) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

(2) any multinational organization, to the extent that it is acting on behalf of an entity described in paragraph (1).

(Sept. 26, 1914, ch. 311, §4, 38 Stat. 719; Mar. 21, 1938, ch. 49, §2, 52 Stat. 111; Pub. L. 102–242, title II, §212(g)(1), Dec. 19, 1991, 105 Stat. 2302; Pub. L. 107–273, div. C, title IV, §14102(c)(2)(B), Nov. 2, 2002, 116 Stat. 1921; Pub. L. 109–455, §§2, 13, Dec. 22, 2006, 120 Stat. 3372, 3382; Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

EDITORIAL NOTES

REFERENCES IN TEXT

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

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

Sections 73 to 76, inclusive, of an Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894, referred to in text, are known as the Wilson Tariff Act. Sections 73 to 76 are classified to sections 8 to 11 of this title.

Act February 12, 1913, is set out as amendments to sections 8 and 11 of this title.

The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, referred to in text, is the Clayton Act. For classification of the Act to the Code, see References in Text note set out under section 12 of this title.

CODIFICATION

"Subtitle IV of title 49" substituted in text for "the Act entitled 'An Act to regulate commerce', approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto" on authority of Pub. L. 95–473, §3(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV of Title 49, Transportation.

AMENDMENTS

2012—Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment note below.

2006—Pub. L. 109–455, §2, which added par. defining "Foreign law enforcement agency", was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

2002—Pub. L. 107–273 substituted "73 to 76" for "73 to 77" in par. defining "Antitrust Acts".

1991—Pub. L. 102–242 added par. defining "Banks".

1938—Act Mar. 21, 1938, amended section generally.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION DATE OF 2006 AMENDMENT

Pub. L. 109–455, §13, Dec. 22, 2006, 120 Stat. 3382, as amended by Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484; Pub. L. 116–173, §1, Oct. 20, 2020, 134 Stat. 837, provided that: "Effective September 30, 2027, this Act [enacting sections 57b–2a, 57b–2b, 57c–1, and 57c–2 of this title, amending this section, sections 45, 46, 56, 57b–2, and 58 of this title, and section 3412 of Title 12, Banks and Banking, and enacting provisions set out as notes under this section and section 58 of this title], and the amendments made by this Act, are repealed, and any provision of law amended by this Act shall be amended to read as if this Act had not been enacted into law."

[Pub. L. 116–173, §1, which delayed the repeal of Pub. L. 109–455, and reversion of any amended text, by substituting "September 30, 2027" for "September 30, 2020" in section 13 of Pub. L. 109–455, set out above, was given effect to reflect the probable intent of Congress, notwithstanding that Pub. L. 116–173 was enacted on Oct. 20, 2020.]

EFFECTIVE DATE OF 2002 AMENDMENT

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

PRESERVATION OF EXISTING AUTHORITY

Pub. L. 109–455, §12, Dec. 22, 2006, 120 Stat. 3382, provided that: "The authority provided by this Act [see Termination Date of 2006 Amendment note above], and by the Federal Trade Commission Act (15 U.S.C. 41 et seq.) and the Right to Financial Privacy Act [of 1978] (12 U.S.C. 3401 et seq.), as such Acts are amended by this Act, is in addition to, and not in lieu of, any other authority vested in the Federal Trade Commission or any other officer of the United States."

[Section 12 of Pub. L. 109–455, set out above, repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note above.]

§45. Unfair methods of competition unlawful; prevention by Commission

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to part A of subtitle VII of title 49, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 U.S.C. 181 et seq.], except as provided in section 406(b) of said Act [7 U.S.C. 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

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

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

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

(4)(A) For purposes of subsection (a), the term "unfair or deceptive acts or practices" includes such acts or practices involving foreign commerce that—

- (i) cause or are likely to cause reasonably foreseeable injury within the United States; or
- (ii) involve material conduct occurring within the United States.

(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.

(b) Proceeding by Commission; modifying and setting aside orders

Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this subchapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require, except that (1) the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section; and (2) in the case of an order, the Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part. The

Commission shall determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph ¹(2) not later than 120 days after the date of the filing of such request.

(c) Review of order; rehearing

Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgement to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show 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 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 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, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28.

(d) Jurisdiction of court

Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) Exemption from liability

No order of the Commission or judgement of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) Service of complaints, orders and other processes; return

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

(g) Finality of order

An order of the Commission to cease and desist shall become final—

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

(2) Except as to any order provision subject to paragraph (4), upon the sixtieth day after such order is served, if a petition for review has been duly filed; except that any such order may be stayed, in whole or in part and subject to such conditions as may be appropriate, by—

(A) the Commission;

(B) an appropriate court of appeals of the United States, if (i) a petition for review of such order is pending in such court, and (ii) an application for such a stay was previously submitted to the Commission and the Commission, within the 30-day period beginning on the date the application was received by the Commission, either denied the application or did not grant or deny the application; or

(C) the Supreme Court, if an applicable petition for certiorari is pending.

(3) For purposes of subsection (m)(1)(B) and of section 57b(a)(2) of this title, if a petition for review of the order of the Commission has been filed—

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

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(4) In the case of an order provision requiring a person, partnership, or corporation to divest itself of stock, other share capital, or assets, if a petition for review of such order of the Commission has been filed—

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

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(h) Modification or setting aside of order by Supreme Court

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

(i) Modification or setting aside of order by Court of Appeals

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

(j) Rehearing upon order or remand

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

(k) "Mandate" defined

As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Penalty for violation of order; injunctions and other appropriate equitable relief

Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in a case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

(m) Civil actions for recovery of penalties for knowing violations of rules and cease and desist orders respecting unfair or deceptive acts or practices; jurisdiction; maximum amount of penalties; continuing violations; de novo determinations; compromise or settlement procedure

(1)(A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this subchapter respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1)) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) that any act or practice is unfair or deceptive, and issues a final cease and desist order, other than a consent order, with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(C) In the case of a violation through continuing failure to comply with a rule or with subsection (a)(1), each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such

action against such defendant shall be tried de novo. Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a).

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court.

(n) Standard of proof; public policy considerations

The Commission shall have no authority under this section or section 57a of this title to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

(Sept. 26, 1914, ch. 311, §5, 38 Stat. 719; Mar. 21, 1938, ch. 49, §3, 52 Stat. 111; June 23, 1938, ch. 601, title XI, §1107(f), 52 Stat. 1028; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Mar. 16, 1950, ch. 61, §4(c), 64 Stat. 21; July 14, 1952, ch. 745, §2, 66 Stat. 632; Pub. L. 85-726, title XIV, §§1401(b), 1411, Aug. 23, 1958, 72 Stat. 806, 809; Pub. L. 85-791, §3, Aug. 28, 1958, 72 Stat. 942; Pub. L. 85-909, §3, Sept. 2, 1958, 72 Stat. 1750; Pub. L. 86-507, §1(13), June 11, 1960, 74 Stat. 200; Pub. L. 93-153, title IV, §408(c), (d), Nov. 16, 1973, 87 Stat. 591, 592; Pub. L. 93-637, title II, §§201(a), 204(b), 205(a), Jan. 4, 1975, 88 Stat. 2193, 2200; Pub. L. 94-145, §3, Dec. 12, 1975, 89 Stat. 801; Pub. L. 96-37, §1(a), July 23, 1979, 93 Stat. 95; Pub. L. 96-252, §2, May 28, 1980, 94 Stat. 374; Pub. L. 97-290, title IV, §403, Oct. 8, 1982, 96 Stat. 1246; Pub. L. 98-620, title IV, §402(12), Nov. 8, 1984, 98 Stat. 3358; Pub. L. 100-86, title VII, §715(a)(1), Aug. 10, 1987, 101 Stat. 655; Pub. L. 103-312, §§4, 6, 9, Aug. 26, 1994, 108 Stat. 1691, 1692, 1695; Pub. L. 109-455, §§3, 13, Dec. 22, 2006, 120 Stat. 3372, 3382; Pub. L. 112-203, §1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109-455, see Termination Date of 2006 Amendment note below.

EDITORIAL NOTES

REFERENCES IN TEXT

The Packers and Stockyards Act, 1921, as amended, referred to in subsec. (a)(2), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, which is classified 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.

CODIFICATION

In subsec. (a)(2), "part A of subtitle VII of title 49" substituted for "the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]" 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.

In subsec. (c), "section 1254 of title 28" substituted for "section 240 of the Judicial Code [28 U.S.C. 347]" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2012—Subsec. (a)(4). Pub. L. 112-203, §1, amended Pub. L. 109-455, §13. See 2006 Amendment note below.

2006—Subsec. (a)(4). Pub. L. 109-455, §3, which added par. (4) extending the definition of unfair or deceptive acts or practices to include certain ones involving foreign commerce, was repealed by Pub. L. 109-455, §13, as amended by Pub. L. 112-203, §1. See Termination Date of 2006 Amendment note below.

1994—Subsec. (g)(1). Pub. L. 103-312, §6(d), substituted a period for "; or" at end.

Subsec. (g)(2). Pub. L. 103-312, §6(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed, or the petition for review dismissed by the court of appeals, and no petition for certiorari has been duly filed; or".

Subsec. (g)(3). Pub. L. 103-312, §6(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review dismissed by the court of appeals; or".

Subsec. (g)(4). Pub. L. 103-312, §6(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: "Upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if such Court directs that the order of the Commission be affirmed or the petition for review dismissed."

Subsec. (m)(1)(B). Pub. L. 103-312, §4(a), inserted ", other than a consent order," after "a final cease and desist order" in introductory provisions.

Subsec. (m)(2). Pub. L. 103-312, §4(b), inserted at end "Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a)."

Subsec. (n). Pub. L. 103-312, §9, added subsec. (n).

1987—Subsec. (a)(2). Pub. L. 100-86 inserted "Federal credit unions described in section 57a(f)(4) of this title," after "section 57a(f)(3) of this title,".

1984—Subsec. (e). Pub. L. 98-620 struck out provision that such proceedings in the court of appeals had to be given precedence over other cases pending therein, and had to be in every way expedited.

1982—Subsec. (a)(3). Pub. L. 97-290 added par. (3).

1980—Subsec. (b). Pub. L. 96-252 added cl. (2) and provision following cl. (2) requiring that the Commission determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph (2) not later than 120 days after the date of the filing of such request.

1979—Subsec. (a)(2). Pub. L. 96-37 added savings and loan institutions described in section 57a(f)(3) of this title to the enumeration of entities exempted from the Commission's power to prevent the use of unfair methods of competition and unfair or deceptive acts or practices.

1975—Pub. L. 93-637, §201(a), substituted "in or affecting commerce" for "in commerce" wherever appearing.

Subsec. (a). Pub. L. 94-145 struck out pars. (2) to (5) which permitted fair trade pricing of articles for retail sale and State enactment of nonsigner provisions, and redesignated par. (6) as (2).

Subsec. (m). Pub. L. 93-637, §§204(b), 205(a), added subsec. (m). Former subsec. (m), relating to the election by the Commission to appear in its own name after notifying and consulting with and giving the Attorney General 10 days to take the action proposed by the Commission, was struck out.

1973—Subsec. (l). Pub. L. 93-153, §408(c), raised the maximum civil penalty for each violation to \$10,000 and inserted provisions empowering the United States District Courts to grant mandatory injunctions and such other and further equitable relief as they might deem appropriate for the enforcement of final Commission orders.

Subsec. (m). Pub. L. 93-153, §408(d), added subsec. (m).

1960—Subsec. (f). Pub. L. 86-507 substituted "mailing a copy thereof by registered mail or by certified mail" for "registering and mailing a copy thereof", and "mailed by registered mail or by certified mail" for "registered and mailed".

1958—Subsec. (a)(6). Pub. L. 85-909 substituted "persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended," for "persons, partnerships or corporations subject to the Packers and Stockyards Act, 1921,".

Pub. L. 85-726, §1411, substituted "Federal Aviation Act of 1958" for "Civil Aeronautics Act of 1938".

Subsec. (b). Pub. L. 85-791, §3(a), struck out "the transcript of" before "the record in the proceeding" in sixth sentence.

Subsec. (c). Pub. L. 85-791, §3(b), in second sentence, substituted "transmitted by the clerk of the court to" for "served upon", and "Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28" for "Commission forthwith shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the Commission", and which, in third sentence struck out "and transcript" after "petition", inserted "concurrently with the Commission until the filing of the record" and struck out "upon the pleadings, evidence, and proceedings set forth in such transcript" before "a decree affirming".

Subsec. (d). Pub. L. 85-791, §3(c), substituted "Upon the filing of the record with it the" for "The".

1952—Subsec. (a). Act July 14, 1952, amended subsec. (a) generally to permit fair trade pricing of articles for retail sale.

1950—Subsec. (l). Act Mar. 16, 1950, inserted last sentence to make each separate violation of a cease and desist order as a separate offense, except that each day of a continuing failure to obey a final order shall be a separate offense.

1938—Subsec. (a). Act June 23, 1938, inserted "air carriers and foreign air carriers subject to chapter 9 of title 49" in second par.

Act Mar. 21, 1938, amended section generally.

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

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

TERMINATION DATE OF 2006 AMENDMENT

Amendment by section 3 of Pub. L. 109–455 repealed effective Sept. 30, 2027, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103–312, §15, Aug. 26, 1994, 108 Stat. 1697, provided that:

"(a) **IN GENERAL.**—Except as provided in subsections (b), (c), (d), and (e), the provisions of this Act [enacting section 57b–5 of this title, amending this section and sections 53, 57a, 57b–1, 57b–2, 57c, and 58 of this title, and enacting provisions set out as notes under sections 57c and 58 of this title] shall take effect on the date of enactment of this Act [Aug. 26, 1994].

"(b) **APPLICABILITY OF SECTION 5.**—The amendment made by section 5 of this Act [amending section 57a of this title] shall apply only to rulemaking proceedings initiated after the date of enactment of this Act. Such amendment shall not be construed to affect in any manner a rulemaking proceeding which was initiated before the date of enactment of this Act [Aug. 26, 1994].

"(c) **APPLICABILITY OF SECTION 6.**—The amendments made by section 6 of this Act [amending this section] shall apply only with respect to cease and desist orders issued under section 5 of the Federal Trade Commission Act (15 U.S.C. 45) after the date of enactment of this Act [Aug. 26, 1994]. These amendments shall not be construed to affect in any manner a cease and desist order which was issued before the date of enactment of this Act.

"(d) **APPLICABILITY OF SECTIONS 7 AND 8.**—The amendments made by sections 7 and 8 of this Act [amending sections 57b–1 and 57b–2 of this title] shall apply only with respect to compulsory process issued after the date of enactment of this Act [Aug. 26, 1994].

"(e) **APPLICABILITY OF SECTION 9.**—The amendments made by section 9 of this Act [amending this section] shall apply only with respect to cease and desist orders issued under section 5 of the Federal Trade Commission Act (15 U.S.C. 45), or to rules promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) after the date of enactment of this Act [Aug. 26, 1994]. These amendments shall not be construed to affect in any manner a cease and desist order which was issued, or a rule which was promulgated, before the date of enactment of this Act. These amendments shall not be construed to affect in any manner a cease and desist order issued after the date of enactment of this Act, if such order was issued pursuant to remand from a court of appeals or the Supreme Court of an order issued by the Federal Trade Commission before the date of enactment of this Act."

EFFECTIVE DATE OF 1984 AMENDMENT

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

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–252, §23, May 28, 1980, 94 Stat. 397, provided that: "The provisions of this Act [enacting sections 57a–1 and 57b–1 to 57b–4 of this title, amending this section and sections 46, 50, 57a, 57c, and 58 of this title, and enacting provisions set out as notes under sections 46, 57a, 57a–1, 57c, and 58 of this title], and the amendments made by this Act, shall take effect on the date of the enactment of this Act [May 28, 1980]."

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 94-145 effective upon expiration of ninety-day period beginning on Dec. 12, 1975, see section 4 of Pub. L. 94-145, set out as a note under section 1 of this title.

Amendment by section 204(b) of Pub. L. 93-637 not applicable to any civil action commenced before Jan. 4, 1975, see section 204(c) of Pub. L. 93-637, set out as a note under section 56 of this title.

Pub. L. 93-637, §205(b), Jan. 4, 1975, 88 Stat. 2201, provided that: "The amendment made by subsection (a) of this section [amending this section] shall not apply to any violation, act, or practice to the extent that such violation, act, or practice occurred before the date of enactment of this Act [Jan. 4, 1975]."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-726 effective on 60th day following the date on which the Administrator of the Federal Aviation Agency first appointed under Pub. L. 85-726 qualifies and takes office, see section 1505(2) of Pub. L. 85-726. The Administrator was appointed, qualified, and took office on Oct. 31, 1958.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Mar. 16, 1950, effective July 1, 1950, see note set out under section 347 of Title 21, Food and Drugs.

PROHIBITING DECEPTIVE ACTS OR PRACTICES IN CONNECTION WITH THE NOVEL CORONAVIRUS

Pub. L. 116-260, div. FF, title XIV, §1401, Dec. 27, 2020, 134 Stat. 3275, provided that:

"(a) **SHORT TITLE.**—This section may be cited as the 'COVID-19 Consumer Protection Act'.

"(b) **IN GENERAL.**—For the duration of a public health emergency declared pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) as a result of confirmed cases of the 2019 novel coronavirus (COVID-19), including any renewal thereof, it shall be unlawful for any person, partnership, or corporation to engage in a deceptive act or practice in or affecting commerce in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)) that is associated with—

"(1) the treatment, cure, prevention, mitigation, or diagnosis of COVID-19; or

"(2) a government benefit related to COVID-19.

"(c) **ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.**—

"(1) **VIOLATION.**—A violation of subsection (b) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

"(2) **POWERS OF THE FEDERAL TRADE COMMISSION.**—

"(A) **IN GENERAL.**—The Federal Trade Commission shall enforce subsection (b) 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 Act [probably means "this section"].

"(B) **PRIVILEGES AND IMMUNITIES.**—Any person who violates this Act [probably means "this section"] shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

"(3) **EFFECT ON OTHER LAWS.**—Nothing in this Act [probably means "this section"] shall be construed to limit the authority of the Federal Trade Commission under any other provision of law.

"(d) **SEVERABILITY.**—If any provision of this Act [probably means "this section"], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation."

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE COVERING GRANT OF DISTRICT SUBPENA ENFORCEMENT AUTHORITY AND AUTHORITY TO GRANT PRELIMINARY INJUNCTIVE RELIEF

Pub. L. 93-153, §408(a), (b), Nov. 16, 1973, 87 Stat. 591, provided that:

"(a)(1) The Congress hereby finds that the investigative and law enforcement responsibilities of the Federal Trade Commission have been restricted and hampered because of inadequate legal authority to enforce subpoenas and to seek preliminary injunctive relief to avoid unfair competitive practices.

"(2) The Congress further finds that as a direct result of this inadequate legal authority significant delays have occurred in a major investigation into the legality of the structure, conduct, and activities of the petroleum industry, as well as in other major investigations designed to protect the public interest.

"(b) It is the purpose of this Act [amending this section and sections 46, 53, and 56 of this title] to grant the Federal Trade Commission the requisite authority to insure prompt enforcement of the laws the Commission

administers by granting statutory authority to directly enforce subpoenas issued by the Commission and to seek preliminary injunctive relief to avoid unfair competitive practices."

PURPOSE OF ACT JULY 14, 1952

Act July 14, 1952, ch. 745, §1, 66 Stat. 631, provided: "That it is the purpose of this Act [amending this section] to protect the rights of States under the United States Constitution to regulate their internal affairs and more particularly to enact statutes and laws, and to adopt policies, which authorize contracts and agreements prescribing minimum or stipulated prices for the resale of commodities and to extend the minimum or stipulated prices prescribed by such contracts and agreements to persons who are not parties thereto. It is the further purpose of this Act to permit such statutes, laws, and public policies to apply to commodities, contracts, agreements, and activities in or affecting interstate or foreign commerce."

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.

¹ So in original. Probably should be "clause".

§45a. Labels on products

To the extent any person introduces, delivers for introduction, sells, advertises, or offers for sale in commerce a product with a "Made in the U.S.A." or "Made in America" label, or the equivalent thereof, in order to represent that such product was in whole or substantial part of domestic origin, such label shall be consistent with decisions and orders of the Federal Trade Commission issued pursuant to section 45 of this title. This section only applies to such labels. Nothing in this section shall preclude the application of other provisions of law relating to labeling. The Commission may periodically consider an appropriate percentage of imported components which may be included in the product and still be reasonably consistent with such decisions and orders. Nothing in this section shall preclude use of such labels for products that contain imported components under the label when the label also discloses such information in a clear and conspicuous manner. The Commission shall administer this section pursuant to section 45 of this title and may from time to time issue rules pursuant to section 553 of title 5 for such purpose. If a rule is issued, such violation shall be treated by the Commission as a violation of a rule under section 57a of this title regarding unfair or deceptive acts or practices. This section shall be effective upon publication in the Federal Register of a Notice of the provisions of this section. The Commission shall publish such notice within six months after September 13, 1994.

(Pub. L. 103-322, title XXXII, §320933, Sept. 13, 1994, 108 Stat. 2135.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Violent Crime Control and Law Enforcement Act of 1994, and not as part of the Federal Trade Commission Act which comprises this subchapter.

§45b. Consumer review protection

(a) Definitions

In this section:

(1) Commission

The term "Commission" means the Federal Trade Commission.

(2) Covered communication

The term "covered communication" means a written, oral, or pictorial review, performance assessment of, or other similar analysis of, including by electronic means, the goods, services, or conduct of a person by an individual who is party to a form contract with respect to which such person is also a party.

(3) Form contract

(A) In general

Except as provided in subparagraph (B), the term "form contract" means a contract with standardized terms—

- (i) used by a person in the course of selling or leasing the person's goods or services; and
- (ii) imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.

(B) Exception

The term "form contract" does not include an employer-employee or independent contractor contract.

(4) Pictorial

The term "pictorial" includes pictures, photographs, video, illustrations, and symbols.

(b) Invalidity of contracts that impede consumer reviews

(1) In general

Except as provided in paragraphs (2) and (3), a provision of a form contract is void from the inception of such contract if such provision—

- (A) prohibits or restricts the ability of an individual who is a party to the form contract to engage in a covered communication;
- (B) imposes a penalty or fee against an individual who is a party to the form contract for engaging in a covered communication; or
- (C) transfers or requires an individual who is a party to the form contract to transfer to any person any intellectual property rights in review or feedback content, with the exception of a non-exclusive license to use the content, that the individual may have in any otherwise lawful covered communication about such person or the goods or services provided by such person.

(2) Rule of construction

Nothing in paragraph (1) shall be construed to affect—

- (A) any duty of confidentiality imposed by law (including agency guidance);
- (B) any civil cause of action for defamation, libel, or slander, or any similar cause of action;
- (C) any party's right to remove or refuse to display publicly on an Internet website or webpage owned, operated, or otherwise controlled by such party any content of a covered communication that—
 - (i) contains the personal information or likeness of another person, or is libelous, harassing, abusive, obscene, vulgar, sexually explicit, or is inappropriate with respect to race, gender, sexuality, ethnicity, or other intrinsic characteristic;
 - (ii) is unrelated to the goods or services offered by or available at such party's Internet website or webpage; or
 - (iii) is clearly false or misleading; or

(D) a party's right to establish terms and conditions with respect to the creation of photographs or video of such party's property when those photographs or video are created by an employee or independent contractor of a commercial entity and solely intended for commercial purposes by that entity.

(3) Exceptions

Paragraph (1) shall not apply to the extent that a provision of a form contract prohibits disclosure or submission of, or reserves the right of a person or business that hosts online consumer reviews or comments to remove—

(A) trade secrets or commercial or financial information obtained from a person and considered privileged or confidential;

(B) personnel and medical files and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(C) records or information compiled for law enforcement purposes, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(D) content that is unlawful or otherwise meets the requirements of paragraph (2)(C); or

(E) content that contains any computer viruses, worms, or other potentially damaging computer code, processes, programs, applications, or files.

(c) Prohibition

It shall be unlawful for a person to offer a form contract containing a provision described as void in subsection (b).

(d) Enforcement by Commission

(1) Unfair or deceptive acts or practices

A violation of subsection (c) by a person with respect to which the Commission is empowered under section 5(a)(2) of the Federal Trade Commission Act (15 U.S.C. 45(a)(2)) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) Powers of Commission

(A) In general

The Commission shall enforce this section 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 Act.

(B) Privileges and immunities

Any person who violates this section shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(e) Enforcement by States

(1) Authorization

Subject to paragraph (2), in any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to subsection (c) in a practice that violates such subsection, the attorney general of the State may, as parens patriae, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States to obtain appropriate relief.

(2) Rights of Federal Trade Commission

(A) Notice to Federal Trade Commission

(i) In general

Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) before initiating the civil action against a person described in subsection (d)(1).

(ii) Contents

The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.

(iii) Exception

If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify the Commission immediately upon instituting the civil action.

(B) Intervention by Federal Trade Commission

The Commission may—

- (i) intervene in any civil action brought by the attorney general of a State under paragraph (1) against a person described in subsection (d)(1); and
- (ii) upon intervening—
 - (I) be heard on all matters arising in the civil action; and
 - (II) file petitions for appeal of a decision in the civil action.

(3) Investigatory powers

Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

(4) Preemptive action by Federal Trade Commission

If the Federal Trade Commission institutes a civil action or an administrative action with respect to a violation of subsection (c), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

(5) Venue; service of process

(A) Venue

Any action brought under paragraph (1) may be brought in—

- (i) the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28; or
- (ii) another court of competent jurisdiction.

(B) Service of process

In an action brought under paragraph (1), process may be served in any district in which the defendant—

- (i) is an inhabitant; or
- (ii) may be found.

(6) Actions by other State officials

(A) In general

In addition to civil actions brought by attorneys general under paragraph (1), any other consumer protection officer of a State who is authorized by the State to do so may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B) Savings provision

Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

(f) Education and outreach for businesses

Not later than 60 days after December 14, 2016, the Commission shall commence conducting

education and outreach that provides businesses with non-binding best practices for compliance with this Act.

(g) Relation to State causes of action

Nothing in this section shall be construed to affect any cause of action brought by a person that exists or may exist under State law.

(h) Savings provision

Nothing in this section shall be construed to limit, impair, or supersede the operation of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] or any other provision of Federal law.

(i) Effective dates

This section shall take effect on December 14, 2016, except that—

(1) subsections (b) and (c) shall apply with respect to contracts in effect on or after the date that is 90 days after December 14, 2016; and

(2) subsections (d) and (e) shall apply with respect to contracts in effect on or after the date that is 1 year after December 14, 2016.

(Pub. L. 114–258, §2, Dec. 14, 2016, 130 Stat. 1355.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (d)(2) and (h), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to this subchapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

This Act, referred to in subsecs. (d)(2)(A) and (f), is Pub. L. 114–258, Dec. 14, 2016, 130 Stat. 1355, known as the Consumer Review Fairness Act of 2016, which enacted this section and provisions set out as a note under section 58 of this title. For complete classification of this Act to the Code, see Short Title of 2016 Amendment note set out under section 58 of this title and Tables.

CODIFICATION

Section was enacted as part of the Consumer Review Fairness Act of 2016, and not as part of the Federal Trade Commission Act which comprises this subchapter.

§45c. Unfair and deceptive acts and practices relating to circumvention of ticket access control measures

(a) Conduct prohibited

(1) In general

Except as provided in paragraph (2), it shall be unlawful for any person—

(A) to circumvent a security measure, access control system, or other technological control or measure on an Internet website or online service that is used by the ticket issuer to enforce posted event ticket purchasing limits or to maintain the integrity of posted online ticket purchasing order rules; or

(B) to sell or offer to sell any event ticket in interstate commerce obtained in violation of subparagraph (A) if the person selling or offering to sell the ticket either—

(i) participated directly in or had the ability to control the conduct in violation of subparagraph (A); or

(ii) knew or should have known that the event ticket was acquired in violation of subparagraph (A).

(2) Exception

It shall not be unlawful under this section for a person to create or use any computer software or system—

(A) to investigate, or further the enforcement or defense, of any alleged violation of this section or other statute or regulation; or

(B) to engage in research necessary to identify and analyze flaws and vulnerabilities of measures, systems, or controls described in paragraph (1)(A), if these research activities are conducted to advance the state of knowledge in the field of computer system security or to assist in the development of computer security product.

(b) Enforcement by the Federal Trade Commission

(1) Unfair or deceptive acts or practices

A violation of subsection (a) shall be treated as a violation of a rule defining an unfair or a deceptive act or practice under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) Powers of Commission

(A) In general

The Commission shall enforce this section 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 section.

(B) Privileges and immunities

Any person who violates subsection (a) shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(C) Authority preserved

Nothing in this section shall be construed to limit the authority of the Federal Trade Commission under any other provision of law.

(c) Enforcement by States

(1) In general

In any case in which the attorney general of a State has reason to believe that an interest of the residents of the State has been or is threatened or adversely affected by the engagement of any person subject to subsection (a) in a practice that violates such subsection, the attorney general of the State may, as *parens patriae*, bring a civil action on behalf of the residents of the State in an appropriate district court of the United States—

(A) to enjoin further violation of such subsection by such person;

(B) to compel compliance with such subsection; and

(C) to obtain damages, restitution, or other compensation on behalf of such residents.

(2) Rights of Federal Trade Commission

(A) Notice to Federal Trade Commission

(i) In general

Except as provided in clause (iii), the attorney general of a State shall notify the Commission in writing that the attorney general intends to bring a civil action under paragraph (1) not later than 10 days before initiating the civil action.

(ii) Contents

The notification required by clause (i) with respect to a civil action shall include a copy of the complaint to be filed to initiate the civil action.

(iii) Exception

If it is not feasible for the attorney general of a State to provide the notification required by clause (i) before initiating a civil action under paragraph (1), the attorney general shall notify

the Commission immediately upon instituting the civil action.

(B) Intervention by Federal Trade Commission

The Commission may—

- (i) intervene in any civil action brought by the attorney general of a State under paragraph (1); and
- (ii) upon intervening—
 - (I) be heard on all matters arising in the civil action; and
 - (II) file petitions for appeal of a decision in the civil action.

(3) Investigatory powers

Nothing in this subsection may be construed to prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of the State to conduct investigations, to administer oaths or affirmations, or to compel the attendance of witnesses or the production of documentary or other evidence.

(4) Preemptive action by Federal Trade Commission

If the Commission institutes a civil action or an administrative action with respect to a violation of subsection (a), the attorney general of a State may not, during the pendency of such action, bring a civil action under paragraph (1) against any defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.

(5) Venue; service of process

(A) Venue

Any action brought under paragraph (1) may be brought in—

- (i) the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28; or
- (ii) another court of competent jurisdiction.

(B) Service of process

In an action brought under paragraph (1), process may be served in any district in which the defendant—

- (i) is an inhabitant; or
- (ii) may be found.

(6) Actions by other State officials

(A) In general

In addition to civil actions brought by attorneys general under paragraph (1), any other consumer protection officer of a State who is authorized by the State to do so may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B) Savings provision

Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

(Pub. L. 114–274, §2, Dec. 14, 2016, 130 Stat. 1401.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to this subchapter. 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 Better Online Ticket Sales Act of 2016 or the BOTS Act of 2016, and not as part of the Federal Trade Commission Act which comprises this subchapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

Pub. L. 114–274, §3, Dec. 14, 2016, 130 Stat. 1403, provided that: "In this Act [see Short Title of 2016 Amendment note set out under section 58 of this title]:

"(1) COMMISSION.—The term 'Commission' means the Federal Trade Commission.

"(2) EVENT.—The term 'event' means any concert, theatrical performance, sporting event, show, or similarly scheduled activity, taking place in a venue with a seating or attendance capacity exceeding 200 persons that—

"(A) is open to the general public; and

"(B) is promoted, advertised, or marketed in interstate commerce or for which event tickets are generally sold or distributed in interstate commerce.

"(3) EVENT TICKET.—The term 'event ticket' means any physical, electronic, or other form of a certificate, document, voucher, token, or other evidence indicating that the bearer, possessor, or person entitled to possession through purchase or otherwise has—

"(A) a right, privilege, or license to enter an event venue or occupy a particular seat or area in an event venue with respect to one or more events; or

"(B) an entitlement to purchase such a right, privilege, or license with respect to one or more future events.

"(4) TICKET ISSUER.—The term 'ticket issuer' means any person who makes event tickets available, directly or indirectly, to the general public, and may include—

"(A) the operator of the venue;

"(B) the sponsor or promoter of an event;

"(C) a sports team participating in an event or a league whose teams are participating in an event;

"(D) a theater company, musical group, or similar participant in an event; and

"(E) an agent for any such person."

§45d. Unfair or deceptive acts or practices with respect to substance use disorder treatment service and products

(a) Unlawful activity

It is unlawful to engage in an unfair or deceptive act or practice with respect to any substance use disorder treatment service or substance use disorder treatment product.

(b) Enforcement by the Federal Trade Commission

(1) Unfair or deceptive acts or practices

A violation of subsection (a) shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices.

(2) Powers of the Federal Trade Commission

(A) In general

The Federal Trade Commission shall enforce this section 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 section.

(B) Privileges and immunities

Any person who violates subsection (a) shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated and made part of this section.

(c) Authority preserved

Nothing in this subtitle shall be construed to limit the authority of the Federal Trade Commission or the Food and Drug Administration under any other provision of law.

(Pub. L. 115–271, title VIII, §8023, Oct. 24, 2018, 132 Stat. 4082.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

This subtitle, referred to in subsec. (c), is subtitle B (§§8021–8023) of title VIII of Pub. L. 115–271, Oct. 24, 2018, 132 Stat. 4082, known as the Opioid Addiction Recovery Fraud Prevention Act of 2018, which enacted this section and provisions set out as notes under this section and section 58 of this title.

CODIFICATION

Section was enacted as part of the Opioid Addiction Recovery Fraud Prevention Act of 2018, and also as part of the Substance Use–Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act, also known as the SUPPORT for Patients and Communities Act, and not as part of the Federal Trade Commission Act which comprises this subchapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

DEFINITIONS

Pub. L. 115–271, title VIII, §8022, Oct. 24, 2018, 132 Stat. 4082, provided that: "For purposes of this subtitle [subtitle B (§§8021–8023) of title VIII of Pub. L. 115–271, see References in Text note above] only, and not [to] be construed or applied as to challenge or affect the characterization, definition, or treatment under any other statute, regulation, or rule:

"(1) **SUBSTANCE USE DISORDER TREATMENT PRODUCT**.—The term 'substance use disorder treatment product' means a product for use or marketed for use in the treatment, cure, or prevention of a substance use disorder, including an opioid use disorder.

"(2) **SUBSTANCE USE DISORDER TREATMENT SERVICE**.—The term 'substance use disorder treatment service' means a service that purports to provide referrals to treatment, treatment, or recovery housing for people diagnosed with, having, or purporting to have a substance use disorder, including an opioid use disorder."

§45e. Office for the prevention of fraud targeting seniors

(a) Establishment of Advisory Office

The Federal Trade Commission (in this section referred to as the "Commission") shall establish an office within the Bureau of Consumer Protection for the purpose of advising the Commission on the prevention of fraud targeting seniors and to assist the Commission with the following:

(1) Oversight

The advisory office shall monitor the market for mail, television, internet, telemarketing, and recorded message telephone call (in this section referred to as "robocall") fraud targeting seniors and shall coordinate with other relevant agencies regarding the requirements of this section.

(2) Consumer education

The Commission, through the advisory office and in consultation with the Attorney General, the Secretary of Health and Human Services, the Postmaster General, the Chief Postal Inspector for the United States Postal Inspection Service, and other relevant agencies, shall—

(A) disseminate to seniors and families and caregivers of seniors general information on mail, television, internet, telemarketing, and robocall fraud targeting seniors, including descriptions of

the most common fraud schemes;

(B) disseminate to seniors and families and caregivers of seniors information on reporting complaints of fraud targeting seniors either to the national toll-free telephone number established by the Commission for reporting such complaints, or to the Consumer Sentinel Network, operated by the Commission, where such complaints will become immediately available to appropriate law enforcement agencies, including the Federal Bureau of Investigation and the attorneys general of the States;

(C) in response to a specific request about a particular entity or individual, provide publicly available information of any enforcement action taken by the Commission for mail, television, internet, telemarketing, and robocall fraud against such entity; and

(D) maintain a website to serve as a resource for information for seniors and families and caregivers of seniors regarding mail, television, internet, telemarketing, robocall, and other identified fraud targeting seniors.

(3) Complaints

The Commission, through the advisory office and in consultation with the Attorney General, shall establish procedures to—

(A) log and acknowledge the receipt of complaints by individuals who believe they have been a victim of mail, television, internet, telemarketing, and robocall fraud in the Consumer Sentinel Network, and shall make those complaints immediately available to Federal, State, and local law enforcement authorities; and

(B) provide to individuals described in subparagraph (A), and to any other persons, specific and general information on mail, television, internet, telemarketing, and robocall fraud, including descriptions of the most common schemes using such methods of communication.

(b) Commencement

The Commission shall commence carrying out the requirements of this section not later than 1 year after March 15, 2022.

(c) Use of existing funds

No additional funds are authorized to be appropriated to carry out this section and the Commission shall carry out this section using amounts otherwise made available to the Commission.

(Pub. L. 117–103, div. Q, title I, §122, Mar. 15, 2022, 136 Stat. 811.)

EDITORIAL NOTES

CODIFICATION

Section was enacted as part of the Seniors Fraud Prevention Act of 2022, the Fraud and Scam Reduction Act, and also as part of the Consolidated Appropriations Act, 2022, and not as part of the Federal Trade Commission Act which comprises this subchapter.

STATUTORY NOTES AND RELATED SUBSIDIARIES

SENIOR SCAMS PREVENTION ADVISORY GROUP

Pub. L. 117–103, div. Q, title I, §112(a)–(d), Mar. 15, 2022, 136 Stat. 809, 810, provided that:

"(a) ESTABLISHMENT.—There is established a Senior Scams Prevention Advisory Group (in this subtitle [subtitle A of div. Q of Pub. L. 117–103, amending section 21711 of Title 34, Crime Control and Law Enforcement, and enacting provisions set out as notes under section 58 of this title and section 21711 of Title 34] referred to as the 'Advisory Group').

"(b) MEMBERS.—The Advisory Group shall be composed of stakeholders such as the following individuals or the designees of those individuals:

"(1) The Chairman of the Federal Trade Commission.

"(2) The Secretary of the Treasury.

"(3) The Attorney General.

"(4) The Director of the Bureau of Consumer Financial Protection.

"(5) Representatives from each of the following sectors, including trade associations, to be selected by the Federal Trade Commission:

"(A) Retail.

"(B) Gift cards.

"(C) Telecommunications.

"(D) Wire-transfer services.

"(E) Senior peer advocates.

"(F) Consumer advocacy organizations with efforts focused on preventing seniors from becoming the victims of scams.

"(G) Financial services, including institutions that engage in digital currency.

"(H) Prepaid cards.

"(6) A member of the Board of Governors of the Federal Reserve System.

"(7) A prudential regulator, as defined in section 1002 of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5481).

"(8) The Director of the Financial Crimes Enforcement Network.

"(9) Any other Federal, State, or local agency, industry representative, consumer advocate, or entity, as determined by the Federal Trade Commission.

"(c) NO COMPENSATION FOR MEMBERS.—A member of the Advisory Group shall serve without compensation in addition to any compensation received for the service of the member as an officer or employee of the United States, if applicable.

"(d) DUTIES.—

"(1) IN GENERAL.—The Advisory Group shall—

"(A) collect information on the existence, use, and success of educational materials and programs for retailers, financial services, and wire-transfer companies, which—

"(i) may be used as a guide to educate employees on how to identify and prevent scams that affect seniors; and

"(ii) includes—

"(I) useful information for retailers, financial services, and wire transfer companies for the purpose described in clause (i);

"(II) training for employees on ways to identify and prevent senior scams;

"(III) best practices for keeping employees up to date on current scams;

"(IV) the most effective signage and placement in retail locations to warn seniors about scammers' use of gift cards, prepaid cards, and wire transfer services;

"(V) suggestions on effective collaborative community education campaigns;

"(VI) available technology to assist in identifying possible scams at the point of sale; and

"(VII) other information that would be helpful to retailers, wire transfer companies, financial institutions, and their employees as they work to prevent fraud affecting seniors; and

"(B) based on the findings in subparagraph (A)—

"(i) identify inadequacies, omissions, or deficiencies in those educational materials and programs for the categories listed in subparagraph (A) and their execution in reaching employees to protect older adults; and

"(ii) create model materials, best practices guidance, or recommendations to fill those inadequacies, omissions, or deficiencies that may be used by industry and others to help protect older adults from scams.

"(2) ENCOURAGED USE.—The Chairman of the Federal Trade Commission shall—

"(A) make the materials or guidance created by the Federal Trade Commission described in paragraph (1) publicly available; and

"(B) encourage the use and distribution of the materials created under this subsection to prevent scams affecting seniors by governmental agencies and the private sector."

[Pub. L. 117–103, div. Q, title I, §112(a)–(d), set out above, ceases to be effective on the date that is 5 years after Mar. 15, 2022, see section 112(f) of title I of div. Q of Pub. L. 117–103, set out as a Termination of 2022 Amendment note under section 21711 of Title 34, Crime Control and Law Enforcement.]

§45f. Collection, verification, and disclosure of information by online marketplaces to inform consumers

(a) Collection and verification of information

(1) Collection

(A) In general

An online marketplace shall require any high-volume third party seller on such online marketplace's platform to provide, not later than 10 days after qualifying as a high-volume third party seller on the platform, the following information to the online marketplace:

(i) Bank account

(I) In general

A bank account number, or, if such seller does not have a bank account, the name of the payee for payments issued by the online marketplace to such seller.

(II) Provision of information

The bank account or payee information required under subclause (I) may be provided by the seller in the following ways:

(aa) To the online marketplace.

(bb) To a payment processor or other third party contracted by the online marketplace to maintain such information, provided that the online marketplace ensures that it can obtain such information within 3 business days from such payment processor or other third party.

(ii) Contact information

Contact information for such seller as follows:

(I) With respect to a high-volume third party seller that is an individual, the individual's name.

(II) With respect to a high-volume third party seller that is not an individual, one of the following forms of contact information:

(aa) A copy of a valid government-issued identification for an individual acting on behalf of such seller that includes the individual's name.

(bb) A copy of a valid government-issued record or tax document that includes the business name and physical address of such seller.

(iii) Tax ID

A business tax identification number, or, if such seller does not have a business tax identification number, a taxpayer identification number.

(iv) Working email and phone number

A current working email address and phone number for such seller.

(B) Notification of change; annual certification

An online marketplace shall—

(i) periodically, but not less than annually, notify any high-volume third party seller on such online marketplace's platform of the requirement to keep any information collected under subparagraph (A) current; and

(ii) require any high-volume third party seller on such online marketplace's platform to, not later than 10 days after receiving the notice under clause (i), electronically certify that—

(I) the seller has provided any changes to such information to the online marketplace, if any such changes have occurred; or

(II) there have been no changes to such seller's information.

(C) Suspension

In the event that a high-volume third party seller does not provide the information or certification required under this paragraph, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide such information or certification not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until such seller provides such information or certification.

(2) Verification

(A) In general

An online marketplace shall—

- (i) verify the information collected under paragraph (1)(A) not later than 10 days after such collection; and
- (ii) verify any change to such information not later than 10 days after being notified of such change by a high-volume third party seller under paragraph (1)(B).

(B) Presumption of verification

In the case of a high-volume third party seller that provides a copy of a valid government-issued tax document, any information contained in such document shall be presumed to be verified as of the date of issuance of such document.

(3) Data use limitation

Data collected solely to comply with the requirements of this section may not be used for any other purpose unless required by law.

(4) Data security requirement

An online marketplace shall implement and maintain reasonable security procedures and practices, including administrative, physical, and technical safeguards, appropriate to the nature of the data and the purposes for which the data will be used, to protect the data collected to comply with the requirements of this section from unauthorized use, disclosure, access, destruction, or modification.

(b) Disclosure required

(1) Requirement

(A) In general

An online marketplace shall—

- (i) require any high-volume third party seller with an aggregate total of \$20,000 or more in annual gross revenues on such online marketplace, and that uses such online marketplace's platform, to provide the information described in subparagraph (B) to the online marketplace; and
- (ii) disclose the information described in subparagraph (B) to consumers in a clear and conspicuous manner—
 - (I) on the product listing page (including via hyperlink); or
 - (II) in the order confirmation message or other document or communication made to the consumer after the purchase is finalized and in the consumer's account transaction history.

(B) Information described

The information described in this subparagraph is the following:

- (i) Subject to paragraph (2), the identity of the high-volume third party seller, including—
 - (I) the full name of the seller, which may include the seller name or seller's company name, or the name by which the seller or company operates on the online marketplace;
 - (II) the physical address of the seller; and
 - (III) contact information for the seller, to allow for the direct, unhindered communication with high-volume third party sellers by users of the online marketplace, including—
 - (aa) a current working phone number;
 - (bb) a current working email address; or
 - (cc) other means of direct electronic messaging (which may be provided to such seller by the online marketplace), provided that the requirements of this item shall not prevent an online marketplace from monitoring communications between high-volume third party sellers and users of the online marketplace for fraud, abuse, or spam.

(ii) Whether the high-volume third party seller used a different seller to supply the consumer product to the consumer upon purchase, and, upon the request of an authenticated purchaser, the information described in clause (i) relating to any such seller that supplied the consumer product to the purchaser, if such seller is different than the high-volume third party seller listed on the product listing prior to purchase.

(2) Exception

(A) In general

Subject to subparagraph (B), upon the request of a high-volume third party seller, an online marketplace may provide for partial disclosure of the identity information required under paragraph (1)(B)(i) in the following situations:

(i) If such seller certifies to the online marketplace that the seller does not have a business address and only has a residential street address, or has a combined business and residential address, the online marketplace may—

(I) disclose only the country and, if applicable, the State in which such seller resides; and

(II) inform consumers that there is no business address available for the seller and that consumer inquiries should be submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace.

(ii) If such seller certifies to the online marketplace that the seller is a business that has a physical address for product returns, the online marketplace may disclose the seller's physical address for product returns.

(iii) If such seller certifies to the online marketplace that the seller does not have a phone number other than a personal phone number, the online marketplace shall inform consumers that there is no phone number available for the seller and that consumer inquiries should be submitted to the seller's email address or other means of electronic messaging provided to such seller by the online marketplace.

(B) Limitation on exception

If an online marketplace becomes aware that a high-volume third party seller has made a false representation to the online marketplace in order to justify the provision of a partial disclosure under subparagraph (A) or that a high-volume third party seller who has requested and received a provision for a partial disclosure under subparagraph (A) has not provided responsive answers within a reasonable time frame to consumer inquiries submitted to the seller by phone, email, or other means of electronic messaging provided to such seller by the online marketplace, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to respond not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller unless such seller consents to the disclosure of the identity information required under paragraph (1)(B)(i).

(3) Reporting mechanism

An online marketplace shall disclose to consumers in a clear and conspicuous manner on the product listing of any high-volume third party seller a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace.

(4) Compliance

If a high-volume third party seller does not comply with the requirements to provide and disclose information under this subsection, the online marketplace shall, after providing the seller with written or electronic notice and an opportunity to provide or disclose such information not later than 10 days after the issuance of such notice, suspend any future sales activity of such seller until the seller complies with such requirements.

(c) Enforcement by Federal Trade Commission

(1) Unfair and deceptive acts or practices

A violation of subsection (a) or (b) by an online marketplace shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) Powers of the Commission

(A) In general

The Commission shall enforce subsections (a) and (b) 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 section.

(B) Privileges and immunities

Any person that violates subsection (a) or (b) shall be subject to the penalties, and entitled to the privileges and immunities, provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(3) Regulations

The Commission may promulgate regulations under section 553 of title 5 with respect to the collection, verification, or disclosure of information under this section, provided that such regulations are limited to what is necessary to collect, verify, and disclose such information.

(4) Authority preserved

Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

(d) Enforcement by State attorneys general

(1) In general

If the attorney general of a State has reason to believe that any online marketplace has violated or is violating this section or a regulation promulgated under this section that affects one or more residents of that State, the attorney general of the State may bring a civil action in any appropriate district court of the United States, to—

- (A) enjoin further such violation by the defendant;
- (B) enforce compliance with this section or such regulation;
- (C) obtain civil penalties in the amount provided for under subsection (c);
- (D) obtain other remedies permitted under State law; and
- (E) obtain damages, restitution, or other compensation on behalf of residents of the State.

(2) Notice

The attorney general of a State shall provide prior written notice of any action under paragraph (1) to the Commission and provide the Commission with a copy of the complaint in the action, except in any case in which such prior notice is not feasible, in which case the attorney general shall serve such notice immediately upon instituting such action.

(3) Intervention by the Commission

Upon receiving notice under paragraph (2), the Commission shall have the right—

- (A) to intervene in the action;
- (B) upon so intervening, to be heard on all matters arising therein; and
- (C) to file petitions for appeal.

(4) Limitation on State action while Federal action is pending

If the Commission has instituted a civil action for violation of this section or a regulation promulgated under this section, no State attorney general, or official or agency of a State, may bring a separate action under paragraph (1) during the pendency of that action against any defendant named in the complaint of the Commission for any violation of this section or a

regulation promulgated under this section that is alleged in the complaint. A State attorney general, or official or agency of a State, may join a civil action for a violation of this section or regulation promulgated under this section filed by the Commission.

(5) Rule of construction

For purposes of bringing a civil action under paragraph (1), nothing in this section shall be construed to prevent the chief law enforcement officer, or official or agency of a State, from exercising the powers conferred on such chief law enforcement officer, or official or agency of a State, by the laws of the State to conduct investigations, administer oaths or affirmations, or compel the attendance of witnesses or the production of documentary and other evidence.

(6) Actions by other State officials

(A) In general

In addition to civil actions brought by attorneys general under paragraph (1), any other officer of a State who is authorized by the State to do so, except for any private person on behalf of the State attorney general, may bring a civil action under paragraph (1), subject to the same requirements and limitations that apply under this subsection to civil actions brought by attorneys general.

(B) Savings provision

Nothing in this subsection may be construed to prohibit an authorized official of a State from initiating or continuing any proceeding in a court of the State for a violation of any civil or criminal law of the State.

(e) Severability

If any provision of this section, or the application thereof to any person or circumstance, is held invalid, the remainder of this section and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected by the invalidation.

(f) Definitions

In this section:

(1) Commission

The term "Commission" means the Federal Trade Commission.

(2) Consumer product

The term "consumer product" has the meaning given such term in section 2301 of this title and section 700.1 of title 16, Code of Federal Regulations.

(3) High-volume third party seller

(A) In general

The term "high-volume third party seller" means a participant on an online marketplace's platform who is a third party seller and, in any continuous 12-month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products and an aggregate total of \$5,000 or more in gross revenues.

(B) Clarification

For purposes of calculating the number of discrete sales or transactions or the aggregate gross revenues under subparagraph (A), an online marketplace shall only be required to count sales or transactions made through the online marketplace and for which payment was processed by the online marketplace, either directly or through its payment processor.

(4) Online marketplace

The term "online marketplace" means any person or entity that operates a consumer-directed electronically based or accessed platform that—

(A) includes features that allow for, facilitate, or enable third party sellers to engage in the

sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States;

(B) is used by one or more third party sellers for such purposes; and

(C) has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

(5) Seller

The term "seller" means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace's platform.

(6) Third party seller

(A) In general

The term "third party seller" means any seller, independent of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through such online marketplace's platform.

(B) Exclusions

The term "third party seller" does not include, with respect to an online marketplace—

(i) a seller who operates the online marketplace's platform; or

(ii) a business entity that has—

(I) made available to the general public the entity's name, business address, and working contact information;

(II) an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; and

(III) provided to the online marketplace identifying information, as described in subsection (a), that has been verified in accordance with that subsection.

(7) Verify

The term "verify" means to confirm information provided to an online marketplace pursuant to this section, which may include the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided are valid, corresponding to the seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.

(g) Relationship to State laws

No State or political subdivision of a State, or territory of the United States, may establish or continue in effect any law, regulation, rule, requirement, or standard that conflicts with the requirements of this section.

(h) Effective date

This section shall take effect 180 days after December 29, 2022.

(Pub. L. 117–328, div. BB, title III, §301, Dec. 29, 2022, 136 Stat. 5555.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (c)(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 Consolidated Appropriations Act, 2023, and not as part of the Federal Trade Commission Act which comprises this chapter.

§46. Additional powers of Commission

The Commission shall also have power—

(a) Investigation of persons, partnerships, or corporations

To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

(b) Reports of persons, partnerships, and corporations

To require, by general or special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

(c) Investigation of compliance with antitrust decrees

Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the Commission.

(d) Investigations of violations of antitrust statutes

Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Readjustment of business of corporations violating antitrust statutes

Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) Publication of information; reports

To make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use: *Provided*, That the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information (1) to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes, and (2) to any officer or employee of any foreign law

enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 57b–2(b) of this title.

(g) Classification of corporations; regulations

From time to time classify corporations and (except as provided in section 57a(a)(2) of this title) to make rules and regulations for the purpose of carrying out the provisions of this subchapter.

(h) Investigations of foreign trade conditions; reports

To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

(i) Investigations of foreign antitrust law violations

With respect to the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6201 et seq.], to conduct investigations of possible violations of foreign antitrust laws (as defined in section 12 of such Act [15 U.S.C. 6211]).

(j) Investigative assistance for foreign law enforcement agencies

(1) In general

Upon a written request from a foreign law enforcement agency to provide assistance in accordance with this subsection, if the requesting agency states that it is investigating, or engaging in enforcement proceedings against, possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211(5))), to provide the assistance described in paragraph (2) without requiring that the conduct identified in the request constitute a violation of the laws of the United States.

(2) Type of assistance

In providing assistance to a foreign law enforcement agency under this subsection, the Commission may—

(A) conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by this subchapter; and

(B) when the request is from an agency acting to investigate or pursue the enforcement of civil laws, or when the Attorney General refers a request to the Commission from an agency acting to investigate or pursue the enforcement of criminal laws, seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of title 28.

(3) Criteria for determination

In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including—

(A) whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission;

(B) whether compliance with the request would prejudice the public interest of the United States; and

(C) whether the requesting agency's investigation or enforcement proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.

(4) International agreements

If a foreign law enforcement agency has set forth a legal basis for requiring execution of an international agreement as a condition for reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, with prior approval and ongoing

oversight of the Secretary of State, and with final approval of the agreement by the Secretary of State, may negotiate and conclude an international agreement, in the name of either the United States or the Commission, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such an international agreement to—

- (A) provide assistance using the powers set forth in this subsection;
- (B) disclose materials and information in accordance with subsection (f) and section 57b–2(b) of this title; and
- (C) engage in further cooperation, and protect materials and information received from disclosure, as authorized by this subchapter.

(5) Additional authority

The authority provided by this subsection is in addition to, and not in lieu of, any other authority vested in the Commission or any other officer of the United States.

(6) Limitation

The authority granted by this subsection shall not authorize the Commission to take any action or exercise any power with respect to a bank, a savings and loan institution described in section 57a(f)(3) of this title, a Federal credit union described in section 57a(f)(4) of this title, or a common carrier subject to the Act to regulate commerce, except in accordance with the undesignated proviso following the last designated subsection of this section.

(7) Assistance to certain countries

The Commission may not provide investigative assistance under this subsection to a foreign law enforcement agency from a foreign state that the Secretary of State has determined, in accordance with section 4605(j) ¹ of title 50, has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 4605(j)(4) ¹ of title 50.

(k) Referral of evidence for criminal proceedings

(1) In general

Whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate statutes. Nothing in this paragraph affects any other authority of the Commission to disclose information.

(2) International information

The Commission shall endeavor to ensure, with respect to memoranda of understanding and international agreements it may conclude, that material it has obtained from foreign law enforcement agencies acting to investigate or pursue the enforcement of foreign criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

(l) Expenditures for cooperative arrangements

To expend appropriated funds for—

- (1) operating expenses and other costs of bilateral and multilateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates; and
- (2) expenses for consultations and meetings hosted by the Commission with foreign government agency officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes, such expenses to include necessary administrative and logistic expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including—

- (A) such incidental expenses as meals taken in the course of such attendance;
- (B) any travel and transportation to or from such meetings; and
- (C) any other related lodging or subsistence.

Provided, That the exception of "banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce" from the Commission's powers defined in subsections (a), (b), and (j) of this section, shall not be construed to limit the Commission's authority to gather and compile information, to investigate, or to require reports or answers from, any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations, or industry which is not engaged or is engaged only incidentally in banking, in business as a savings and loan institution, in business as a Federal credit union, or in business as a common carrier subject to the Act to regulate commerce.

The Commission shall establish a plan designed to substantially reduce burdens imposed upon small businesses as a result of requirements established by the Commission under clause (b) relating to the filing of quarterly financial reports. Such plan shall (1) be established after consultation with small businesses and persons who use the information contained in such quarterly financial reports; (2) provide for a reduction of the number of small businesses required to file such quarterly financial reports; and (3) make revisions in the forms used for such quarterly financial reports for the purpose of reducing the complexity of such forms. The Commission, not later than December 31, 1980, shall submit such plan to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. Such plan shall take effect not later than October 31, 1981.

No officer or employee of the Commission or any Commissioner may publish or disclose information to the public, or to any Federal agency, whereby any line-of-business data furnished by a particular establishment or individual can be identified. No one other than designated sworn officers and employees of the Commission may examine the line-of-business reports from individual firms, and information provided in the line-of-business program administered by the Commission shall be used only for statistical purposes. Information for carrying out specific law enforcement responsibilities of the Commission shall be obtained under practices and procedures in effect on May 28, 1980, or as changed by law.

Nothing in this section (other than the provisions of clause (c) and clause (d)) shall apply to the business of insurance, except that the Commission shall have authority to conduct studies and prepare reports relating to the business of insurance. The Commission may exercise such authority only upon receiving a request which is agreed to by a majority of the members of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives. The authority to conduct any such study shall expire at the end of the Congress during which the request for such study was made.

(Sept. 26, 1914, ch. 311, §6, 38 Stat. 721; Pub. L. 93-153, title IV, §408(e), Nov. 16, 1973, 87 Stat. 592; Pub. L. 93-637, title II, §§201(b), 202(b), 203(a), Jan. 4, 1975, 88 Stat. 2193, 2198; Pub. L. 96-37, §1(b), July 23, 1979, 93 Stat. 95; Pub. L. 96-252, §§3-5(a), May 28, 1980, 94 Stat. 374, 375; Pub. L. 100-86, title VII, §715(a), (b), Aug. 10, 1987, 101 Stat. 655; Pub. L. 103-437, §5(a), Nov. 2, 1994, 108 Stat. 4582; Pub. L. 103-438, §3(e)(2)(A), Nov. 2, 1994, 108 Stat. 4598; Pub. L. 109-455, §§4(a), (b), (d), 13, Dec. 22, 2006, 120 Stat. 3372, 3373, 3375, 3382; Pub. L. 112-203, §1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109-455, see Termination Date of 2006 Amendment note below.

EDITORIAL NOTES

REFERENCES IN TEXT

The Act to regulate commerce, referred to in subsecs. (a), (b), (j)(6), and the proviso following subsec. (l), is defined in section 44 of this title.

The International Antitrust Enforcement Assistance Act of 1994, referred to in subsec. (i), 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.

Section 4605(j) of title 50, referred to in subsec. (j)(7), was repealed by Pub. L. 115-232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232. For provisions similar to those of former section 4605(j) of title 50, see section 4813(c) of title 50, as enacted by Pub. L. 115-232.

AMENDMENTS

2012—Pub. L. 112-203, §1, amended Pub. L. 109-455, §13. See 2006 Amendment notes below.

2006—Pub. L. 109-455, §4(d), which substituted "subsections (a), (b), and (j)" for "clauses (a) and (b)" in proviso following subsec. (l), was repealed by Pub. L. 109-455, §13, as amended by Pub. L. 112-203, §1. See Termination Date of 2006 Amendment note below.

Subsec. (f). Pub. L. 109-455, §4(a), which inserted "(1)" after "disclose such information", substituted "purposes, and" for "purposes.", and added par. (2) providing for conditional disclosure to officers and employees of foreign law enforcement, was repealed by Pub. L. 109-455, §13, as amended by Pub. L. 112-203, §1. See Termination Date of 2006 Amendment note below.

Subsecs. (j) to (l). Pub. L. 109-455, §4(b), which added subsecs. (j) to (l) relating to investigative assistance for foreign law enforcement agencies, referral of evidence for criminal proceedings, and expenditures for cooperative arrangements, respectively, was repealed by Pub. L. 109-455, §13, as amended by Pub. L. 112-203, §1. See Termination Date of 2006 Amendment note below.

1994—Pub. L. 103-437, in first and third undesignated pars. following proviso after subsec. (h), substituted "Committee on Energy and Commerce" for "Committee on Interstate and Foreign Commerce".

Subsec. (i). Pub. L. 103-438 added subsec. (i).

1987—Pub. L. 100-86, §715(b), in proviso following subsec. (h), inserted reference to Federal credit unions described in section 57a(f)(4) of this title and reference to in business as a Federal credit union.

Subsecs. (a), (b). Pub. L. 100-86, §715(a)(1), (2), inserted reference to Federal credit unions described in section 57a(f)(4) of this title.

1980—Pub. L. 96-252, §§3(b)-5(a), inserted three undesignated paragraphs following proviso after subsec. (h) requiring the Commission to establish a plan to reduce burdens imposed upon small businesses by the quarterly financial reporting requirements under subsec. (b) of this section, prohibiting Commissioners and officers and employees of the Commission from publishing or disclosing information whereby line-of-business data furnished by particular establishments or individuals can be identified, and, with certain exceptions, making this section inapplicable to the business of insurance.

Subsec. (f). Pub. L. 96-252, §3(a), substituted "as are" for ", except trade secrets and names of customers, as it shall deem expedient" and inserted proviso restricting Commission's authority to make public trade secrets or commercial or financial information which is obtained from any person and which is privileged or confidential.

1979—Pub. L. 96-37, §1(b)(3), in proviso following subsec. (h), inserted references to savings and loan institutions and to persons, partnerships, corporations, groups of persons, partnerships, or corporations or industries that are not engaged or are engaged only incidentally in business as savings and loan institutions.

Subsecs. (a), (b). Pub. L. 96-37, §1(b)(1), (2), inserted reference to savings and loan institutions described in section 57a(f)(3) of this title.

1975—Pub. L. 93-637, §203(a)(3), in proviso following subsec. (h), substituted "any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations," for "any such corporation to the extent that such action is necessary to the investigation of any corporation, group of corporations,".

Subsec. (a). Pub. L. 93-637, §§201(b), 203(a)(1), substituted "in or whose business affects commerce" for "in commerce", "person, partnership, or corporation" for "corporation", and "persons, partnerships, and corporations" for "corporations and to individuals, associations, and partnerships".

Subsec. (b). Pub. L. 93-637, §§201(b), 203(a)(2), substituted "in or whose business affects commerce" for "in commerce", "special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting" for "special orders, corporations engaged in or whose business affects commerce, excepting", and "respective persons, partnerships, and corporations" for "respective corporations".

Subsec. (g). Pub. L. 93-637, §202(b), inserted "(except as provided in section 57a(a)(2) of this title)" before "to make rules and regulations".

1973—Pub. L. 93–153 inserted proviso following subsec. (h) that the Commission's investigatory powers to gather and compile information, investigate, and require reports or answers is not curtailed as regards banks and common carriers when the investigation in question is an investigation of a corporation, group of corporations, or industry not engaged or engaged only incidentally in banking or in business as a common carrier subject to the Act to regulate commerce notwithstanding provisions excepting banks and common carriers subject to the Act from the exercise of the Commission's power to investigate and require reports from corporations.

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.

TERMINATION DATE OF 2006 AMENDMENT

Amendment by section 4(a), (b), (d) of Pub. L. 109–455 repealed effective Sept. 30, 2027, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–252 effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as a note under section 45 of this title.

APPLICABILITY OF 1975 AMENDMENT TO SUBSECTION (G) OF THIS SECTION

For applicability to rules promulgated or proposed under subsec. (g) of this section prior to Jan. 4, 1975, of amendment made to said subsec. (g) by section 202(b) of Act Jan. 4, 1975, see "Applicability" provisions of section 202(c) of Act Jan. 4, 1975, set out as a note under section 57a of this title.

STUDY AND EVALUATION OF EFFECTIVENESS OF STATE POLICIES AND PROGRAMS RELATING TO REGULATION OF CERTAIN HEALTH INSURANCE POLICIES

Pub. L. 96–252, §5(b), May 28, 1980, 94 Stat. 376, provided that: "The amendment made in subsection (a) [adding undesignated paragraph authorizing studies and reports relating to the business of insurance] shall not be construed to prohibit the Federal Trade Commission from participating with the Secretary of Health and Human Services in a comprehensive study and evaluation of the comparative effectiveness of various State policies and programs relating to the regulation of health insurance policies available for purchase by individuals who are eligible for benefits under the program of health insurance benefits established in title XVIII of the Social Security Act [42 U.S.C. 1395 et seq]."

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.

EX. ORD. NO. 10544. INSPECTION OF INCOME TAX RETURNS BY FEDERAL TRADE COMMISSION

Ex. Ord. No. 10544, July 12, 1954, 19 F.R. 4289, provided:

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code (53 Stat. 29; 54 Stat. 1008; 55 Stat. 722) and in the interest of the internal management of the Government, it is hereby ordered that corporation income tax returns made for the year 1953 and subsequent years shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914, 38 Stat. 717, [this subchapter], such inspection to be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in

the Treasury decision relating to the inspection of returns by the Federal Trade Commission, approved by me this date [T.D. 6080, 19 F.R. 4308].

This Executive Order shall be effective upon its filing for publication in the Federal Register.

DWIGHT D. EISENHOWER.

¹ See References in Text note below.

§46a. Concurrent resolution essential to authorize investigations

After June 16, 1933, no new investigations shall be initiated by the Commission as the result of a legislative resolution, except the same be a concurrent resolution of the two Houses of Congress.

(June 16, 1933, ch. 101, §1, 48 Stat. 291.)

EDITORIAL NOTES

CODIFICATION

Section was not enacted as part of the Federal Trade Commission Act which comprises this subchapter.

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.

§47. Reference of suits under antitrust statutes to Commission

In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the Commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The Commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.

(Sept. 26, 1914, ch. 311, §7, 38 Stat. 722.)

EDITORIAL NOTES

REFERENCES IN TEXT

The words "In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts" have reference to actions under sections 4, 9, and 25 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.

§48. Information and assistance from departments

The several departments and bureaus of the Government when directed by the President shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this subchapter, and shall detail from time to time such officials and employees to the Commission as he may direct.

(Sept. 26, 1914, ch. 311, §8, 38 Stat. 722.)

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.

§49. Documentary evidence; depositions; witnesses

For the purposes of this subchapter the Commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any person, partnership, or corporation being investigated or proceeded against; and the Commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the Commission may sign subpoenas, and members and examiners of the Commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, partnership, or corporation issue an order requiring such person, partnership, or corporation to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the Commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person, partnership, or corporation to comply with the provisions of this subchapter or any order of the Commission made in pursuance thereof.

The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under this subchapter at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(Sept. 26, 1914, ch. 311, §9, 38 Stat. 722; Pub. L. 91-452, title II, §211, Oct. 15, 1970, 84 Stat. 929; Pub. L. 93-637, title II, §203(b), Jan. 4, 1975, 88 Stat. 2198.)

EDITORIAL NOTES

AMENDMENTS

1975—First par. Pub. L. 93–637, §203(b)(1), substituted "person, partnership, or corporation" for "corporation".

Third par. Pub. L. 93–637, §203(b)(2), substituted "person, partnership, or corporation" for "corporation or other person" wherever appearing.

Fourth par. Pub. L. 93–637, §203(b)(3), substituted "person, partnership, or corporation" for "person or corporation".

1970—Seventh par. Pub. L. 91–452 struck out provisions which granted immunity from prosecution for any natural person testifying or producing evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on 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.

SAVINGS PROVISION

Amendment by Pub. L. 91–452 not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before the 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.

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.

§50. Offenses and penalties

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry or to produce any documentary evidence, if in his power to do so, in obedience to an order of a district court of the United States directing compliance with the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this subchapter, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any person, partnership, or corporation subject to this subchapter, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such person, partnership, or corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such person, partnership, or corporation, or who shall willfully refuse to submit to the Commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such person, partnership, or corporation in his possession or within his control, shall be deemed guilty of an offense against the

United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any persons, partnership, or corporation required by this subchapter to file any annual or special report shall fail so to do within the time fixed by the Commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

(Sept. 26, 1914, ch. 311, §10, 38 Stat. 723; June 25, 1948, ch. 646, §1, 62 Stat. 909; Pub. L. 93-637, title II, §203(c), Jan. 4, 1975, 88 Stat. 2199; Pub. L. 96-252, §6, May 28, 1980, 94 Stat. 376.)

EDITORIAL NOTES

AMENDMENTS

1980—First par. Pub. L. 96-252 inserted "any" after "produce" and "an order of a district court of the United States directing compliance with" after "obedience to".

1975—Second par. Pub. L. 93-637, §203(c)(1), substituted "person, partnership, or corporation" for "corporation" wherever appearing.

Third par. Pub. L. 93-637, §203(c)(2), substituted "If any persons, partnership, or corporation" for "If any corporation", and "in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business" for "in the district where the corporation has its principal office or in any district in which it shall do business".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

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

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-252 effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as a note under section 45 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.

§51. Effect on other statutory provisions

Nothing contained in this subchapter shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in this subchapter be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.
(Sept. 26, 1914, ch. 311, §11, 38 Stat. 724.)

§52. Dissemination of false advertisements

(a) Unlawfulness

It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

(1) By United States mails, or in or having an effect upon commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, services, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of food, drugs, devices, services, or cosmetics.

(b) Unfair or deceptive act or practice

The dissemination or the causing to be disseminated of any false advertisement within the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section 45 of this title.

(Sept. 26, 1914, ch. 311, §12, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Pub. L. 93–637, title II, §201(c), Jan. 4, 1975, 88 Stat. 2193; Pub. L. 103–297, §8, Aug. 16, 1994, 108 Stat. 1550.)

EDITORIAL NOTES

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–297 inserted "services," after "devices," in pars. (1) and (2).

1975—Subsec. (a). Pub. L. 93–637 substituted "in or having an effect upon commerce," for "in commerce".

Subsec. (b). Pub. L. 93–637 substituted "in or affecting commerce" for "in commerce".

STATUTORY NOTES AND RELATED SUBSIDIARIES

INFORMATION ABOUT SCAMS RELATED TO COVID–19

Pub. L. 116–287, §2, Jan. 5, 2021, 134 Stat. 4882, provided that:

"(a) **DISSEMINATION OF INFORMATION.**—

"(1) **IN GENERAL.**—As expeditiously as possible after the date of the enactment of this Act [Jan. 5, 2021], the Commission, in consultation with the Attorney General, the Secretary of Health and Human Services, the Postmaster General, the Chief Postal Inspector, and the Internet Crime Complaint Center, shall develop and disseminate information to the public about scams related to the novel coronavirus (COVID–19).

"(2) **REQUIREMENTS.**—In carrying out paragraph (1), the Commission shall—

"(A) include—

"(i) information regarding mail, telemarketing, and internet fraud and illegal robocalls related to COVID–19 that identifies the most common scams; and

"(ii) information regarding where and how to report instances of scams related to COVID–19, including instructions on how to file a complaint with the appropriate law enforcement agency;

"(B) disseminate information under such paragraph in a manner that prioritizes, and that is easily accessible by and user-friendly to, senior citizens and people with infirmities and disabilities;

"(C) disseminate information under such paragraph on an internet website of the Commission that serves as a source of information for the public about scams related to COVID–19; and

"(D) regularly update the information developed and disseminated under such paragraph to keep pace with the changing nature of scams related to COVID-19.

"(b) DATABASE.—As expeditiously as possible after the date of the enactment of this Act, the Commission shall, in consultation with State law enforcement agencies, the Director of the Bureau of Consumer Financial Protection, the Attorney General, the Secretary of Health and Human Services, and other relevant Federal officials, establish a comprehensive national database, either within or separate from the Consumer Sentinel Network, that tracks instances of scams related to COVID-19.

"(c) COMMISSION DEFINED.—In this section, the term 'Commission' means the Federal Trade Commission."

§53. False advertisements; injunctions and restraining orders

(a) Power of Commission; jurisdiction of courts

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 52 of this title, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 45 of this title, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 45 of this title, would be to the interest of the public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.

(b) Temporary restraining orders; preliminary injunctions

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: *Provided, however,* That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: *Provided further,* That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a

party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.

(c) Service of process; proof of service

Any process of the Commission under this section may be served by any person duly authorized by the Commission—

(1) by delivering a copy of such process to the person to be served, to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served;

(2) by leaving a copy of such process at the residence or the principal office or place of business of such person, partnership, or corporation; or

(3) by mailing a copy of such process by registered mail or certified mail addressed to such person, partnership, or corporation at his, or her, or its residence, principal office, or principal place or business.

The verified return by the person serving such process setting forth the manner of such service shall be proof of the same.

(d) Exception of periodical publications

Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—

(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher 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 false advertisement or any other advertisement,

the court shall exclude such issue from the operation of the restraining order or injunction.

(Sept. 26, 1914, ch. 311, §13, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Pub. L. 93–153, title IV, §408(f), Nov. 16, 1973, 87 Stat. 592; Pub. L. 103–312, §10, Aug. 26, 1994, 108 Stat. 1695.)

EDITORIAL NOTES

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1994—Subsecs. (a), (b). Pub. L. 103–312, §10(a), in concluding provisions, substituted "Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found." for "Any such suit shall be brought in the district in which such person, partnership, or corporation resides or transacts business."

Subsecs. (c), (d). Pub. L. 103–312, §10(b), added subsec. (c) and redesignated former subsec. (c) as (d).

1973—Subsecs. (b), (c). Pub. L. 93–153 added subsec. (b) and redesignated former subsec. (b) as (c).

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.

§54. False advertisements; penalties

(a) Imposition of penalties

Any person, partnership, or corporation who violates any provision of section 52(a) of this title shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than \$10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: *Provided*, That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act [21 U.S.C. 601 et seq.] shall be conclusively presumed not injurious to health at the time the same leave official "establishments."

(b) Exception of advertising medium or agency

No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement. (Sept. 26, 1914, ch. 311, §14, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Meat Inspection Act, referred to in subsec. (a), is act Mar. 4, 1907, ch. 2907, titles I to IV, as added Dec. 15, 1967, Pub. L. 90-201, 81 Stat. 584, which is classified to subchapters I to IV (§601 et seq.) of chapter 12 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 21 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Act Mar. 21, 1938, ch. 49, §5(b), 52 Stat. 117, provided: "Section 14 of the Federal Trade Commission Act [this section] added to such Act by section 4 of this Act, shall take effect on the expiration of sixty days after the date of the enactment of this Act [Mar. 21, 1938]."

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.

§55. Additional definitions

For the purposes of sections 52 to 54 of this title—

(a) False advertisement

(1) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

(2) In the case of oleomargarine or margarine an advertisement shall be deemed misleading in a material respect if in such advertisement representations are made or suggested by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine.

(b) Food

The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(c) Drug

The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(d) Device

The term "device" (except when used in subsection (a) of this section) means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or

(3) intended to affect the structure or any function of the body of man or other animals, and

which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(e) Cosmetic

The term "cosmetic" means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component

of any such article; except that such term shall not include soap.

(f) Oleomargarine or margarine

For the purposes of this section and section 347 of title 21, the term "oleomargarine" or "margarine" includes—

(1) all substances, mixtures, and compounds known as oleomargarine or margarine;

(2) all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

(Sept. 26, 1914, ch. 311, §15, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Mar. 16, 1950, ch. 61, §4(a), (b), 64 Stat. 21; Pub. L. 94-295, §3(a)(1)(B), May 28, 1976, 90 Stat. 575.)

EDITORIAL NOTES

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1976—Subsec. (d). Pub. L. 94-295 expanded definition of "device" to include implements, machines, implants, in vitro reagents, and other similar or related articles, added recognition in the National Formulary or the United States Pharmacopeia, or any supplement to the Formulary or Pharmacopeia, to the enumeration of conditions under which a device may qualify for inclusion under this chapter, and inserted requirements that a device be one which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

1950—Subsec. (a). Act Mar. 16, 1950, §4(a), designated existing provisions as par. (1) and added par. (2) relating to oleomargarine.

Subsec. (f). Act Mar. 16, 1950, §4(b), added subsec. (f).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Mar. 16, 1950, effective July 1, 1950, see note set out under section 347 of Title 21, Food and Drugs.

§56. Commencement, defense, intervention and supervision of litigation and appeal by Commission or Attorney General

(a) Procedure for exercise of authority to litigate or appeal

(1) Except as otherwise provided in paragraph (2) or (3), if—

(A) before commencing, defending, or intervening in, any civil action involving this subchapter (including an action to collect a civil penalty) which the Commission, or the Attorney General on behalf of the Commission, is authorized to commence, defend, or intervene in, the Commission gives written notification and undertakes to consult with the Attorney General with respect to such action; and

(B) the Attorney General fails within 45 days after receipt of such notification to commence, defend, or intervene in, such action;

the Commission may commence, defend, or intervene in, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose.

(2) Except as otherwise provided in paragraph (3), in any civil action—

(A) under section 53 of this title (relating to injunctive relief);

(B) under section 57b of this title (relating to consumer redress);

(C) to obtain judicial review of a rule prescribed by the Commission, or a cease and desist order issued under section 45 of this title;

(D) under the second paragraph of section 49 of this title (relating to enforcement of a subpoena) and under the fourth paragraph of such section (relating to compliance with section 46 of this title); or

(E) under section 57b-2a of this title;

the Commission shall have exclusive authority to commence or defend, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose, unless the Commission authorizes the Attorney General to do so. The Commission shall inform the Attorney General of the exercise of such authority and such exercise shall not preclude the Attorney General from intervening on behalf of the United States in such action and any appeal of such action as may be otherwise provided by law.

(3)(A) If the Commission makes a written request to the Attorney General, within the 10-day period which begins on the date of the entry of the judgment in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), to represent itself through any of its attorneys designated by it for such purpose before the Supreme Court in such action, it may do so, if—

(i) the Attorney General concurs with such request; or

(ii) the Attorney General, within the 60-day period which begins on the date of the entry of such judgment—

(a) refuses to appeal or file a petition for writ of certiorari with respect to such civil action, in which case he shall give written notification to the Commission of the reasons for such refusal within such 60-day period; or

(b) the Attorney General fails to take any action with respect to the Commission's request.

(B) In any case where the Attorney General represents the Commission before the Supreme Court in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), the Attorney General may not agree to any settlement, compromise, or dismissal of such action, or confess error in the Supreme Court with respect to such action, unless the Commission concurs.

(C) For purposes of this paragraph (with respect to representation before the Supreme Court), the term "Attorney General" includes the Solicitor General.

(4) If, prior to the expiration of the 45-day period specified in paragraph (1) of this section or a 60-day period specified in paragraph (3), any right of the Commission to commence, defend, or intervene in, any such action or appeal may be extinguished due to any procedural requirement of any court with respect to the time in which any pleadings, notice of appeal, or other acts pertaining to such action or appeal may be taken, the Attorney General shall have one-half of the time required to comply with any such procedural requirement of the court (including any extension of such time granted by the court) for the purpose of commencing, defending, or intervening in the civil action pursuant to paragraph (1) or for the purpose of refusing to appeal or file a petition for writ of certiorari and the written notification or failing to take any action pursuant to paragraph 3(A)(ii).

(5) The provisions of this subsection shall apply notwithstanding chapter 31 of title 28, or any other provision of law.

(b) Certification by Commission to Attorney General for criminal proceedings

Whenever the Commission has reason to believe that any person, partnership, or corporation is liable for a criminal penalty under this subchapter, the Commission shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate criminal proceedings to be brought.

(c) Foreign litigation

(1) Commission attorneys

With the concurrence of the Attorney General, the Commission may designate Commission attorneys to assist the Attorney General in connection with litigation in foreign courts on particular matters in which the Commission has an interest.

(2) Reimbursement for foreign counsel

The Commission is authorized to expend appropriated funds, upon agreement with the Attorney General, to reimburse the Attorney General for the retention of foreign counsel for litigation in foreign courts and for expenses related to litigation in foreign courts in which the Commission has an interest.

(3) Limitation on use of funds

Nothing in this subsection authorizes the payment of claims or judgments from any source other than the permanent and indefinite appropriation authorized by section 1304 of title 31.

(4) Other authority

The authority provided by this subsection is in addition to any other authority of the Commission or the Attorney General.

(Sept. 26, 1914, ch. 311, §16, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; amended Pub. L. 93–153, title IV, §408(g), Nov. 16, 1973, 87 Stat. 592; Pub. L. 93–637, title II, §204(a), Jan. 4, 1975, 88 Stat. 2199; Pub. L. 109–455, §§5, 7(b), 13, Dec. 22, 2006, 120 Stat. 3375, 3379, 3382; Pub. L. 112–203, §1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

EDITORIAL NOTES

AMENDMENTS

2012—Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment notes below.

2006—Subsec. (a)(2)(E). Pub. L. 109–455, §7(b), which added subpar. (E) reading "under section 57b–2a of this title;", was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

Subsec. (c). Pub. L. 109–455, §5, which added subsec. (c) relating to attorneys used and money expended for foreign litigation, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

1975—Pub. L. 93–637 substituted provisions authorizing the Commission at its election to appear in court by its own name and designate its attorneys for such purpose, for provisions relating to the certification of facts by the Commission to the Attorney General who brought the appropriate proceedings, or, after compliance with section 45(m) of this title, itself brought the appropriate proceedings.

1973—Pub. L. 93–153 inserted provisions authorizing the Federal Trade Commission to itself cause appropriate proceedings to be brought after compliance with the requirements of section 45(m) of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION DATE OF 2006 AMENDMENT

Amendment by sections 5 and 7(b) of Pub. L. 109–455 repealed effective Sept. 30, 2027, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 93–637, title II, §204(c), Jan. 4, 1975, 88 Stat. 2200, provided that: "The amendment and repeal made by this section [amending this section and repealing section 45(m) of this title] shall not apply to any civil action commenced before the date of enactment of this Act [Jan. 4, 1975]."

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.

§57. Separability clause

If any provision of this subchapter, or the application thereof to any person, partnership, or corporation, or circumstance, is held invalid, the remainder of this subchapter, and the application of such provisions to any other person, partnership, corporation, or circumstance, shall not be affected thereby.

(Sept. 26, 1914, ch. 311, §17, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114.)

§57a. Unfair or deceptive acts or practices rulemaking proceedings

(a) Authority of Commission to prescribe rules and general statements of policy

(1) Except as provided in subsection (h), the Commission may prescribe—

(A) interpretive rules and general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), and

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), except that the Commission shall not develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to this section. Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.

(2) The Commission shall have no authority under this subchapter, other than its authority under this section, to prescribe any rule with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title). The preceding sentence shall not affect any authority of the Commission to prescribe rules (including interpretive rules), and general statements of policy, with respect to unfair methods of competition in or affecting commerce.

(b) Procedures applicable

(1) When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of title 5 (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (A) publish a notice of proposed rulemaking stating with particularity the text of the rule, including any alternatives, which the Commission proposes to promulgate, and the reason for the proposed rule; (B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (C) provide an opportunity for an informal hearing in accordance with subsection (c); and (D) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in subsection (e)(1)(B)), together with a statement of basis and purpose.

(2)(A) Prior to the publication of any notice of proposed rulemaking pursuant to paragraph (1)(A), the Commission shall publish an advance notice of proposed rulemaking in the Federal Register. Such advance notice shall—

(i) contain a brief description of the area of inquiry under consideration, the objectives which the Commission seeks to achieve, and possible regulatory alternatives under consideration by the Commission; and

(ii) invite the response of interested parties with respect to such proposed rulemaking, including any suggestions or alternative methods for achieving such objectives.

(B) The Commission shall submit such advance notice of proposed rulemaking to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. The Commission may use such additional mechanisms as the Commission considers useful to obtain suggestions regarding the content of the area of inquiry before the publication of a general notice of proposed rulemaking under paragraph (1)(A).

(C) The Commission shall, 30 days before the publication of a notice of proposed rulemaking pursuant to paragraph (1)(A), submit such notice to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives.

(3) The Commission shall issue a notice of proposed rulemaking pursuant to paragraph (1)(A) only where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent. The Commission shall make a determination that unfair or deceptive acts or practices are prevalent under this paragraph only if—

(A) it has issued cease and desist orders regarding such acts or practices, or

(B) any other information available to the Commission indicates a widespread pattern of unfair or deceptive acts or practices.

(c) Informal hearing procedure

The Commission shall conduct any informal hearings required by subsection (b)(1)(C) of this section in accordance with the following procedure:

(1)(A) The Commission shall provide for the conduct of proceedings under this subsection by hearing officers who shall perform their functions in accordance with the requirements of this subsection.

(B) The officer who presides over the rulemaking proceedings shall be responsible to a chief presiding officer who shall not be responsible to any other officer or employee of the Commission. The officer who presides over the rulemaking proceeding shall make a recommended decision based upon the findings and conclusions of such officer as to all relevant and material evidence, except that such recommended decision may be made by another officer if the officer who presided over the proceeding is no longer available to the Commission.

(C) Except as required for the disposition of ex parte matters as authorized by law, no presiding officer shall consult any person or party with respect to any fact in issue unless such officer gives notice and opportunity for all parties to participate.

(2) Subject to paragraph (3) of this subsection, an interested person is entitled—

(A) to present his position orally or by documentary submission (or both), and

(B) if the Commission determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under paragraph (3)(B)) such cross-examination of persons as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to such issues.

(3) The Commission may prescribe such rules and make such rulings concerning proceedings in such hearings as may tend to avoid unnecessary costs or delay. Such rules or rulings may include (A) imposition of reasonable time limits on each interested person's oral presentations, and (B) requirements that any cross-examination to which a person may be entitled under paragraph (2) be conducted by the Commission on behalf of that person in such manner as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to disputed issues of material fact.

(4)(A) Except as provided in subparagraph (B), if a group of persons each of whom under paragraphs (2) and (3) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Commission to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings (i) limiting the representation of such interest, for such purposes, and (ii) governing the manner in which such cross-examination shall be limited.

(B) When any person who is a member of a group with respect to which the Commission has made a determination under subparagraph (A) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of subparagraph (A) the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if (i) he satisfies the Commission that he has made a reasonable

and good faith effort to reach agreement upon group representation with the other members of the group and (ii) the Commission determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(5) A verbatim transcript shall be taken of any oral presentation, and cross-examination, in an informal hearing to which this subsection applies. Such transcript shall be available to the public.

(d) Statement of basis and purpose accompanying rule; "Commission" defined; judicial review of amendment or repeal of rule; violation of rule

(1) The Commission's statement of basis and purpose to accompany a rule promulgated under subsection (a)(1)(B) shall include (A) a statement as to the prevalence of the acts or practices treated by the rule; (B) a statement as to the manner and context in which such acts or practices are unfair or deceptive; and (C) a statement as to the economic effect of the rule, taking into account the effect on small business and consumers.

(2)(A) The term "Commission" as used in this subsection and subsections (b) and (c) includes any person authorized to act in behalf of the Commission in any part of the rulemaking proceeding.

(B) A substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection. An exemption under subsection (g) shall not be treated as an amendment or repeal of a rule.

(3) When any rule under subsection (a)(1)(B) takes effect a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 45(a)(1) of this title, unless the Commission otherwise expressly provides in such rule.

(e) Judicial review; petition; jurisdiction and venue; rulemaking record; additional submissions and presentations; scope of review and relief; review by Supreme Court; additional remedies

(1)(A) Not later than 60 days after a rule is promulgated under subsection (a)(1)(B) by the Commission, any interested person (including a consumer or consumer organization) may file a petition, in the United States Court of Appeals for the District of Columbia circuit or for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. Copies 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 provisions of section 2112 of title 28 shall apply to the filing of the rulemaking record of proceedings on which the Commission based its rule and to the transfer of proceedings in the courts of appeals.

(B) For purposes of this section, the term "rulemaking record" means the rule, its statement of basis and purpose, the transcript required by subsection (c)(5), any written submissions, and any other information which the Commission considers relevant to such rule.

(2) If the petitioner or the Commission applies to the court for leave to make additional oral submissions or written presentations and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Commission, the court may order the Commission to provide additional opportunity to make such submissions and presentations. The Commission may modify or set aside its rule or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule, and the rule's statement of basis of ¹ purpose, with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(3) Upon the filing of the petition under paragraph (1) of this subsection, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief, including interim relief, as provided in such chapter. The court shall hold unlawful and set aside the rule on any ground specified in subparagraphs (A), (B), (C), or (D) of section 706(2) of title 5 (taking due account of the rule of prejudicial error), or if—

(A) the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record (as defined in paragraph (1)(B) of this subsection) taken as a whole, or

(B) the court finds that—

- (i) a Commission determination under subsection (c) that the petitioner is not entitled to conduct cross-examination or make rebuttal submissions, or
- (ii) a Commission rule or ruling under subsection (c) limiting the petitioner's cross-examination or rebuttal submissions,

has precluded disclosure of disputed material facts which was necessary for fair determination by the Commission of the rulemaking proceeding taken as a whole.

The term "evidence", as used in this paragraph, means any matter in the rulemaking record.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such rule 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)(A) Remedies under the preceding paragraphs of this subsection are in addition to and not in lieu of any other remedies provided by law.

(B) The United States Courts of Appeal shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of a rule prescribed under subsection (a)(1)(B), if any district court of the United States would have had jurisdiction of such action but for this subparagraph. Any such action shall be brought in the United States Court of Appeals for the District of Columbia circuit, or for any circuit which includes a judicial district in which the action could have been brought but for this subparagraph.

(C) A determination, rule, or ruling of the Commission described in paragraph (3)(B)(i) or (ii) may be reviewed only in a proceeding under this subsection and only in accordance with paragraph (3)(B). Section 706(2)(E) of title 5 shall not apply to any rule promulgated under subsection (a)(1)(B). The contents and adequacy of any statement required by subsection (b)(1)(D) shall not be subject to judicial review in any respect.

(f) Definitions of banks, savings and loan institutions, and Federal credit unions

(1) Repealed. Pub. L. 111–203, title X, §1092(2), July 21, 2010, 124 Stat. 2095

(2) DEFINITION.—For purposes of this subchapter, the term "bank" means—

(A) national banks 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 insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)) and insured State branches of foreign banks.

(3) For purposes of this subchapter, the term "savings and loan institution" has the same meaning as in section 1813 of title 12.

(4) For purposes of this subchapter, the term "Federal credit union" has the same meaning as in sections 1766 and 1786 of title 12.

The terms used in this paragraph ² that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the meaning given to them in section 3101 of title 12.

(g) Exemptions and stays from application of rules; procedures

(1) Any person to whom a rule under subsection (a)(1)(B) of this section applies may petition the Commission for an exemption from such rule.

(2) If, on its own motion or on the basis of a petition under paragraph (1), the Commission finds that the application of a rule prescribed under subsection (a)(1)(B) to any person or class or ³ persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or part of such rule. Section 553 of title 5 shall apply to action under this paragraph.

(3) Neither the pendency of a proceeding under this subsection respecting an exemption from a rule, nor the pendency of judicial proceedings to review the Commission's action or failure to act under this subsection, shall stay the applicability of such rule under subsection (a)(1)(B).

(h) Restriction on rulemaking authority of Commission respecting children's advertising proceedings pending on May 28, 1980

The Commission shall not have any authority to promulgate any rule in the children's advertising proceeding pending on May 28, 1980, or in any substantially similar proceeding on the basis of a determination by the Commission that such advertising constitutes an unfair act or practice in or affecting commerce.

(i) Meetings with outside parties

(1) For purposes of this subsection, the term "outside party" means any person other than (A) a Commissioner; (B) an officer or employee of the Commission; or (C) any person who has entered into a contract or any other agreement or arrangement with the Commission to provide any goods or services (including consulting services) to the Commission.

(2) Not later than 60 days after May 28, 1980, the Commission shall publish a proposed rule, and not later than 180 days after May 28, 1980, the Commission shall promulgate a final rule, which shall authorize the Commission or any Commissioner to meet with any outside party concerning any rulemaking proceeding of the Commission. Such rule shall provide that—

(A) notice of any such meeting shall be included in any weekly calendar prepared by the Commission; and

(B) a verbatim record or a summary of any such meeting, or of any communication relating to any such meeting, shall be kept, made available to the public, and included in the rulemaking record.

(j) Communications by investigative personnel with staff of Commission concerning matters outside rulemaking record prohibited

Not later than 60 days after May 28, 1980, the Commission shall publish a proposed rule, and not later than 180 days after May 28, 1980, the Commission shall promulgate a final rule, which shall prohibit any officer, employee, or agent of the Commission with any investigative responsibility or other responsibility relating to any rulemaking proceeding within any operating bureau of the Commission, from communicating or causing to be communicated to any Commissioner or to the personal staff of any Commissioner any fact which is relevant to the merits of such proceeding and which is not on the rulemaking record of such proceeding, unless such communication is made available to the public and is included in the rulemaking record. The provisions of this subsection shall not apply to any communication to the extent such communication is required for the disposition of ex parte matters as authorized by law.

(Sept. 26, 1914, ch. 311, §18, as added Pub. L. 93-637, title II, §202(a), Jan. 4, 1975, 88 Stat. 2193; amended Pub. L. 96-37, §1(c), July 23, 1979, 93 Stat. 95; Pub. L. 96-221, title VI, §610(b), Mar. 31, 1980, 94 Stat. 174; Pub. L. 96-252, §§7-11(a), 12, May 28, 1980, 94 Stat. 376-379; Pub. L. 100-86, title VII, §715(c), Aug. 10, 1987, 101 Stat. 655; Pub. L. 101-73, title VII, §744(t), Aug. 9, 1989, 103 Stat. 441; Pub. L. 102-242, title II, §212(g)(2), Dec. 19, 1991, 105 Stat. 2302; Pub. L. 102-550, title XVI, §1604(a)(9), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 103-312, §§3, 5, Aug. 26, 1994, 108 Stat. 1691, 1692; Pub. L. 103-437, §5(a), Nov. 2, 1994, 108 Stat. 4582; Pub. L. 109-351, title VII, §725(g), Oct. 13, 2006, 120 Stat. 2002; Pub. L. 109-356, title I, §123(g), Oct. 16, 2006, 120 Stat. 2029; Pub. L. 111-203, title X, §1092, July 21, 2010, 124 Stat. 2094.)

EDITORIAL NOTES

REFERENCES IN TEXT

Sections 25 and 25A of the Federal Reserve Act, referred to in subsec. (f)(2)(B), are classified to subchapters I (§601 et seq.) and II (§611 et seq.), respectively, of chapter 6 of Title 12, Banks and Banking.

PRIOR PROVISIONS

A prior section 18 of act Sept. 26, 1914, ch. 311, was renumbered section 28 and is classified to section 58 of this title.

AMENDMENTS

2010—Subsec. (f). Pub. L. 111–203, §1092(1), inserted subsec. heading.

Subsec. (f)(1). Pub. L. 111–203, §1092(2), struck out par. (1) which related to prevention of unfair or deceptive acts or practices in or affecting commerce.

Subsec. (f)(2). Pub. L. 111–203, §1092(4)(A), substituted "Definition" for "Enforcement" in heading and "For purposes of this subchapter, the term 'bank' means" for "Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12, in the case of" in introductory provisions.

Subsec. (f)(2)(A). Pub. L. 111–203, §1092(4)(B), struck out ", by the division of consumer affairs established by the Office of the Comptroller of the Currency" before semicolon at end.

Subsec. (f)(2)(B). Pub. L. 111–203, §1092(4)(C), substituted "25A" for "25(a)" and struck out ", by the division of consumer affairs established by the Board of Governors of the Federal Reserve System" before "; and".

Subsec. (f)(2)(C). Pub. L. 111–203, §1092(4)(D), inserted "than" after "other" and struck out ", by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation" before period at end.

Subsec. (f)(3). Pub. L. 111–203, §1092(5), substituted "For purposes of this subchapter, the term 'savings and loan institution' has the same meaning as in" for "Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12 with respect to savings associations as defined in".

Subsec. (f)(4). Pub. L. 111–203, §1092(6), substituted "For purposes of this subchapter, the term 'Federal credit union' has the same meaning as in" for "Compliance with regulations prescribed under this subsection shall be enforced with respect to Federal credit unions under".

Subsec. (f)(5) to (7). Pub. L. 111–203, §1092(3), struck out pars. (5) to (7) which related to violation of regulations, authority to make rules relating to compliance, and annual report to Congress by each agency exercising authority.

2006—Subsec. (f)(2)(A), (B). Pub. L. 109–351 and Pub. L. 109–356 amended par. (2) identically, striking out ", banks operating under the code of law for the District of Columbia," after "national banks" in subpar. (A) and "and banks operating under the code of law for the District of Columbia" after "(other than national banks" in subpar. (B).

1994—Subsec. (a)(1). Pub. L. 103–312, §3(b), substituted "subsection (h)" for "subsection (i)" in introductory provisions.

Subsec. (b)(2)(B), (C). Pub. L. 103–437 substituted "Committee on Energy and Commerce" for "Committee on Interstate and Foreign Commerce".

Subsec. (b)(3). Pub. L. 103–312, §5, added par. (3).

Subsecs. (h) to (k). Pub. L. 103–312, §3(a), redesignated subsecs. (i) to (k) as (h) to (j), respectively, and struck out former subsec. (h) which provided for compensation for attorney fees, expert witness fees, etc., incurred in rulemaking proceedings, limitation on amount, and establishment of small business outreach program.

1992—Subsec. (f)(2)(A). Pub. L. 102–550 substituted "division" for "divisions".

1991—Subsec. (f). Pub. L. 102–242, §212(g)(2)(B), inserted at end "The terms used in this paragraph that are not defined in this subchapter or otherwise defined in section 1813(s) of title 12 shall have the meaning given to them in section 3101 of title 12."

Subsec. (f)(2). Pub. L. 102–242, §212(g)(2)(A), added par. (2) and struck out former par. (2) which read as follows: "Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12, in the case of—

"(A) national banks and banks operating under the code of law for the District of Columbia, by the division of consumer affairs established by the Comptroller of the Currency;

"(B) member banks of the Federal Reserve System (other than banks referred to in subparagraph (A)) by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

"(C) banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)), by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation."

1989—Subsec. (f)(3). Pub. L. 101–73 amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Compliance with regulations prescribed under this subsection shall be enforced under section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464) with respect to Federal savings and loan associations,

section 407 of the National Housing Act (12 U.S.C. 1730) with respect to insured institutions, and sections 6(i) and 17 of the Federal Home Loan Bank Act (12 U.S.C. 1426(i), 1437) with respect to savings and loan institutions which are members of a Federal Home Loan Bank, by a division of consumer affairs to be established by the Federal Home Loan Bank Board pursuant to the Federal Home Loan Bank Act."

1987—Subsec. (f)(1). Pub. L. 100–86, §715(c)(1), (2), in second sentence inserted "and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4))" and in last sentence inserted "or Federal credit unions described in paragraph (4)," in two places, substituted "any such" for "either such", and inserted ", savings and loan institutions or Federal credit unions".

Subsec. (f)(4) to (7). Pub. L. 100–86, §715(c)(3), added par. (4) and redesignated former pars. (4) to (6) as (5) to (7), respectively.

1980—Subsec. (a)(1). Pub. L. 96–252, §§7, 11(a)(2), in provisions preceding subpar. (A) substituted "Except as provided in subsection (i), the" for "The" and in subpar. (B) inserted ", except that the Commission shall not develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to this section" after "section 45(a)(1) of this title)".

Subsec. (b). Pub. L. 96–252, §§8(a), 11(a)(3), designated existing provisions as par. (1) and cls. (1) to (4) thereof as subpars. (A) to (D) and, subpar. (A) thereof, inserted "the text of the rule, including any alternatives, which the Commission proposes to promulgate, and" after "particularity", and added par. (2).

Subsec. (c). Pub. L. 96–252, §8(b)(1), in provisions preceding par. (1) substituted "subsection (b)(1)(C)" for "subsection (b)(3)".

Subsec. (c)(1). Pub. L. 96–252, §9(a)(2), added par. (1). Former par. (1) redesignated (2).

Subsec. (c)(2). Pub. L. 96–252, §9(a)(1), (b)(1), redesignated former par. (1) as (2), substituted "paragraph (3)" for "paragraph (2)" and "paragraph (3)(B)" for "paragraph (2)(B)". Former par. (2) redesignated (3).

Subsec. (c)(3). Pub. L. 96–252, §9(a)(1), (b)(2), redesignated former par. (2) as (3) and substituted "paragraph (2)" for "paragraph (1)". Former par. (3) redesignated (4).

Subsec. (c)(4), (5). Pub. L. 96–252, §9(a)(1), (b)(3), redesignated former par. (3) as (4) and substituted in subpar. (A) "paragraph (2) and (3)" for "paragraphs (1) and (2)". Former par. (4) redesignated (5).

Subsec. (e). Pub. L. 96–252, §§8(b)(2), 9(c), substituted in par. (1)(B) "subsection (c)(5)" for "subsection (c)(4)" and in par. (5)(C) "subsection (b)(1)(D)" for "subsection (b)(4)".

Subsec. (f)(6). Pub. L. 96–221 struck out requirement that the report be made not later than every March 15.

Subsec. (h)(2). Pub. L. 96–252, §10(b), substituted provisions reserving an amount equal to 25 percent of the amount appropriated for the payment of compensation under this subsection to be available solely for the payment of compensation to persons who either would be regulated by a proposed rule or represent persons who would be so regulated for provisions restricting the aggregate amount of compensation paid under this subsection in any fiscal year to all persons, who in rulemaking proceedings in which they receive compensation, are persons who would be regulated by the proposed rule or represent persons who would be so regulated, to an amount not in excess of 25 percent of the aggregate amount paid as compensation under this subsection.

Subsec. (h)(3). Pub. L. 96–252, §10(a), (e), temporarily added par. (3) and redesignated former par. (3) as (4). See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (h)(4). Pub. L. 96–252, §10(a), (c), (e), temporarily redesignated former par. (3) as (4) and substituted "\$750,000" for "\$1,000,000". See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (h)(5). Pub. L. 96–252, §10(d), (e), added par. (5) to be redesignated (4) effective Sept. 30, 1983. See Effective and Termination Dates of 1980 Amendments note below.

Subsec. (i). Pub. L. 96–252, §11(a)(1), added subsec. (i).

Subsecs. (j), (k). Pub. L. 96–252, §12, added subsecs. (j) and (k).

1979—Subsec. (f)(1). Pub. L. 96–37, §1(c)(1), inserted provisions relating to savings and loan institutions and to regulations with respect to savings and loan institutions promulgated by Federal Home Loan Bank Board.

Subsec. (f)(3) to (6). Pub. L. 96–37, §1(c)(2), added par. (3) and redesignated former pars. (3) to (5) as (4) to (6), respectively.

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 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 1994 AMENDMENT

Amendment by section 5 of Pub. L. 103–312 applicable only to rulemaking proceedings initiated after Aug. 26, 1994, and not to be construed to affect in any manner a rulemaking proceeding initiated before such date, see section 15(b) of Pub. L. 103–312, set out as a note under section 45 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 this title.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENTS

Pub. L. 96–252, §10(e), May 28, 1980, 94 Stat. 378, provided that: "The amendments made in subsection (a) and subsection (c) [amending this section] are repealed, effective at the end of fiscal year 1982. Effective upon such repeal, paragraph (5) of section 18(h) of the Federal Trade Commission Act [subsec. (h)(5) of this section], as added by subsection (d), is redesignated as paragraph (4) of section 18(h) of such Act."

Pub. L. 97–377, title I, §101(d), Dec. 21, 1982, 96 Stat. 1866, 1870, provided in part that: "Notwithstanding any other provision of law, the provisions of sections 10 [amending this section and enacting provision set out as first paragraph of this note], 11(b) [set out as a note below], 18 [set out as a note under section 57c of this title], 20 [set out as a note under section 57c of this title] and 21 [enacting section 57a–1 of this title and enacting a provision set out as a note under section 57a–1 of this title], of the Federal Trade Commission Improvements Act of 1980 (Public Law 96–252; 94 Stat. 374) are hereby extended until the termination date set forth in section 102(c) of H.J. Res. 631 [Sept. 30, 1983] as enacted into law [Pub. L. 97–377], notwithstanding subsections 10(e) [see paragraph above] and 21(i) [set out as a note under section 57a–1 of this title] of the Federal Trade Commission Improvements Act of 1980 (Public Law 96–252; 94 Stat. 374)."

Pub. L. 96–252, §11(c), May 28, 1980, 94 Stat. 379, provided that: "The amendments made in subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [May 28, 1980]. The children's advertising proceeding pending on the date of the enactment of this Act shall not proceed further until such time as the Commission has complied with section 18(b)(1)(A) of the Federal Trade Commission Act [subsec. (b)(1)(A) of this section], as amended by subsection (a)(3) and as so redesignated in section 8(a). In any such further proceeding, interested parties shall be given a reasonable opportunity to present their views in accordance with section 18(b)(1)(B) of the Federal Trade Commission Act, as so redesignated in section 8(a) [subsec. (b)(1)(B) of this section], section 18(b)(1)(C) of such Act, as so redesignated in section 8(a) [subsec. (b)(1)(C) of this section], and section 18(c) of such Act (15 U.S.C. 57a(c))."

Amendment by Pub. L. 96–252 effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

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 an Effective Date of 1980 Amendment note under section 1602 of this title.

RESTRICTION ON USE OF FUNDS FOR PURPOSE OF INITIATING NEW RULEMAKING PROCEEDING

Pub. L. 96–252, §11(b), May 28, 1980, 94 Stat. 379, prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97–377, title I §101(d), Dec. 21, 1982, 96 Stat. 1870), under section 57c of this title, for the purpose of initiating any new rulemaking proceeding under this section which was intended to result in, or which might result in, the promulgation of any rule by the Commission which prohibited or otherwise regulated any commercial advertising on the basis of a determination by the Commission that such commercial advertising constituted an unfair act or practice in or affecting commerce.

RESTRICTION ON USE OF FUNDS RESPECTING REGULATION OF FUNERAL INDUSTRY; EXCEPTION

Pub. L. 96-252, §19, May 28, 1980, 94 Stat. 391, prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982, under section 57c of this title to issue the proposed trade regulation rule which was published in the Federal Register of Aug. 29, 1975, beginning at page 39901, and which relates to the regulation of funeral industry practices, in final form or a substantially similar proposed or final trade regulation rule unless the final rule met specific requirements and the Commission followed specific procedures.

OVERSIGHT HEARINGS WITH RESPECT TO FEDERAL TRADE COMMISSION

Pub. L. 96-252, §22, May 28, 1980, 94 Stat. 396, required the Consumer Subcommittee of the Committee on Commerce, Science, and Transportation of the Senate to conduct an oversight hearing with respect to the Federal Trade Commission at least once during the first 6 calendar months, and at least once during the last 6 calendar months, of each of the fiscal years 1980, 1981, and 1982.

APPLICABILITY OF UNFAIR OR DECEPTIVE ACTS OR PRACTICES RULEMAKING PROCEDURES TO RULES CLASSIFYING CORPORATIONS PROMULGATED PRIOR TO JANUARY 4, 1975

Pub. L. 93-637, title II, §202(c), Jan. 4, 1975, 88 Stat. 2198, provided that:

"(1) The amendments made by subsections (a) and (b) of this section [enacting this section and amending section 46 of this title] shall not affect the validity of any rule which was promulgated under section 6(g) of the Federal Trade Commission Act [section 46(g) of this title] prior to the date of enactment of this section [Jan. 4, 1975]. Any proposed rule under section 6(g) of such Act with respect to which presentation of data, views, and arguments was substantially completed before such date may be promulgated in the same manner and with the same validity as such rule could have been promulgated had this section not been enacted.

"(2) If a rule described in paragraph (1) of this subsection is valid and if section 18 of the Federal Trade Commission Act [this section] would have applied to such rule had such rule been promulgated after the date of enactment of this Act, any substantive change in the rule after it has been promulgated shall be made in accordance with such section 18."

STUDY, EVALUATION, AND REPORT BY FEDERAL TRADE COMMISSION AND ADMINISTRATIVE CONFERENCE OF UNITED STATES ON UNFAIR OR DECEPTIVE ACTS OR PRACTICES; RULEMAKING PROCEDURES

Pub. L. 93-637, title II, §202(d), Jan. 4, 1975, 88 Stat. 2198, as amended by Pub. L. 94-299, §2, May 29, 1976, 90 Stat. 588; Pub. L. 95-558, Nov. 1, 1978, 92 Stat. 2130, required the Federal Trade Commission and the Administrative Conference of the United States, not later than June 30, 1979, to conduct a study and submit a report to Congress on the rulemaking procedures under section 57a of this title.

¹ *So in original. Probably should be "and".*

² *So in original.*

³ *So in original. Probably should be "of".*

§57a-1. Omitted

EDITORIAL NOTES

CODIFICATION

Section, Pub. L. 96-252, §21(a)-(h), May 28, 1980, 94 Stat. 393; H. Res. 549, Mar. 25, 1980; Pub. L. 98-620, title IV, §402(13), Nov. 8, 1984, 98 Stat. 3358, provided procedures for review by Congress of final rules promulgated by the Federal Trade Commission.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE; TERMINATION DATE

Pub. L. 96-252, §21(i), May 28, 1980, 94 Stat. 396, provided that: "The provisions of this section shall take effect on the date of the enactment of this Act [May 28, 1980] and shall cease to have any force or effect after September 30, 1982."

Pub. L. 97-377, title I, §101(d), Dec. 21, 1982, 96 Stat. 1870, provided in part that notwithstanding any other provision of law, the provisions of section 21 of the Federal Trade Commission Improvements Act of 1980 [Pub. L. 96-252], which enacted this section and enacted provisions set out as a note under this section, were extended until Sept. 30, 1983, notwithstanding section 21(i) of such Act.

§57b. Civil actions for violations of rules and cease and desist orders respecting unfair or deceptive acts or practices

(a) Suits by Commission against persons, partnerships, or corporations; jurisdiction; relief for dishonest or fraudulent acts

(1) If any person, partnership, or corporation violates any rule under this subchapter respecting unfair or deceptive acts or practices (other than an interpretive rule, or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of section 45(a) of this title), then the Commission may commence a civil action against such person, partnership, or corporation for relief under subsection (b) in a United States district court or in any court of competent jurisdiction of a State.

(2) If any person, partnership, or corporation engages in any unfair or deceptive act or practice (within the meaning of section 45(a)(1) of this title) with respect to which the Commission has issued a final cease and desist order which is applicable to such person, partnership, or corporation, then the Commission may commence a civil action against such person, partnership, or corporation in a United States district court or in any court of competent jurisdiction of a State. If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief under subsection (b).

(b) Nature of relief available

The court in an action under subsection (a) shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnerships, and corporations resulting from the rule violation or the unfair or deceptive act or practice, as the case may be. Such relief may include, but shall not be limited to, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice, as the case may be; except that nothing in this subsection is intended to authorize the imposition of any exemplary or punitive damages.

(c) Conclusiveness of findings of Commission in cease and desist proceedings; notice of judicial proceedings to injured persons, etc.

(1) If (A) a cease and desist order issued under section 45(b) of this title has become final under section 45(g) of this title with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice, and (B) an action under this section is brought with respect to such person's, partnership's, or corporation's rule violation or act or practice, then the findings of the Commission as to the material facts in the proceeding under section 45(b) of this title with respect to such person's, partnership's, or corporation's rule violation or act or practice, shall be conclusive unless (i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive, or (ii) the order became final by reason of section 45(g)(1) of this title, in which case such finding shall be conclusive if supported by evidence.

(2) The court shall cause notice of an action under this section to be given in a manner which is reasonably calculated, under all of the circumstances, to apprise the persons, partnerships, and corporations allegedly injured by the defendant's rule violation or act or practice of the pendency of such action. Such notice may, in the discretion of the court, be given by publication.

(d) Time for bringing of actions

No action may be brought by the Commission under this section more than 3 years after the rule violation to which an action under subsection (a)(1) relates, or the unfair or deceptive act or practice to which an action under subsection (a)(2) relates; except that if a cease and desist order with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice has become final and such order was issued in a proceeding under section 45(b) of this title which was commenced not later than 3 years after the rule violation or act or practice occurred, a civil action may be commenced under this section against such person, partnership, or corporation at any time before the expiration of one year after such order becomes final.

(e) Availability of additional Federal or State remedies; other authority of Commission unaffected

Remedies provided in this section are in addition to, and not in lieu of, any other remedy or right of action provided by State or Federal law. Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law.

(Sept. 26, 1914, ch. 311, §19, as added Pub. L. 93-637, title II, §206(a), Jan. 4, 1975, 88 Stat. 2201.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Pub. L. 93-637, title II, §206(b), Jan. 4, 1975, 88 Stat. 2202, provided that: "The amendment made by subsection (a) of this section [enacting this section] shall not apply to—

"(1) any violation of a rule to the extent that such violation occurred before the date of enactment of this Act [Jan. 4, 1975], or

"(2) any act or practice with respect to which the Commission issues a cease-and-desist order, to the extent that such act or practice occurred before the date of enactment of this Act [Jan. 4, 1975], unless such order was issued after such date and the person, partnership or corporation against whom such an order was issued had been notified in the complaint, or in the notice or order attached thereto, that consumer redress may be sought."

§57b-1. Civil investigative demands

(a) Definitions

For purposes of this section:

(1) The terms "civil investigative demand" and "demand" mean any demand issued by the commission under subsection (c)(1).

(2) The term "Commission investigation" means any inquiry conducted by a Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title) or in any antitrust violations.

(3) The term "Commission investigator" means any attorney or investigator employed by the Commission who is charged with the duty of enforcing or carrying into effect any provisions relating to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title) or any provisions relating to antitrust violations.

(4) The term "custodian" means the custodian or any deputy custodian designated under section 57b-2(b)(2)(A) of this title.

(5) The term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document.

(6) 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.

(7) The term "violation" means any act or omission constituting an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 45(a)(1) of this title) or any antitrust violation.

(8) The term "antitrust violation" means—

(A) any unfair method of competition (within the meaning of section 45(a)(1) of this title);

(B) any violation of the Clayton Act [15 U.S.C. 12 et seq.] or of any other Federal statute that prohibits, or makes available to the Commission a civil remedy with respect to, any restraint upon or monopolization of interstate or foreign trade or commerce;

(C) with respect to the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6201 et seq.], any violation of any of the foreign antitrust laws (as defined in section 12 of such Act [15 U.S.C. 6211]) with respect to which a request is made under section 3 of such Act [15 U.S.C. 6202]; or

(D) any activity in preparation for a merger, acquisition, joint venture, or similar transaction, which if consummated, may result in any such unfair method of competition or in any such violation.

(b) Actions conducted by Commission respecting unfair or deceptive acts or practices in or affecting commerce

For the purpose of investigations performed pursuant to this section with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title); all actions of the Commission taken under section 46 and section 49 of this title shall be conducted pursuant to subsection (c).

(c) Issuance of demand; contents; service; verified return; sworn certificate; answers; taking of oral testimony

(1) Whenever the Commission has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title), or to antitrust violations, the Commission may, before the institution of any proceedings under this subchapter, 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 submit such tangible things, to file written reports or answers to questions, to give oral testimony concerning documentary material or other information, or to furnish any combination of such material, answers, or testimony.

(2) Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand 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.

(4) Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Commission investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7)(A) Any civil investigative demand may be served by any Commission investigator at any place within the territorial jurisdiction of any court of the United States.

(B) Any such demand or any enforcement petition filed under this section may be served upon any person who is not 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 nation.

(C) To the extent that the courts of the United States have authority to 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 section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering a duly executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of such partnership, corporation, association, or other legal entity, or to any agent of such partnership, corporation, association, or other legal entity authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or other legal entity;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or other legal entity to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or other legal entity at its principal office or place of business.

(9) Service of any civil investigative demand or of any enforcement petition filed under this section may be made upon any natural person by—

(A) delivering a duly executed copy of such demand or petition to the person to be served; or

(B) depositing a duly executed 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.

(10) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section 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 or enforcement petition.

(11) The production of documentary material in response to a civil investigative demand 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 any person 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.

(12) The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(13) Each reporting requirement or question in a civil investigative demand 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 any person responsible for answering each reporting requirement or question, 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.

(14)(A) Any Commission investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. After the testimony is fully transcribed, the Commission investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) Any Commission investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, his attorney, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(C) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Commission investigator before whom the oral testimony of such person is to be taken and such person.

(D)(i) Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(ii) Such person or attorney 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 himself or through his attorney otherwise interrupt the oral examination. If such person refuses to answer any question, the Commission may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(iii) 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 section 6004 of title 18.

(E)(i) After the testimony of any witness is fully transcribed, the Commission investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript. 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 Commission 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.

(ii) If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the Commission investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) The Commission investigator 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 Commission investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) The Commission investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcription) to the witness only, except that the Commission may for

good cause limit such witness to inspection of the official transcript of his testimony.

(H) Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) Procedures for demand material

Materials received as a result of a civil investigative demand shall be subject to the procedures established in section 57b-2 of this title.

(e) Petition for enforcement

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Commission, through such officers or attorneys as it 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 section. All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f) Petition for order modifying or setting aside demand

(1) Not later than 20 days after the service of any civil investigative demand upon any person under subsection (c), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Commission investigator named in the demand, such person may file with the Commission a petition for an order by the Commission modifying or setting aside the demand.

(2) The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the Commission, shall not run during the pendency of such petition at the Commission, 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 the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) Custodial control of documentary material, tangible things, reports, etc.

At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person 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 section or section 57b-2 of this title.

(h) Jurisdiction of court

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 section. 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 of such court.

(i) Commission authority to issue subpoenas or make demand for information

Notwithstanding any other provision of law, the Commission shall have no authority to issue a subpoena or make a demand for information, under authority of this subchapter or any other provision of law, unless such subpoena or demand for information is signed by a Commissioner acting pursuant to a Commission resolution. The Commission shall not delegate the power conferred by this section to sign subpoenas or demands for information to any other person.

(j) Applicability of this section

The provisions of this section shall not—

(1) apply to any proceeding under section 45(b) of this title, any proceeding under section 11(b) of the Clayton Act (15 U.S.C. 21(b)), or any adjudicative proceeding under any other provision of law; or

(2) apply to or affect the jurisdiction, duties, or powers of any agency of the Federal Government, other than the Commission, regardless of whether such jurisdiction, duties, or powers are derived in whole or in part, by reference to this subchapter.

(Sept. 26, 1914, ch. 311, §20, as added Pub. L. 96–252, §13, May 28, 1980, 94 Stat. 380; amended Pub. L. 103–312, §7, Aug. 26, 1994, 108 Stat. 1693; Pub. L. 103–438, §3(e)(2)(B), Nov. 2, 1994, 108 Stat. 4598.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Clayton Act, referred to in subsec. (a)(8)(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 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.

The International Antitrust Enforcement Assistance Act of 1994, referred to in subsec. (a)(8)(C), 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.

PRIOR PROVISIONS

A prior section 20 of act Sept. 26, 1914, ch. 311, was renumbered section 24 and is classified to section 57c of this title.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–312, §7(a)(1), inserted before period at end "or in any antitrust violations".

Subsec. (a)(3). Pub. L. 103–312, §7(a)(2), inserted before period at end "or any provisions relating to antitrust violations".

Subsec. (a)(7). Pub. L. 103–312, §7(a)(3), inserted before period at end "or any antitrust violation".

Subsec. (a)(8). Pub. L. 103–438 amended par. (8) generally. Prior to amendment, par. (8) read as follows: "The term 'antitrust violation' means any unfair method of competition (within the meaning of section 45(a)(1) of this title), any violation of the Clayton Act, any violation of any other Federal statute that prohibits, or makes available to the Commission a civil remedy with respect to, any restraint upon or monopolization of interstate or foreign trade or commerce, or any activity in preparation for a merger, acquisition, joint venture, or similar transaction, which if consummated, may result in such an unfair method of competition or violation."

Pub. L. 103–312, §7(a)(4), added par. (8).

Subsec. (c)(1). Pub. L. 103–312, §7(b)(1), inserted "or tangible things" after "control of any documentary material", "or to antitrust violations," after "section 45(a)(1) of this title),", and "to submit such tangible things," after "copying or reproduction,".

Subsec. (c)(4) to (14). Pub. L. 103–312, §7(b)(2), added pars. (4) and (12) and redesignated former pars. (4) to (10), (11), and (12) as (5) to (11), (13), and (14), respectively.

Subsec. (g). Pub. L. 103–312, §7(c), inserted ", tangible things" after "documentary material".

Subsec. (j)(1). Pub. L. 103–312, §7(d), inserted before semicolon at end ", any proceeding under section 11(b) of the Clayton Act (15 U.S.C. 21(b)), or any adjudicative proceeding under any other provision of law".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–312 applicable only with respect to compulsory process issued after Aug. 26, 1994, see section 15(d) of Pub. L. 103–312, set out as a note under section 45 of this title.

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

§57b-2. Confidentiality

(a) Definitions

For purposes of this section:

(1) The term "material" means documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony.

(2) The term "Federal agency" has the meaning given it in section 552(e) ¹ of title 5.

(b) Procedures respecting documents, tangible things, or transcripts of oral testimony received pursuant to compulsory process or investigation

(1) With respect to any document, tangible thing, or transcript of oral testimony received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, the procedures established in paragraph (2) through paragraph (7) shall apply.

(2)(A) The Commission shall designate a duly authorized agent to serve as custodian of documentary material, tangible things, or written reports or answers to questions, and transcripts of oral testimony, and such additional duly authorized agents as the Commission shall determine from time to time to be necessary to serve as deputies to the custodian.

(B) Any person upon whom any demand 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 in such demand 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 57b-1(h) 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.

(3)(A) The custodian to whom any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony are delivered shall take physical possession of such material, reports or answers, and transcripts, and shall be responsible for the use made of such material, reports or answers, and transcripts, and for the return of material, pursuant to the requirements of this section.

(B) The custodian may prepare such copies of the documentary material, written reports or answers to questions, and transcripts of oral testimony, and may make tangible things available, as may be required for official use by any duly authorized officer or employee of the Commission under regulations which shall be promulgated by the Commission. Notwithstanding subparagraph (C), such material, things, and transcripts may be used by any such officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, tangible things, reports or answers to questions, and transcripts of oral testimony shall be available for examination by any individual other than a duly authorized officer or employee of the Commission without the consent of the person who produced the material, things, or transcripts. Nothing in this section is intended to prevent disclosure to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Commission shall prescribe—

(i) documentary material, tangible things, or written reports shall be available for examination by the person who produced the material, or by any duly authorized representative of such person; and

(ii) answers to questions in writing and transcripts of oral testimony shall be available for examination by the person who produced the testimony or by his attorney.

(4) Whenever the Commission has instituted a proceeding against a person, partnership, or corporation, the custodian may deliver to any officer or employee of the Commission documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony for official use in connection with such proceeding. Upon the completion of the proceeding, the officer or employee shall return to the custodian any such material so delivered which has not been received into the record of the proceeding.

(5) If any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony have been produced in the course of any investigation by any person pursuant to compulsory process and—

(A) any proceeding arising out of the investigation has been completed; or

(B) no proceeding in which the material may be used has been commenced within a reasonable time after completion of the examination and analysis of all such material and other information assembled in the course of the investigation;

then the custodian shall, upon written request of the person who produced the material, return to the person any such material which has not been received into the record of any such proceeding (other than copies of such material made by the custodian pursuant to paragraph (3)(B)).

(6) The custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony may deliver to any officers or employees of appropriate Federal law enforcement agencies, in response to a written request, copies of such material for use in connection with an investigation or proceeding under the jurisdiction of any such agency. The custodian of any tangible things may make such things available for inspection to such persons on the same basis. Such materials shall not be made available to any such agency until the custodian receives certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. Such documentary material, results of inspections of tangible things, written reports or answers to questions, and transcripts of oral testimony may be used by any officer or employee of such agency only in such manner and subject to such conditions as apply to the Commission under this section. The custodian may make such materials available to any State law enforcement agency upon the prior certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—

(A) the foreign law enforcement agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

(i) foreign laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any law administered by the Commission;

(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

(iii) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement agency's government;

(C) the appropriate Federal banking agency (as defined in section 1813(q) of title 12) or, in the case of a Federal credit union, the National Credit Union Administration, has given its prior

approval if the materials to be provided under subparagraph (B) are requested by the foreign law enforcement agency for the purpose of investigating, or engaging in enforcement proceedings based on, possible violations of law by a bank, a savings and loan institution described in section 57a(f)(3) of this title, or a Federal credit union described in section 57a(f)(4) of this title; and

(D) the foreign law enforcement agency is not from a foreign state that the Secretary of State has determined, in accordance with section 4605(j) ¹ of title 50, has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 4605(j)(4) ¹ of title 50.

Nothing in the preceding sentence authorizes the disclosure of material obtained in connection with the administration of the Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 6211 of this title) to any officer or employee of a foreign law enforcement agency.

(7) In the event of the death, disability, or separation from service in the Commission of the custodian of any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony produced under any demand issued under this subchapter, or the official relief of the custodian from responsibility for the custody and control of such material, the Commission promptly shall—

(A) designate under paragraph (2)(A) another duly authorized agent to serve as custodian of such material; and

(B) transmit in writing to the person who produced the material or testimony notice as to the identity and address of the successor so designated.

Any successor designated under paragraph (2)(A) as a result of the requirements of this paragraph shall have (with regard to the material involved) all duties and responsibilities imposed by this section upon his predecessor in office with regard to such material, except that he shall not be held responsible for any default or dereliction which occurred before his designation.

(c) Information considered confidential

(1) All information reported to or otherwise obtained by the Commission which is not subject to the requirements of subsection (b) shall be considered confidential when so marked by the person supplying the information and shall not be disclosed, except in accordance with the procedures established in paragraph (2) and paragraph (3).

(2) If the Commission determines that a document marked confidential by the person supplying it may be disclosed because it is not a trade secret or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 46(f) of this title, then the Commission shall notify such person in writing that the Commission intends to disclose the document at a date not less than 10 days after the date of receipt of notification.

(3) Any person receiving such notification may, if he believes disclosure of the document would cause disclosure of a trade secret, or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 46(f) of this title, before the date set for release of the document, bring an action in the district court of the United States for the district within which the documents are located or in the United States District Court for the District of Columbia to restrain disclosure of the document. Any person receiving such notification may file with the appropriate district court or court of appeals of the United States, as appropriate, an application for a stay of disclosure. The documents shall not be disclosed until the court has ruled on the application for a stay.

(d) Particular disclosures allowed

(1) The provisions of subsection (c) shall not be construed to prohibit—

(A) the disclosure of information to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the

owner or provider;

(B) the disclosure of the results of any investigation or study carried out or prepared by the Commission, except that no information shall be identified nor shall information be disclosed in such a manner as to disclose a trade secret of any person supplying the trade secret, or to disclose any commercial or financial information which is obtained from any person and which is privileged or confidential;

(C) the disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party; or

(D) the disclosure to a Federal agency of disaggregated information obtained in accordance with section 3512¹ of title 44, except that the recipient agency shall use such disaggregated information for economic, statistical, or policymaking purposes only, and shall not disclose such information in an individually identifiable form.

(2) Any disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party shall be governed by the rules of the Commission for adjudicative proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

(e) Effect on other statutory provisions limiting disclosure

Nothing in this section shall supersede any statutory provision which expressly prohibits or limits particular disclosures by the Commission, or which authorizes disclosures to any other Federal agency.

(f) Exemption from public disclosure

(1) In general

Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process shall not be required to be disclosed under section 552 of title 5 or any other provision of law, except as provided in paragraph (2)(B) of this section.

(2) Material obtained from a foreign source

(A) In general

Except as provided in subparagraph (B) of this paragraph, the Commission shall not be required to disclose under section 552 of title 5 or any other provision of law—

(i) any material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

(iii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

(B) Savings provision

Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.

(Sept. 26, 1914, ch. 311, §21, as added Pub. L. 96-252, §14, May 28, 1980, 94 Stat. 385; amended Pub. L. 103-312, §8, Aug. 26, 1994, 108 Stat. 1694; Pub. L. 109-455, §§6, 13, Dec. 22, 2006, 120 Stat. 3376, 3382; Pub. L. 112-203, §1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

EDITORIAL NOTES

REFERENCES IN TEXT

Section 552(e) of title 5, referred to in subsec. (a)(2), was redesignated section 552(f) of Title 5, Government Organization and Employees, by section 1802(b) of Pub. L. 99–570.

Section 4605(j) of title 50, referred to in subsec. (b)(6)(D), was repealed by Pub. L. 115–232, div. A, title XVII, §1766(a), Aug. 13, 2018, 132 Stat. 2232. For provisions similar to those of former section 4605(j) of title 50, see section 4813(c) of title 50, as enacted by Pub. L. 115–232.

Section 3512 of title 44, referred to in subsec. (d)(1)(D), which related to requirements for the collection of information by independent Federal regulatory agencies, was a part of chapter 35 of Title 44, Public Printing and Documents. Chapter 35 was amended generally by the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and subsequently by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

PRIOR PROVISIONS

A prior section 21 of act Sept. 26, 1914, ch. 311, was renumbered section 28 and is classified to section 58 of this title.

AMENDMENTS

2012—Pub. L. 112–203, §1, amended Pub. L. 109–455, §13. See 2006 Amendment notes below.

2006—Subsec. (b)(6). Pub. L. 109–455, §6(a), which inserted at end "The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—", added subpars. (A) to (D) setting forth conditions for making materials available to foreign law enforcement agencies, and inserted concluding provisions restricting disclosure of certain antitrust materials, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. See Termination Date of 2006 Amendment note below.

Subsec. (f). Pub. L. 109–455, §6(b), which inserted heading "Exemption from public disclosure" and amended text of subsec. (f) generally, was repealed by Pub. L. 109–455, §13, as amended by Pub. L. 112–203, §1. Prior to amendment by section 6(b), text read as follows: "Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this subchapter or which is provided voluntarily in place of such compulsory process shall be exempt from disclosure under section 552 of title 5." See Termination Date of 2006 Amendment note below.

1994—Subsec. (a)(1). Pub. L. 103–312, §8(1), inserted "tangible things," after "documentary material,".

Subsec. (b)(1). Pub. L. 103–312, §8(2), inserted ", tangible thing," after "document".

Subsec. (b)(2)(A). Pub. L. 103–312, §8(3), inserted "tangible things," after "documentary material,".

Subsec. (b)(3). Pub. L. 103–312, §8(4), in subpar. (A), inserted "tangible things," after "documentary material," in subpar. (B), inserted ", and may make tangible things available," after "transcripts of oral testimony" and ", things," after "such material", in subpar. (C), inserted "tangible things," after "documentary material," and ", things," after "material", and in subpar. (D)(i), inserted ", tangible things," after "documentary material".

Subsec. (b)(4), (5). Pub. L. 103–312, §8(5), (6), inserted "tangible things," after "documentary material,".

Subsec. (b)(6). Pub. L. 103–312, §8(7), inserted "The custodian of any tangible things may make such things available for inspection to such persons on the same basis." after first sentence, and "results of inspections of tangible things," after "Such documentary material,".

Subsec. (b)(7). Pub. L. 103–312, §8(8), inserted "tangible things," after "documentary material,".

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION DATE OF 2006 AMENDMENT

Amendment by section 6 of Pub. L. 109–455 repealed effective Sept. 30, 2027, and provisions amended by

Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–312 applicable only with respect to compulsory process issued after Aug. 26, 1994, see section 15(d) of Pub. L. 103–312, set out as a note under section 45 of this title.

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

¹ See References in Text note below.

§57b–2a. Confidentiality and delayed notice of compulsory process for certain third parties

(a) Application with other laws

The Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18 shall apply with respect to the Commission, except as otherwise provided in this section.

(b) Procedures for delay of notification or prohibition of disclosure

The procedures for delay of notification or prohibition of disclosure under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, including procedures for extensions of such delays or prohibitions, shall be available to the Commission, provided that, notwithstanding any provision therein—

(1) a court may issue an order delaying notification or prohibiting disclosure (including extending such an order) in accordance with the procedures of section 1109 of the Right to Financial Privacy Act (12 U.S.C. 3409) (if notification would otherwise be required under that Act), or section 2705 of title 18 (if notification would otherwise be required under chapter 121 of that title), if the presiding judge or magistrate judge finds that there is reason to believe that such notification or disclosure may cause an adverse result as defined in subsection (g) of this section; and

(2) if notification would otherwise be required under chapter 121 of title 18, the Commission may delay notification (including extending such a delay) upon the execution of a written certification in accordance with the procedures of section 2705 of that title if the Commission finds that there is reason to believe that notification may cause an adverse result as defined in subsection (g) of this section.

(c) Ex parte application by Commission

(1) In general

If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, the Commission may apply ex parte to a presiding judge or magistrate judge for an order prohibiting the recipient of compulsory process issued by the Commission from disclosing to any other person the existence of the process, notwithstanding any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia. The presiding judge or magistrate judge may enter such an order granting the requested prohibition of disclosure for a period not to exceed 60 days if there is reason to believe that disclosure may cause an adverse result as defined in subsection (g). The presiding judge or magistrate judge may grant extensions of this order of up to 30 days each in accordance with this subsection, except that in no event shall the prohibition continue in force for more than a total of 9 months.

(2) Application

This subsection shall apply only in connection with compulsory process issued by the Commission where the recipient of such process is not a subject of the investigation or proceeding at the time such process is issued.

(3) Limitation

No order issued under this subsection shall prohibit any recipient from disclosing to a Federal agency that the recipient has received compulsory process from the Commission.

(d) No liability for failure to notify

If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, the recipient of compulsory process issued by the Commission under this subchapter shall not be liable under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, or under any contract or other legally enforceable agreement, for failure to provide notice to any person that such process has been issued or that the recipient has provided information in response to such process. The preceding sentence does not exempt any recipient from liability for—

- (1) the underlying conduct reported;
- (2) a failure to comply with the record retention requirements under section 1104(c) of the Right to Financial Privacy Act (12 U.S.C. 3404[c]), where applicable; or
- (3) any failure to comply with any obligation the recipient may have to disclose to a Federal agency that the recipient has received compulsory process from the Commission or intends to provide or has provided information to the Commission in response to such process.

(e) Venue and procedure

(1) In general

All judicial proceedings initiated by the Commission under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), chapter 121 of title 18, or this section may be brought in the United States District Court for the District of Columbia or any other appropriate United States District Court. All ex parte applications by the Commission under this section related to a single investigation may be brought in a single proceeding.

(2) In camera proceedings

Upon application by the Commission, all judicial proceedings pursuant to this section shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

(f) Section not to apply to antitrust investigations or proceedings

This section shall not apply to an investigation or proceeding related to the administration of Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 6211 of this title).

(g) Adverse result defined

For purposes of this section the term "adverse result" means—

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) the destruction of, or tampering with, evidence;
- (4) the intimidation of potential witnesses; or
- (5) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices, including, but not limited to, by—
 - (A) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;
 - (B) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such

practices; or

(C) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission.

(Sept. 26, 1914, ch. 311, §21A, as added Pub. L. 109–455, §7(a), Dec. 22, 2006, 120 Stat. 3377.)

REPEAL OF SECTION

For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.

EDITORIAL NOTES

REFERENCES IN TEXT

The Right to Financial Privacy Act, referred to in subsecs. (a) to (e), probably means the Right to Financial Privacy Act of 1978, Pub. L. 95–630, title XI, Nov. 10, 1978, 92 Stat. 3697, which is classified generally to chapter 35 (§3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Section repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

§57b–2b. Protection for voluntary provision of information

(a) In general

(1) No liability for providing certain material

An entity described in paragraphs (2) or (3) of subsection (d) that voluntarily provides material to the Commission that such entity reasonably believes is relevant to—

(A) a possible unfair or deceptive act or practice, as defined in section 45(a) of this title; or

(B) assets subject to recovery by the Commission, including assets located in foreign jurisdictions;

shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material.

(2) Limitations

Nothing in this subsection shall be construed to exempt any such entity from liability—

(A) for the underlying conduct reported; or

(B) to any Federal agency for providing such material or for any failure to comply with any obligation the entity may have to notify a Federal agency prior to providing such material to the Commission.

(b) Certain financial institutions

An entity described in paragraph (1) of subsection (d) shall, in accordance with section 5318(g)(3) of title 31, be exempt from liability for making a voluntary disclosure to the Commission of any possible violation of law or regulation, including—

(1) a disclosure regarding assets, including assets located in foreign jurisdictions—

(A) related to possibly fraudulent or deceptive commercial practices;

(B) related to persons involved in such practices; or

(C) otherwise subject to recovery by the Commission; or

(2) a disclosure regarding suspicious chargeback rates related to possibly fraudulent or deceptive commercial practices.

(c) Consumer complaints

Any entity described in subsection (d) that voluntarily provides consumer complaints sent to it, or information contained therein, to the Commission shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material. This subsection shall not provide any exemption from liability for the underlying conduct.

(d) Application

This section applies to the following entities, whether foreign or domestic:

(1) A financial institution as defined in section 5312 of title 31.

(2) To the extent not included in paragraph (1), a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments.

(3) A courier service, a commercial mail receiving agency, an industry membership organization, a payment system provider, a consumer reporting agency, a domain name registrar or registry acting as such, and a provider of alternative dispute resolution services.

(4) An Internet service provider or provider of telephone services.

(Sept. 26, 1914, ch. 311, §21B, as added Pub. L. 109–455, §8, Dec. 22, 2006, 120 Stat. 3380.)

REPEAL OF SECTION

For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Section repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

§57b–3. Rulemaking process

(a) Definitions

For purposes of this section:

(1) The term "rule" means any rule promulgated by the Commission under section 46 or section 57a of this title, except that such term does not include interpretive rules, rules involving Commission management or personnel, general statements of policy, or rules relating to Commission organization, procedure, or practice. Such term does not include any amendment to a rule unless the Commission—

(A) estimates that such amendment will have an annual effect on the national economy of \$100,000,000 or more;

(B) estimates that such amendment will cause a substantial change in the cost or price of goods or services which are used extensively by particular industries, which are supplied extensively in particular geographic regions, or which are acquired in significant quantities by the Federal Government, or by State or local governments; or

(C) otherwise determines that such amendment will have a significant impact upon persons subject to regulation under such amendment and upon consumers.

(2) The term "rulemaking" means any Commission process for formulating or amending a rule.

(b) Notice of proposed rulemaking; regulatory analysis; contents; issuance

(1) In any case in which the Commission publishes notice of a proposed rulemaking, the Commission shall issue a preliminary regulatory analysis relating to the proposed rule involved. Each preliminary regulatory analysis shall contain—

- (A) a concise statement of the need for, and the objectives of, the proposed rule;
- (B) a description of any reasonable alternatives to the proposed rule which may accomplish the stated objective of the rule in a manner consistent with applicable law; and
- (C) for the proposed rule, and for each of the alternatives described in the analysis, a preliminary analysis of the projected benefits and any adverse economic effects and any other effects, and of the effectiveness of the proposed rule and each alternative in meeting the stated objectives of the proposed rule.

(2) In any case in which the Commission promulgates a final rule, the Commission shall issue a final regulatory analysis relating to the final rule. Each final regulatory analysis shall contain—

- (A) a concise statement of the need for, and the objectives of, the final rule;
- (B) a description of any alternatives to the final rule which were considered by the Commission;
- (C) an analysis of the projected benefits and any adverse economic effects and any other effects of the final rule;
- (D) an explanation of the reasons for the determination of the Commission that the final rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen; and
- (E) 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.

(3)(A) In order to avoid duplication or waste, the Commission is authorized to—

- (i) consider a series of closely related rules as one rule for purposes of this subsection; and
- (ii) whenever appropriate, incorporate any data or analysis contained in a regulatory analysis issued under this subsection in the statement of basis and purpose to accompany any rule promulgated under section 57a(a)(1)(B) of this title, and incorporate by reference in any preliminary or final regulatory analysis information contained in a notice of proposed rulemaking or a statement of basis and purpose.

(B) The Commission shall include, in each notice of proposed rulemaking and in each publication of a final rule, a statement of the manner in which the public may obtain copies of the preliminary and final regulatory analyses. The Commission may charge a reasonable fee for the copying and mailing of regulatory analyses. The regulatory analyses shall be furnished without charge or at a reduced charge if the Commission determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public.

(4) The Commission is authorized to delay the completion of any of the requirements established in this subsection by publishing in the Federal Register, not later than the date of publication of the final rule involved, a finding that the final rule is being promulgated in response to an emergency which makes timely compliance with the provisions of this subsection impracticable. Such publication shall include a statement of the reasons for such finding.

(5) The requirements of this subsection shall not be construed to alter in any manner the substantive standards applicable to any action by the Commission, or the procedural standards otherwise applicable to such action.

(c) Judicial review

(1) The contents and adequacy of any regulatory analysis prepared or issued by the Commission under this section, including the adequacy of any procedure involved in such preparation or issuance, shall not be subject to any judicial review in any court, except that a court, upon review of a rule pursuant to section 57a(e) of this title, may set aside such rule if the Commission has failed entirely to prepare a regulatory analysis.

(2) Except as specified in paragraph (1), no Commission action may be invalidated, remanded, or

otherwise affected by any court on account of any failure to comply with the requirements of this section.

(3) The provisions of this subsection do not alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(d) Regulatory agenda; contents; publication dates in Federal Register

(1) The Commission shall publish at least semiannually a regulatory agenda. Each regulatory agenda shall contain a list of rules which the Commission intends to propose or promulgate during the 12-month period following the publication of the agenda. On the first Monday in October of each year, the Commission shall publish in the Federal Register a schedule showing the dates during the current fiscal year on which the semiannual regulatory agenda of the Commission will be published.

(2) For each rule listed in a regulatory agenda, the Commission shall—

(A) describe the rule;

(B) state the objectives of and the legal basis for the rule; and

(C) specify any dates established or anticipated by the Commission for taking action, including dates for advance notice of proposed rulemaking, notices of proposed rulemaking, and final action by the Commission.

(3) Each regulatory agenda shall state the name, office address, and office telephone number of the Commission officer or employee responsible for responding to any inquiry relating to each rule listed.

(4) The Commission shall not propose or promulgate a rule which was not listed on a regulatory agenda unless the Commission publishes with the rule an explanation of the reasons the rule was omitted from such agenda.

(Sept. 26, 1914, ch. 311, §22, as added Pub. L. 96-252, §15, May 28, 1980, 94 Stat. 388.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

§57b-4. Good faith reliance on actions of Board of Governors

(a) "Board of Governors" defined

For purposes of this section, the term "Board of Governors" means the Board of Governors" of the Federal Reserve System.

(b) Use as defense

Notwithstanding any other provision of law, if—

(1) any person, partnership, or corporation engages in any conduct or practice which allegedly constitutes a violation of any Federal law with respect to which the Board of Governors of the Federal Reserve System has rulemaking authority; and

(2) such person, partnership, or corporation engaged in such conduct or practice in good faith reliance upon, and in conformity with, any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors under such Federal law;

then such good faith reliance shall constitute a defense in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Commission under this subchapter or in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Attorney General of the United States, upon request made by the Commission, under any provision of law.

(c) Applicability of subsection (b)

The provisions of subsection (b) shall apply regardless of whether any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors is amended, rescinded, or held to be invalid by judicial authority or any other authority after a person, partnership, or corporation has engaged in any conduct or practice in good faith reliance upon, and in conformity with, such rule, regulation, statement of interpretation, or statement of approval.

(d) Request for issuance of statement or interpretation concerning conduct or practice

If, in any case in which—

- (1) the Board of Governors has rulemaking authority with respect to any Federal law; and
- (2) the Commission is authorized to enforce the requirements of such Federal law;

any person, partnership, or corporation submits a request to the Board of Governors for the issuance of any statement of interpretation or statement of approval relating to any conduct or practice of such person, partnership, or corporation which may be subject to the requirements of such Federal law, then the Board of Governors shall dispose of such request as soon as practicable after the receipt of such request.

(Sept. 26, 1914, ch. 311, §23, as added Pub. L. 96–252, §16, May 28, 1980, 94 Stat. 390.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as an Effective Date of 1980 Amendment note under section 45 of this title.

§57b–5. Agricultural cooperatives

(a) The Commission shall not have any authority to conduct any study, investigation, or prosecution of any agricultural cooperative for any conduct which, because of the provisions of sections 291 and 292 of title 7, is not a violation of any of the antitrust Acts or this subchapter.

(b) The Commission shall not have any authority to conduct any study or investigation of any agricultural marketing orders.

(Sept. 26, 1914, ch. 311, §24, as added Pub. L. 103–312, §2, Aug. 26, 1994, 108 Stat. 1691.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 24 of act Sept. 26, 1914, was renumbered section 25 and is classified to section 57c of this title.

§57c. Authorization of appropriations

There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed \$92,700,000 for fiscal year 1994; not to exceed \$99,000,000 for fiscal year 1995; not to exceed \$102,000,000 for fiscal year 1996; not to exceed \$107,000,000 for fiscal year 1997; and not to exceed \$111,000,000 for fiscal year 1998.

(Sept. 26, 1914, ch. 311, §25, formerly §20, as added Pub. L. 93–367, title II, §207, Jan. 4, 1975, 88 Stat. 2203; amended Pub. L. 94–299, §1, May 29, 1976, 90 Stat. 588; renumbered §24 and amended Pub. L. 96–252, §§13, 17, May 28, 1980, 94 Stat. 380, 391; renumbered §25 and amended Pub. L. 103–312, §§2, 14, Aug. 26, 1994, 108 Stat. 1691, 1697; Pub. L. 104–216, §2, Oct. 1, 1996, 110 Stat. 3019.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 25 of act Sept. 26, 1914, was renumbered section 28 and is classified to section 58 of this title.

AMENDMENTS

1996—Pub. L. 104–216 struck out "and" before "not to exceed \$102,000,000" and inserted before period at end "; not to exceed \$107,000,000 for fiscal year 1997; and not to exceed \$111,000,000 for fiscal year 1998".

1994—Pub. L. 103–312, §14, amended section generally. Prior to amendment, section read as follows: "There are authorized to be appropriated to carry out the functions, powers, and duties of the Federal Trade Commission not to exceed \$42,000,000 for the fiscal year ending June 30, 1975; not to exceed \$47,091,000 for the fiscal year ending June 30, 1976; not to exceed \$50,000,000 for the fiscal year ending in 1977; not to exceed \$70,000,000 for the fiscal year ending September 30, 1980; not to exceed \$75,000,000 for the fiscal year ending September 30, 1981; and not to exceed \$80,000,000 for the fiscal year ending September 30, 1982."

1980—Pub. L. 96–252, §17, substituted "1977; not to exceed \$70,000,000 for the fiscal year ending September 30, 1980; not to exceed \$75,000,000 for the fiscal year ending September 30, 1981; and not to exceed \$80,000,000 for the fiscal year ending September 30, 1982" for "1977. For fiscal years ending after 1977, there may be appropriated to carry out such functions, powers, and duties, only such sums as the Congress may hereafter authorize by law".

1976—Pub. L. 94–299 substituted "\$47,091,000" for "\$46,000,000".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–252 effective May 28, 1980, see section 23 of Pub. L. 96–252, set out as a note under section 45 of this title.

INTERVENTION BY COMMISSION IN CERTAIN PROCEEDINGS

Pub. L. 103–312, §11, Aug. 26, 1994, 108 Stat. 1696, provided that:

"(a) **LIMITATION ON USE OF AUTHORIZED FUNDS.**—The Federal Trade Commission shall not have any authority to use any funds which are authorized to be appropriated to carry out the Federal Trade Commission Act (15 U.S.C. 41 et seq.) for fiscal years 1994, 1995, and 1996 for the purpose of submitting statements to, appearing before, or intervening in the proceedings of, any Federal or State agency or State legislative body concerning proposed rules or legislation that the agency or legislative body is considering unless the Commission advises the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives regarding such action as soon as possible.

"(b) **CONTENTS OF NOTICE TO CONGRESS.**—The notice required in subsection (a) shall include the name of the agency or legislator involved, the date of such action, and a concise statement regarding the nature and purpose of such action."

RESTRICTION ON USE OF FUNDS TO CANCEL REGISTRATION OF TRADEMARKS

Pub. L. 96–252, §18, May 28, 1980, 94 Stat. 391, prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97–377, title I §101(d), Dec. 21, 1982, 96 Stat. 1870), under this section, for the purpose of taking any action under 15 U.S.C. 1064 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.

RESTRICTION ON USE OF FUNDS RESPECTING STUDY, INVESTIGATION, OR PROSECUTION OF ANY AGRICULTURAL COOPERATIVE OR STUDY OR INVESTIGATION OF ANY AGRICULTURAL MARKETING ORDERS

Pub. L. 96–252, §20, May 28, 1980, 94 Stat. 393, prohibited the Federal Trade Commission from using any funds authorized to be appropriated to carry out this subchapter for fiscal year 1980, 1981, or 1982 (or 1983 as extended by Pub. L. 97–377, title I §101(d), Dec. 21, 1982, 96 Stat. 1870), under this section, for the purpose of conducting any study, investigation, or prosecution of any agricultural cooperative for any conduct which, because of the provisions of the Capper-Volstead Act (7 U.S.C. 291 et seq.), was not a violation of any

Federal antitrust Act or this subchapter or for the purpose of conducting any study or investigation of any agricultural marketing orders.

§57c–1. Staff exchanges

(a) In general

The Commission may—

(1) retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission pursuant to section 42 of this title or section 3101 or section 3109 of title 5; and

(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

(b) Reciprocity and reimbursement

The staff arrangements described in subsection (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applicable, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

(c) Standards of conduct

A person appointed under subsection (a)(1) shall be subject to the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.

(Sept. 26, 1914, ch. 311, §25A, as added Pub. L. 109–455, §9, Dec. 22, 2006, 120 Stat. 3381.)

REPEAL OF SECTION

For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Section repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

§57c–2. Reimbursement of expenses

The Commission may accept payment or reimbursement, in cash or in kind, from a domestic or foreign law enforcement agency, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, or employees in carrying out any activity pursuant to a statute administered by the Commission without regard to any other provision of law. Any such payments or reimbursements shall be considered a reimbursement to the appropriated funds of the Commission.

(Sept. 26, 1914, ch. 311, §26, as added Pub. L. 109–455, §11(2), Dec. 22, 2006, 120 Stat. 3381.)

REPEAL OF SECTION

For repeal of section by section 13 of Pub. L. 109–455, see Effective Date of Repeal note below.

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 26 of act Sept. 26, 1914, was renumbered section 28 and is classified to section 58 of this title.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF REPEAL

Section repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note under section 44 of this title.

§58. Short title

This subchapter may be cited as the "Federal Trade Commission Act".

(Sept. 26, 1914, ch. 311, §28, formerly §18, as added Mar. 21, 1938, ch. 49, §4, 52 Stat. 114; renumbered §21, Pub. L. 93–637, title II, §202(a), Jan. 4, 1975, 88 Stat. 2193; renumbered §25, Pub. L. 96–252, §13, May 28, 1980, 94 Stat. 380; renumbered §26, Pub. L. 103–312, §2, Aug. 26, 1994, 108 Stat. 1691; renumbered §28, Pub. L. 109–455, §11(1), Dec. 22, 2006, 120 Stat. 3381.)

AMENDMENT OF SECTION

For repeal of amendment renumbering this section by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

STATUTORY NOTES AND RELATED SUBSIDIARIES

TERMINATION DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–455 repealed effective Sept. 30, 2027, and provisions amended by Pub. L. 109–455 to be amended to read as if Pub. L. 109–455 had not been enacted, see section 13 of Pub. L. 109–455, as amended, set out as a note under section 44 of this title.

SHORT TITLE OF 2022 AMENDMENT

Pub. L. 117–103, div. Q, title I, §101, Mar. 15, 2022, 136 Stat. 809, provided that: "This title [enacting section 45e of this title, amending section 21711 of Title 34, Crime Control and Law Enforcement, and enacting provisions set out as notes under this section and section 45e of this title, and section 21711 of Title 34] may be cited as the 'Fraud and Scam Reduction Act'."

Pub. L. 117–103, div. Q, title I, §111, Mar. 15, 2022, 136 Stat. 809, provided that: "This subtitle [subtitle A (§§111, 112) of title I of div. Q of Pub. L. 117–103, amending section 21711 of Title 34, Crime Control and Law Enforcement, and enacting provisions set out as notes under section 45e of this title and section 21711 of Title 34] may be cited as the 'Stop Senior Scams Act'."

Pub. L. 117–103, div. Q, title I, §121, Mar. 15, 2022, 136 Stat. 811, provided that: "This subtitle [subtitle B (§§121, 122) of title I of div. Q of Pub. L. 117–103, enacting section 45e of this title] may be cited as the 'Seniors Fraud Prevention Act of 2022'."

SHORT TITLE OF 2021 AMENDMENT

Pub. L. 116–287, §1, Jan. 5, 2021, 134 Stat. 4882, provided that: "This Act [enacting provisions set out as a note under section 52 of this title] may be cited as the 'Combating Pandemic Scams Act of 2020'."

SHORT TITLE OF 2018 AMENDMENT

Pub. L. 115–271, title VIII, §8021, Oct. 24, 2018, 132 Stat. 4082, provided that: "This subtitle [subtitle B (§§8021–8023) of title VIII of Pub. L. 115–271, enacting section 45d of this title and provisions set out as a note under section 45d of this title] may be cited as the 'Opioid Addiction Recovery Fraud Prevention Act of 2018'."

SHORT TITLE OF 2016 AMENDMENT

Pub. L. 114–274, §1, Dec. 14, 2016, 130 Stat. 1401, provided that: "This Act [enacting section 45c of this title and provisions set out as a note under section 45c of this title] may be cited as the 'Better Online Ticket Sales Act of 2016' or the 'BOTS Act of 2016'."

Pub. L. 114–258, §1, Dec. 14, 2016, 130 Stat. 1355, provided that: "This Act [enacting section 45b of this title] may be cited as the 'Consumer Review Fairness Act of 2016'."

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–455, §1, Dec. 22, 2006, 120 Stat. 3372, provided that: "This Act [enacting sections 57b–2a,

57b–2b, 57c–1, and 57c–2 of this title, amending this section, sections 44, 45, 46, 56, and 57b–2 of this title, and section 3412 of Title 12, Banks and Banking, and enacting provisions set out as notes under section 44 of this title] may be cited as the 'Undertaking Spam, Spyware, And Fraud Enforcement With Enforcers beyond Borders Act of 2006' or the 'U.S. SAFE WEB Act of 2006'."

[Section 1 of Pub. L. 109–455, set out above, repealed effective Sept. 30, 2027, see section 13 of Pub. L. 109–455, as amended, set out as a Termination Date of 2006 Amendment note under section 44 of this title.]

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–216, §1, Oct. 1, 1996, 110 Stat. 3019, provided that: "This Act [amending section 57c of this title] may be cited as the 'Federal Trade Commission Reauthorization Act of 1996'."

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–312, §1(a), Aug. 26, 1994, 108 Stat. 1691, provided that: "This Act [enacting section 57b–5 of this title, amending this section and sections 45, 53, 57a, 57b–1, 57b–2, and 57c of this title, and enacting provisions set out as notes under sections 45 and 57c of this title] may be cited as the 'Federal Trade Commission Act Amendments of 1994'."

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–252, §1, May 28, 1980, 94 Stat. 374, provided that "This Act [enacting sections 57a–1 and 57b–1 to 57b–4 of this title, amending this section and sections 45, 46, 50, 57a, and 57c of this title, and enacting provisions set out as notes under sections 45, 46, 57a, 57a–1, and 57c of this title] may be cited as the 'Federal Trade Commission Improvements Act of 1980'."

SUBCHAPTER II—PROMOTION OF EXPORT TRADE

§61. Export trade; definitions

The words "export trade" wherever used in this subchapter mean solely trade or commerce in goods, wares, or merchandise exported, or in the course of being exported from the United States or any Territory thereof to any foreign nation; but the words "export trade" shall not be deemed to include the production, manufacture, or selling for consumption or for resale, within the United States or any Territory thereof, of such goods, wares, or merchandise, or any act in the course of such production, manufacture, or selling for consumption or for resale.

The words "trade within the United States" wherever used in this subchapter mean trade or commerce among the several States 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 or Territories and any State or States or the District of Columbia, or between the District of Columbia and any State or States.

The word "association" wherever used in this subchapter means any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations.

(Apr. 10, 1918, ch. 50, §1, 40 Stat. 516.)

§62. Export trade and antitrust legislation

Nothing contained in the Sherman Act [15 U.S.C. 1 et seq.] shall be construed as declaring to be illegal an association entered into for the sole purpose of engaging in export trade and actually engaged solely in such export trade, or an agreement made or act done in the course of export trade by such association, provided such association, agreement, or act is not in restraint of trade within the United States, and is not in restraint of the export trade of any domestic competitor of such association: *Provided*, That such association does not, either in the United States or elsewhere, enter into any agreement, understanding, or conspiracy, or do any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such

association, or which substantially lessens competition within the United States or otherwise restrains trade therein.

(Apr. 10, 1918, ch. 50, §2, 40 Stat. 517.)

EDITORIAL NOTES

CODIFICATION

"Sherman Act [15 U.S.C. 1 et seq.]" substituted in text for "Act entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' approved July second, eighteen hundred and ninety" on authority of the enacting clause of that Act set out as a Short Title note under section 1 of this title.

§63. Acquisition of stock of export trade corporation

Nothing contained in section 18 of this title shall be construed to forbid the acquisition or ownership by any corporation of the whole or any part of the stock or other capital of any corporation organized solely for the purpose of engaging in export trade, and actually engaged solely in such export trade, unless the effect of such acquisition or ownership may be to restrain trade or substantially lessen competition within the United States.

(Apr. 10, 1918, ch. 50, §3, 40 Stat. 517.)

§64. Unfair methods of competition in export trade

The prohibition against "unfair methods of competition" and the remedies provided for enforcing said prohibition contained in the Federal Trade Commission Act [15 U.S.C. 41 et seq.] shall be construed as extending to unfair methods of competition used in export trade against competitors engaged in export trade, even though the acts constituting such unfair methods are done without the territorial jurisdiction of the United States.

(Apr. 10, 1918, ch. 50, §4, 40 Stat. 517.)

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 this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

"Federal Trade Commission Act [15 U.S.C. 41 et seq.]" substituted in text for "Act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September twenty-sixth, nineteen hundred and fourteen" on authority of section 18 of that Act [15 U.S.C. 58].

§65. Information required from export trade corporation; powers of Federal Trade Commission

Every association which engages solely in export trade, within thirty days after its creation, shall file with the Federal Trade Commission a verified written statement setting forth the location of its offices or places of business and the names and addresses of all its officers and of all its stockholders or members, and if a corporation, a copy of its certificate or articles of incorporation and bylaws, and if unincorporated, a copy of its articles or contract of association, and on the 1st day of January of each year every association engaged solely in export trade shall make a like statement of the location of its offices or places of business and the names and addresses of all its officers and of all its

stockholders or members and of all amendments to and changes in its articles or certificate of incorporation or in its articles or contract of association. It shall also furnish to the Commission such information as the Commission may require as to its organization business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals. Any association which shall fail so to do shall not have the benefit of the provisions of sections 62 and 63 of this title, and it shall also forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the association has its principal office, or in any district in which it shall do business. It shall be the duty of the various United States attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of the forfeiture. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Whenever the Federal Trade Commission shall have reason to believe that an association or any agreement made or act done by such association is in restraint of trade within the United States or in restraint of the export trade of any domestic competitor of such association, or that an association either in the United States or elsewhere has entered into any agreement, understanding, or conspiracy, or done any act which artificially or intentionally enhances or depresses prices within the United States of commodities of the class exported by such association, or which substantially lessens competition within the United States or otherwise restrains trade therein, it shall summon such association, its officers, and agents to appear before it, and thereafter conduct an investigation into the alleged violations of law. Upon investigation, if it shall conclude that the law has been violated, it may make to such association recommendations for the readjustment of its business, in order that it may thereafter maintain its organization and management and conduct its business in accordance with law. If such association fails to comply with the recommendations of the Federal Trade Commission, said Commission shall refer its findings and recommendations to the Attorney General of the United States for such action thereon as he may deem proper.

For the purpose of enforcing these provisions the Federal Trade Commission shall have all the powers, so far as applicable, given it in the Federal Trade Commission Act [15 U.S.C. 41 et seq.]. (Apr. 10, 1918, ch. 50, §5, 40 Stat. 517; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

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 this chapter. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

"Federal Trade Commission Act [15 U.S.C. 41 et seq.]" substituted in text for "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," on authority of section 18 of that Act [15 U.S.C. 58].

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

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

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.

§66. Short title

This subchapter may be cited as the "Webb-Pomerene Act".

(Apr. 10, 1918, ch. 50, §6, as added Pub. L. 94-435, title III, §305(c), Sept. 30, 1976, 90 Stat. 1397.)

SUBCHAPTER III—LABELING OF WOOL PRODUCTS

§68. Definitions

As used in this subchapter—

(a) The term "person" means an individual, partnership, corporation, association, or any other form of business enterprise, plural or singular, as the case demands.

(b) The term "wool" means the fiber from the fleece of the sheep or lamb or hair of the Angora or Cashmere goat (and may include the so-called specialty fibers from the hair of the camel, alpaca, llama, and vicuna) which has never been reclaimed from any woven or felted wool product.

(c) The term "recycled wool" means (1) the resulting fiber when wool has been woven or felted into a wool product which, without ever having been utilized in any way by the ultimate consumer, subsequently has been made into a fibrous state, or (2) the resulting fiber when wool or reprocessed wool has been spun, woven, knitted, or felted into a wool product which, after having been used in any way by the ultimate consumer, subsequently has been made into a fibrous state.

(d) The term "wool product" means any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool or recycled wool.

(e) The term "Commission" means the Federal Trade Commission.

(f) 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, and the Federal Trade Commission Act approved March 21, 1938.

(g) 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 and any State or Territory or foreign nation.

(h) The term "Territory" includes the insular possessions of the United States and also any Territory of the United States.

(Oct. 14, 1940, ch. 871, §2, 54 Stat. 1128; Pub. L. 96-242, §1, May 5, 1980, 94 Stat. 344.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

The Federal Trade Commission Act approved March 21, 1938, referred to in subsec. (f), is act Mar. 21, 1938, ch. 49, 52 Stat. 111. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1980—Subsec. (c). Pub. L. 96-242, §1(a), substituted "recycled wool" for "reprocessed wool" as term defined, designated existing definition as cl. (1), and added cl. (2).

Subsecs. (d) to (i). Pub. L. 96-242, §1(b)–(d), redesignated subsecs. (e) to (i) as (d) to (h), respectively, and, in subsec. (d) as so redesignated, substituted "containing wool or recycled wool" for "containing wool, reprocessed wool, or reused wool". Former subsec. (d), which defined term "reused wool", was struck out.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1980 AMENDMENT

Pub. L. 96–242, §3, May 5, 1980, 94 Stat. 344, provided that: "The amendments made by this Act [amending this section and section 68b of this title] shall take effect with respect to wool products manufactured on or after the date sixty days after the date of enactment of this Act [May 5, 1980]."

EFFECTIVE DATE

Act Oct. 14, 1940, ch. 871, §12, 54 Stat. 1133, provided that: "This Act [this subchapter] shall take effect nine months after the date of its passage."

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109–428, §1, Dec. 20, 2006, 120 Stat. 2913, provided that: "This Act [amending section 68b of this title and enacting provisions set out as a note under section 68b of this title] may be cited as the 'Wool Suit Fabric Labeling Fairness and International Standards Conforming Act'."

SHORT TITLE

Act Oct. 14, 1940, ch. 871, §1, 54 Stat. 1128, provided that: "This Act [this subchapter] may be cited as the 'Wool Products Labeling Act of 1939'."

SEPARABILITY

Act Oct. 14, 1940, ch. 871, §13, 54 Stat. 1133, provided that: "If any provision of this Act [this subchapter], or the application thereof to any person, partnership, corporation, or circumstance is held invalid, the remainder of the Act and the application of such provision to any other person, partnership, corporation, or circumstance shall not be affected thereby."

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.

§68a. Misbranding declared unlawful

The introduction, or manufacture for introduction, into commerce, or the sale, transportation, or distribution, in commerce, of any wool product which is misbranded within the meaning of this subchapter or the rules and regulations hereunder, is 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; and any person who shall manufacture or deliver for shipment or ship or sell or offer for sale in commerce, any such wool product which is misbranded within the meaning of this subchapter and the rules and regulations hereunder is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

This section shall not apply—

(a) To any common carrier or contract carrier in respect to a wool product shipped or delivered for shipment in commerce in the ordinary course of its business; or

(b) To any person manufacturing, delivering for shipment, shipping, selling, or offering for sale, for exportation from the United States to any foreign country a wool product branded in accordance with the specifications of the purchaser and in accordance with the laws of such country.

(Oct. 14, 1940, ch. 871, §3, 54 Stat. 1129.)

§68b. Misbranded wool products

(a) False identification; affixation of label, etc., contents

A wool product shall be misbranded—

- (1) If it is falsely or deceptively stamped, tagged, labeled, or otherwise identified.
- (2) If a stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, is not on or affixed to the wool product and does not show—
 - (A) the percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) recycled wool; (3) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (4) the aggregate of all other fibers: *Provided*, That deviation of the fiber contents of the wool product from percentages stated on the stamp, tag, label, or other means of identification, shall not be misbranding under this section if the person charged with misbranding proves such deviation resulted from unavoidable variations in manufacture and despite the exercise of due care to make accurate the statements on such stamp, tag, label, or other means of identification.
 - (B) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter.
 - (C) the name of the manufacturer of the wool product and/or the name of one or more persons subject to section 68a of this title with respect to such wool product.
 - (D) the name of the country where processed or manufactured.
- (3) In the case of a wool product containing a fiber other than wool, if the percentages by weight of the wool contents thereof are not shown in words and figures plainly legible.
- (4) In the case of a wool product represented as wool, if the percentages by weight of the wool content thereof are not shown in words and figures plainly legible, or if the total fiber weight of such wool product is not 100 per centum wool exclusive of ornamentation not exceeding 5 per centum of such total fiber weight.
- (5) In the case of a wool product stamped, tagged, labeled, or otherwise identified as—
 - (A) "Super 80's" or "80's", if the average diameter of wool fiber of such wool product does not average 19.75 microns or finer;
 - (B) "Super 90's" or "90's", if the average diameter of wool fiber of such wool product does not average 19.25 microns or finer;
 - (C) "Super 100's" or "100's", if the average diameter of wool fiber of such wool product does not average 18.75 microns or finer;
 - (D) "Super 110's" or "110's", if the average diameter of wool fiber of such wool product does not average 18.25 microns or finer;
 - (E) "Super 120's" or "120's", if the average diameter of wool fiber of such wool product does not average 17.75 microns or finer;
 - (F) "Super 130's" or "130's", if the average diameter of wool fiber of such wool product does not average 17.25 microns or finer;
 - (G) "Super 140's" or "140's", if the average diameter of wool fiber of such wool product does not average 16.75 microns or finer;
 - (H) "Super 150's" or "150's", if the average diameter of wool fiber of such wool product does not average 16.25 microns or finer;
 - (I) "Super 160's" or "160's", if the average diameter of wool fiber of such wool product does not average 15.75 microns or finer;
 - (J) "Super 170's" or "170's", if the average diameter of wool fiber of such wool product does not average 15.25 microns or finer;
 - (K) "Super 180's" or "180's", if the average diameter of wool fiber of such wool product does not average 14.75 microns or finer;
 - (L) "Super 190's" or "190's", if the average diameter of wool fiber of such wool product does not average 14.25 microns or finer;
 - (M) "Super 200's" or "200's", if the average diameter of wool fiber of such wool product does not average 13.75 microns or finer;
 - (N) "Super 210's" or "210's", if the average diameter of wool fiber of such wool product does

not average 13.25 microns or finer;

(O) "Super 220's" or "220's", if the average diameter of wool fiber of such wool product does not average 12.75 microns or finer;

(P) "Super 230's" or "230's", if the average diameter of wool fiber of such wool product does not average 12.25 microns or finer;

(Q) "Super 240's" or "240's", if the average diameter of wool fiber of such wool product does not average 11.75 microns or finer; and

(R) "Super 250's" or "250's", if the average diameter of wool fiber of such wool product does not average 11.25 microns or finer.

In each such case, the average fiber diameter of such wool product may be subject to such standards or deviations as adopted by regulation by the Commission.

(6) In the case of a wool product stamped, tagged, labeled, or otherwise identified as cashmere, if—

(A) such wool product is not the fine (dehaired) undercoat fibers produced by a cashmere goat (*capra hircus laniger*);

(B) the average diameter of the fiber of such wool product exceeds 19 microns; or

(C) such wool product contains more than 3 percent (by weight) of cashmere fibers with average diameters that exceed 30 microns.

The average fiber diameter may be subject to a coefficient of variation around the mean that shall not exceed 24 percent.

(b) Additional information

In addition to information required in this section, the stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, may contain other information not violating the provisions of this subchapter or the rules and regulations of the Commission.

(c) Substitute identification

If any person subject to section 68a of this title with respect to a wool product finds or has reasonable cause to believe its stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, does not contain the information required by this subchapter, he may replace same with a substitute containing the information so required.

(d) Designations on linings, paddings, etc.

This section shall not be construed as requiring designation on garments or articles of apparel of fiber content of any linings, paddings, stiffening, trimmings, or facings, except those concerning which express or implied representations of fiber content are customarily made, nor as requiring designation of fiber content of products which have an insignificant or inconsequential textile content: *Provided*, That if any such article or product purports to contain or in any manner is represented as containing wool, this section shall be applicable thereto and the information required shall be separately set forth and segregated.

The Commission, after giving due notice and opportunity to be heard to interested persons, may determine and publicly announce the classes of such articles concerning which express or implied representations of fiber content are customarily made, and those products which have an insignificant or inconsequential textile content.

(e) False or deceptive advertising in mail order promotions

For the purposes of this subchapter, a wool product shall be considered to be falsely or deceptively advertised in any mail order promotional material which is used in the direct sale or direct offering for sale of such wool product, unless such wool product description states in a clear and conspicuous manner that such wool product is processed or manufactured in the United States of America, or imported, or both.

(f) Location of label, etc.

For purposes of this subchapter, any wool product shall be misbranded if a stamp, tag, label, or other identification conforming to the requirements of this section is not on or affixed to the inside center of the neck midway between the shoulder seams or, if such product does not contain a neck, in the most conspicuous place on the inner side of such product, unless it is on or affixed on the outer side of such product or in the case of hosiery items, on the outer side of such product or package.

(Oct. 14, 1940, ch. 871, §4, 54 Stat. 1129; Pub. L. 96-242, §2, May 5, 1980, 94 Stat. 344; Pub. L. 98-417, title III, §§304, 305, Sept. 24, 1984, 98 Stat. 1604; Pub. L. 109-428, §2(a), Dec. 20, 2006, 120 Stat. 2913.)

EDITORIAL NOTES

AMENDMENTS

2006—Subsec. (a)(5), (6). Pub. L. 109-428 added pars. (5) and (6).

1984—Subsec. (a)(2)(D). Pub. L. 98-417, §304, added subpar. (D).

Subsecs. (e), (f). Pub. L. 98-417, §305, added subsecs. (e) and (f).

1980—Subsec. (a)(2)(A). Pub. L. 96-242 substituted "recycled wool" for "reprocessed wool" as cl. (2), struck out cl. (3) "reused wool", and redesignated existing cls. (4) and (5) as (3) and (4), respectively.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-428, §2(b), Dec. 20, 2006, 120 Stat. 2915, provided that: "The amendments made by this section [amending this section] shall apply to wool products manufactured on or after January 1, 2007."

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-417, title III, §307, Sept. 24, 1984, 98 Stat. 1605, provided that: "The amendments made by this title [amending this section and sections 68c and 70b of this title] shall be effective ninety days after the date of enactment of this Act [Sept. 24, 1984]."

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-242 effective with respect to wool products manufactured on or after the date sixty days after May 5, 1980, see section 3 of Pub. L. 96-242, set out as a note under section 68 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.

§68c. Stamp, tag, label, or other identification

(a) Affixing; retention until sale

Any person manufacturing for introduction, or first introducing into commerce a wool product shall affix thereto the stamp, tag, label, or other means of identification required by this subchapter, and the same, or substitutes therefor containing identical information with respect to content of the wool product or any other products contained therein in an amount of 5 per centum or more by weight and other information required under section 68b of this title, shall be and remain affixed to such wool product, whether it remains in its original state or is contained in garments or other articles made in whole or in part therefrom, until sold to the consumer: *Provided*, That the name of the manufacturer of the wool product need not appear on the substitute stamp, tag, or label if the name of the person who affixes the substitute appears thereon.

(b) Removal or mutilation

Any person who shall cause or participate in the removal or mutilation of any stamp, tag, label, or other means of identification affixed to a wood ¹ product with intent to violate the provisions of this subchapter, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

(c) Packages of wool products

For the purposes of subsections (a) and (b) of this section, any package of wool products intended for sale to the ultimate consumer shall also be considered a wool product and shall have affixed to it a stamp, tag, label, or other means of identification bearing the information required by section 68b of this title, with respect to the wool products contained therein, unless such package of wool products is transparent to the extent that it allows for the clear reading of the stamp, tag, label, or other means of identification affixed to the wool product, or in the case of hosiery items this section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each hosiery product contained in a package if (1) such hosiery products are intended for sale to the ultimate consumer in such package, (2) such package has affixed to it a stamp, tag, label, or other means of identification bearing, with respect to the hosiery products contained therein, the information required by section 68b of this title,² and (3) the information on the stamp, tag, label, or other means of identification affixed to such package is equally applicable with respect to each hosiery product contained therein.

(Oct. 14, 1940, ch. 871, §5, 54 Stat. 1130; Pub. L. 98-417, title III, §306, Sept. 24, 1984, 98 Stat. 1605.)

EDITORIAL NOTES

CODIFICATION

Section 68b of this title, the second time it appears in subsec. (c), was in the original "subsection (4)" and was translated as reading "section 4" as the probable intent of Congress.

AMENDMENTS

1984—Pub. L. 98-417 designated existing first and second pars. as subsecs. (a) and (b), respectively, and added subsec. (c).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-417 effective 90 days after Sept. 24, 1984, see section 307 of Pub. L. 98-417, set out as a note under section 68b of this title.

¹ *So in original. Probably should be "wool".*

² *See Codification note.*

§68d. Enforcement of subchapter

(a) Authority of Commission

Except as otherwise specifically provided herein, this subchapter shall be enforced by the Federal Trade Commission under rules, regulations, and procedure provided for in the Federal Trade Commission Act.

The Commission is authorized and directed to prevent any person from violating the provisions of this subchapter 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 were incorporated into and made a part of this subchapter; and any such person violating the provisions of

this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though the applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this subchapter.

The Commission is authorized and directed to make rules and regulations for the manner and form of disclosing information required by this subchapter, and for segregation of such information for different portions of a wool product as may be necessary to avoid deception or confusion, and to make such further rules and regulations under and in pursuance of the terms of this subchapter as may be necessary and proper for administration and enforcement.

The Commission is also authorized to cause inspections, analyses, tests, and examinations to be made of any wool products subject to this subchapter; and to cooperate with any department or agency of the Government, with any State, Territory, or possession, or with the District of Columbia; or with any department, agency, or political subdivision thereof; or with any person.

(b) Maintenance of records by wool manufacturers

Every manufacturer of wool products shall maintain proper records showing the fiber content as required by this subchapter of all wool products made by him, and shall preserve such records for at least three years.

The neglect or refusal to maintain and so preserve such records is unlawful, and any such manufacturer who neglects or refuses to maintain and so preserve such records shall forfeit to the United States the sum of \$100 for each day of such failure, which shall accrue to the United States and be recoverable in a civil action.

(Oct. 14, 1940, ch. 871, §6, 54 Stat. 1131.)

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.

§68e. Condemnation and injunction proceedings

(a) Grounds for condemnation; disposition of merchandise

Any wool products shall be liable to be proceeded against in the district court of the United States for the district in which found, and to be seized for confiscation by process of libel for condemnation, if the Commission has reasonable cause to believe such wool products are being manufactured or held for shipment, or shipped, or held for sale or exchange after shipment, in commerce in violation of the provisions of this subchapter, and if after notice from the Commission the provisions of this subchapter with respect to said products are not shown to be complied with. Proceedings in such libel cases shall conform as nearly as may be to suits in rem in admiralty, and may be brought by the Commission.

If such wool products are condemned by the court, they shall be disposed of, in the discretion of the court, by destruction; by sale; by delivery to the owner or claimant thereof upon payment of legal costs and charges and upon execution of good and sufficient bond to the effect that such wool products will not be disposed of until properly stamped, tagged, labeled, or otherwise identified under the provisions of this subchapter; or by such charitable disposition as the court may deem proper. If such wool products are disposed of by sale, the proceeds, less legal costs and charges, shall be paid into the Treasury of the United States.

(b) Grounds for temporary injunction or restraining order; issuance without bond

Whenever the Commission has reason to believe that—

(1) Any person is violating, or is about to violate, sections 68a, 68c, 68f, or 68g of this title, and

that

(2) It would be to the public interest to enjoin such violation until complaint is issued by the Commission under the Federal Trade Commission Act and such complaint dismissed by the Commission or set aside by the court on review, or until order to cease and desist made thereon by the Commission has become final within the meaning of the Federal Trade Commission Act,

the Commission may bring suit in the district court of the United States or in the United States court of any Territory, for the district or Territory in which such person resides or transacts business, to enjoin such violation, and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(Oct. 14, 1940, ch. 871, §7, 54 Stat. 1131.)

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.

§68f. Exclusion of misbranded wool products

All wool products imported into the United States, except those made more than twenty years prior to such importation, shall be stamped, tagged, labeled, or otherwise identified in accordance with the provisions of this subchapter and all invoices of such wool products required under the Act of June 17, 1930 (c. 497, title IV, 46 Stat. 719), shall set forth, in addition to the matter therein specified, the information with respect to said wool products required under the provisions of this subchapter, which information shall be in the invoices prior to their certification under said Act of June 17, 1930.

The falsification of, or failure to set forth, said information in said invoices, or the falsification or perjury of the consignee's declaration provided for in said Act of June 17, 1930, insofar as it relates to said information, shall be an unfair method of competition, and an unfair and deceptive act, or practice, in commerce under the Federal Trade Commission Act; and any person who falsifies, or fails to set forth, said information in said invoices, or who falsifies or perjures said consignee's declaration insofar as it relates to said information, may thenceforth be prohibited by the Commission from importing, or participating in the importation of, any wool products into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said wool products and any duty thereon, conditioned upon compliance with the provisions of this subchapter.

A verified statement from the manufacturer or producer of such wool products showing their fiber content as required under the provisions of this subchapter may be required under regulations prescribed by the Secretary of the Treasury.

(Oct. 14, 1940, ch. 871, §8, 54 Stat. 1132.)

EDITORIAL NOTES

REFERENCES IN TEXT

Provisions covering invoices of wool products required under the Act of June 17, 1930 (c. 497, title IV, 46 Stat. 719), referred to in text, are set out as section 1481 et seq. of Title 19, Customs Duties.

Provisions covering certification of invoices under the Act of June 17, 1930, referred to in text, are set out as section 1482 of Title 19.

Provisions covering the consignee's declaration under the Act of June 17, 1930, referred to in text, are set out in section 1485 of Title 19.

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.

§68g. Guaranty

(a) Avoidance of liability; requirements

No person shall be guilty under section 68a of this title if he establishes a guaranty received in good faith signed by and containing the name and address of the person residing in the United States by whom the wool product guaranteed was manufactured and/or from whom it was received, that said wool product is not misbranded under the provisions of this subchapter.

Said guaranty shall be either (1) a separate guaranty specifically designating the wool product guaranteed, in which case it may be on the invoice or other paper relating to said wool product; or (2) a continuing guaranty filed with the Commission applicable to all wool products handled by a guarantor in such form as the Commission by rules and regulations may prescribe.

(b) Furnishing false guaranty

Any person who furnishes 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 residing in the United States by whom the wool product guaranteed was manufactured and/or from whom it was received, with reason to believe the wool product falsely guaranteed may be introduced, sold, transported, or distributed in commerce, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act.

(Oct. 14, 1940, ch. 871, §9, 54 Stat. 1132.)

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.

§68h. Criminal penalty

Any person who willfully violates sections 68a, 68c, 68f, or 68g(b) of this title shall be guilty of a misdemeanor and upon conviction 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 subchapter.

Whenever the Commission has reason to believe any person is guilty of a misdemeanor under this section, it shall certify all pertinent facts to the Attorney General, whose duty it shall be to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

(Oct. 14, 1940, ch. 871, §10, 54 Stat. 1133.)

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.

§68i. Application of other laws

The provision of this subchapter shall be held to be in addition to, and not in substitution for or limitation of, the provisions of any other Act of the United States.

(Oct. 14, 1940, ch. 871, §11, 54 Stat. 1133.)

§68j. Exceptions from subchapter

None of the provisions of this subchapter shall be construed to apply to the manufacture, delivery for shipment, shipment, sale, or offering for sale any carpets, rugs, mats, or upholsteries, nor to any person manufacturing, delivering for shipment, shipping, selling, or offering for sale any carpets, rugs, mats, or upholsteries.

(Oct. 14, 1940, ch. 871, §14, 54 Stat. 1133.)

SUBCHAPTER IV—LABELING OF FUR PRODUCTS

§69. Definitions

As used in this subchapter—

(a) The term "person" means an individual, partnership, corporation, association, business trust, or any organized group of any of the foregoing.

(b) The term "fur" means any animal skin or part thereof with hair, fleece, or fur fibers attached thereto, either in its raw or processed state, but shall not include such skins as are to be converted into leather or which in processing shall have the hair, fleece, or fur fiber completely removed.

(c) The term "used fur" means fur in any form which has been worn or used by an ultimate consumer.

(d) The term "fur product" means any article of wearing apparel made in whole or in part of fur or used fur.

(e) The term "waste fur" means the ears, throats, or scrap pieces which have been severed from the animal pelt, and shall include mats or plates made therefrom.

(f) The term "invoice" means a written account, memorandum, list, or catalog, which is issued in connection with any commercial dealing in fur products or furs, and describes the particulars of any fur products or furs, transported or delivered to a purchaser, consignee, factor, bailee, correspondent, or agent, or any other person who is engaged in dealing commercially in fur products or furs.

(g) The term "Commission" means the Federal Trade Commission.

(h) The term "Federal Trade Commission Act" means the Act 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.].

(i) The term "Fur Products Name Guide" means the register issued by the Commission pursuant to section 69e of this title.

(j) The term "commerce" means commerce between any State, Territory, or possession of the United States, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession or the District of Columbia.

(k) The term "United States" means the several States, the District of Columbia, and the Territories and possessions of the United States.

(Aug. 8, 1951, ch. 298, §2, 65 Stat. 175; Pub. L. 106–476, title I, §1443(b), Nov. 9, 2000, 114 Stat. 2167; Pub. L. 111–313, §2(a), Dec. 18, 2010, 124 Stat. 3326.)

EDITORIAL NOTES

REFERENCES IN TEXT

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

AMENDMENTS

2010—Subsec. (d). Pub. L. 111–313 struck out "; except that such term shall not include such articles (other than any dog or cat fur product to which section 1308 of title 19 applies) as the Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein" after "used fur".

2000—Subsec. (d). Pub. L. 106–476 inserted "(other than any dog or cat fur product to which section 1308 of title 19 applies)" after "shall not include such articles".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–313, §2(b), Dec. 18, 2010, 124 Stat. 3326, provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date that is 90 days after the date of the enactment of this Act [Dec. 18, 2010]."

EFFECTIVE DATE

Act Aug. 8, 1951, ch. 298, §14, 65 Stat. 181, provided that: "This Act [this subchapter], except section 7 [section 69e of this title], shall take effect one year after the date of its enactment [Aug. 8, 1951]."

SHORT TITLE OF 2010 AMENDMENT

Pub. L. 111–313, §1, Dec. 18, 2010, 124 Stat. 3326, provided that: "This Act [amending this section and section 69a of this title and enacting provisions set out as a note under this section] may be cited as the 'Truth in Fur Labeling Act of 2010'."

SHORT TITLE

Act Aug. 8, 1951, ch. 298, §1, 65 Stat. 175, provided: "That this Act [this subchapter] may be cited as the 'Fur Products Labeling Act' ".

SEPARABILITY

Act Aug. 8, 1951, ch. 298, §13, 65 Stat. 181, provided that: "If any provision of this Act [this subchapter] or the application thereof to any person or circumstance is held invalid, the remainder of the Act [this subchapter] and the application of such provision to any other person or circumstance shall not be affected thereby."

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.

§69a. Violations of Federal Trade Commission Act

(a) Introduction or manufacture for introduction into commerce, sale, advertising or offering for sale in commerce

The introduction, or manufacture for introduction, into commerce, or the sale, advertising or

offering for sale in commerce, or the transportation or distribution in commerce, of any fur product which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is 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) Manufacture for sale, sale, advertising, offering for sale, transportation or distribution

The manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, and which is misbranded or falsely or deceptively advertised or invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is 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.].

(c) Introduction into commerce, sale, advertising or offering for sale in commerce or transportation or distribution

The introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur which is falsely or deceptively advertised or falsely or deceptively invoiced, within the meaning of this subchapter or the rules and regulations prescribed under section 69f(b) of this title, is 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) Removal or mutilation of label

Except as provided in subsection (e) of this section, it shall be unlawful to remove or mutilate, or cause or participate in the removal or mutilation of, prior to the time any fur product is sold and delivered to the ultimate consumer, any label required by this subchapter to be affixed to such fur product, and any person violating this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(e) Substitution of labels; records

Any person introducing, selling, advertising, or offering for sale, in commerce, or processing for commerce, a fur product, or any person selling, advertising, offering for sale or processing a fur product which has been shipped and received in commerce, may substitute for the label affixed to such product pursuant to section 69b of this title, a label conforming to the requirements of such section, and such label may show in lieu of the name or other identification shown pursuant to section 69b(2)(E) of this title on the label so removed, the name or other identification of the person making the substitution. Any person substituting a label shall keep such records as will show the information set forth on the label that he removed and the name or names of the person or persons from whom such fur product was received, and shall preserve such records for at least three years. Neglect or refusal to maintain and preserve such records is unlawful, and any person who shall fail to maintain and preserve such records shall forfeit to the United States the sum of \$100 for each day of such failure which shall accrue to the United States and be recoverable by a civil action. Any person substituting a label who shall fail to keep and preserve such records, or who shall by such substitution misbrand a fur product, shall be guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(f) Application of section to common carrier or freight forwarder

Subsections (a), (b), and (c) of this section shall not apply to any common carrier, contract carrier or freight forwarder in respect of a fur product or fur shipped, transported, or delivered for shipment in commerce in the ordinary course of business.

(g) Exemption for particular sales

No provision of this subchapter shall apply to a fur product—

- (1) the fur of which was obtained from an animal through trapping or hunting; and
- (2) when sold in a face to face transaction at a place such as a residence, craft fair, or other location used on a temporary or short term basis, by the person who trapped or hunted the animal, where the revenue from the sale of apparel or fur products is not the primary source of income of such person.

(Aug. 8, 1951, ch. 298, §3, 65 Stat. 176; Pub. L. 111–313, §3, Dec. 18, 2010, 124 Stat. 3326.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is defined in section 69 of this title.

AMENDMENTS

2010—Subsec. (g). Pub. L. 111–313 added subsec. (g).

§69b. Misbranded fur products

For the purposes of this subchapter, a fur product shall be considered to be misbranded—

(1) if it is falsely or deceptively labeled or otherwise falsely or deceptively identified, or if the label contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product;

(2) if there is not affixed to the fur product a label showing in words and figures plainly legible—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name, or other identification issued and registered by the Commission, of one or more of the persons who manufacture such fur product for introduction into commerce, introduce it into commerce, sell it in commerce, advertise or offer it for sale in commerce, or transport or distribute it in commerce;

(F) the name of the country of origin of any imported furs used in the fur product;

(3) if the label required by paragraph (2)(A) of this section sets forth the name or names of any animal or animals other than the name or names provided for in such paragraph.

(Aug. 8, 1951, ch. 298, §4, 65 Stat. 177.)

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.

§69c. False advertising and invoicing

(a) For the purposes of this subchapter, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is

intended to aid, promote, or assist directly or indirectly in the sale or offering for sale of such fur product or fur—

(1) does not show the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(2) does not show that the fur is used fur or that the fur product contains used fur, when such is the fact;

(3) does not show that the fur product or fur is bleached, dyed, or otherwise artificially colored fur when such is the fact;

(4) does not show that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur;

(6) does not show the name of the country of origin of any imported furs or those contained in a fur product.

(b) For the purposes of this subchapter, a fur product or fur shall be considered to be falsely or deceptively invoiced—

(1) if such fur product or fur is not invoiced to show—

(A) the name or names (as set forth in the Fur Products Name Guide) of the animal or animals that produced the fur, and such qualifying statement as may be required pursuant to section 69e(c) of this title;

(B) that the fur product contains or is composed of used fur, when such is the fact;

(C) that the fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact;

(D) that the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur, when such is the fact;

(E) the name and address of the person issuing such invoice;

(F) the name of the country of origin of any imported furs or those contained in a fur product;

(2) if such invoice contains the name or names of any animal or animals other than the name or names specified in paragraph (1)(A) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur.

(Aug. 8, 1951, ch. 298, §5, 65 Stat. 178.)

§69d. Fur products imported into United States

(a) Necessity of proper labelling; additional information

Fur products imported into the United States shall be labeled so as not to be misbranded within the meaning of section 69b of this title; and all invoices of fur products and furs required under title IV of the Tariff Act of 1930, as amended [19 U.S.C. 1401 et seq.], shall set forth, in addition to the matters therein specified, information conforming with the requirements of section 69c(b) of this title, which information shall be included in the invoices prior to their certification under the Tariff Act of 1930, as amended [19 U.S.C. 1202 et seq.].

(b) Violations of Federal Trade Commission Act

The falsification of, or failure to set forth, said information in said invoices, or the falsification or perjury of the consignee's declaration provided for in the Tariff Act of 1930, as amended [19 U.S.C. 1202 et seq.], insofar as it relates to said information, 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.]; and any person who falsifies, or fails to set forth, said information in said