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

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

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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. 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.)

AMENDMENTS

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

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.

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].''

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.

§ 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.)

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.

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.

''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.

§ 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.)

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, Dec. 22, 2006, 120 Stat. 3372.)

AMENDMENT OF SECTION

For termination of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

REFERENCES IN TEXT

The Communications Act of 1934, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. 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

2006—Pub. L. 109–455, §§ 2, 13, temporarily added par. defining ''Foreign law enforcement agency''. 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.

TERMINATION DATE OF 2006 AMENDMENT

Pub. L. 109–455, § 13, Dec. 22, 2006, 120 Stat. 3382, provided that: ''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 amendments made by this Act, shall cease to have effect on the date that is 7 years after the date of enactment of this Act [Dec. 22, 2006].''

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.''

§ 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

[1] So in original. Probably should be ''clause''.

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) of this section 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 vio-

lation 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 chapter 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) of this section) 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) of this section 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) of this section, 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) of this section 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) of this section.

(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, Dec. 22, 2006, 120 Stat. 3372.)

AMENDMENT OF SECTION

For termination of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

REFERENCES IN TEXT

The Acts to regulate commerce, referred to in subsec. (a)(2), are defined in section 44 of this title.

The Packers and Stockyards Act, 1921, as amended, referred to in subsec. (a)(2), is act Aug. 15, 1921, ch. 64, 42 Stat. 159, as amended, 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.

The Antitrust Acts, referred to in subsec. (e), are defined in section 44 of this title.

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

2006—Subsec. (a)(4). Pub. L. 109–455, §§ 3, 13, temporarily added par. (4). 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) of this section 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) of this section.''

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.

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 Pub. L. 109–455 to cease to have effect 7 years after Dec. 22, 2006, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 15 of Pub. L. 103–312 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

Section 23 of Pub. L. 96–252 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.

Section 205(b) of Pub. L. 93–637 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.

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.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE COVERING GRANT OF DISTRICT SUBPENA ENFORCEMENT AUTHORITY AND AUTHORITY TO GRANT PRELIMINARY INJUNCTIVE RELIEF

Section 408(a), (b) of Pub. L. 93–153 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 subpenas 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 subpenas issued by the Commission and to seek preliminary injunctive relief to avoid unfair competitive practices.''

PURPOSE OF ACT JULY 14, 1952

Section 1 of act July 14, 1952, 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.''

§ 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 publi-

cation 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.)

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.

§ 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 2405(j) of the Appendix to title 50, has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 2405(j)(4) of the Appendix to 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 en-

forcement 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), Dec. 22, 2006, 120 Stat. 3372, 3373, 3375.)

AMENDMENT OF SECTION

For termination of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

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 antitrust Acts, referred to in subsecs. (c) to (e), are 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.

AMENDMENTS

2006—Pub. L. 109–455, §§ 4(d), 13, temporarily substituted ''subsections (a), (b), and (j)'' for ''clauses (a) and (b)'' in proviso following subsec. (*l*). See Termination Date of 2006 Amendment note below.

Subsec. (f). Pub. L. 109–455, §§ 4(a), 13, temporarily inserted ''(1)'' after ''disclose such information'', substituted ''purposes, and'' for ''purposes.'', and added par. (2). See Termination Date of 2006 Amendment note below.

Subsecs. (j) to (*l*). Pub. L. 109–455, §§ 4(b), 13, temporarily added subsecs. (j) to (*l*). 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.

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 Pub. L. 109–455 to cease to have effect 7 years after Dec. 22, 2006, 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.

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.

STUDY AND EVALUATION OF EFFECTIVENESS OF STATE POLICIES AND PROGRAMS RELATING TO REGULATION OF CERTAIN HEALTH INSURANCE POLICIES

Section 5(b) of Pub. L. 96–252 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.].''

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.

§ 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.)

CODIFICATION

Section was not enacted as part of the Federal Trade Commission Act which comprises this subchapter.

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.)

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.

The antitrust Acts, referred to in text, are defined in section 44 of this title.

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.)

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.)

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.

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.

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.)

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''.

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.

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.)

REFERENCES IN TEXT

The antitrust Acts, referred to in text, are defined in section 44 of this title.

The Acts to regulate commerce, referred to in text, are defined in section 44 of this title.

§ 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.)

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''.

§ 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.)

AMENDMENTS

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).

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.)

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, as amended, which is classified to subchapters I to IV (§ 601 et seq.) of chapter 12 of Title 21, Food and Drugs. For complete classi-

fication of this Act to the Code, see Short Title note set out under section 601 of Title 21 and Tables.

EFFECTIVE DATE

Section 5(b) of act Mar. 21, 1938, 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].''

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.)

AMENDMENTS

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).

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 subpena) 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), Dec. 22, 2006, 120 Stat. 3375, 3379.)

AMENDMENT OF SECTION

For termination of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

AMENDMENTS

2006—Subsec. (a)(2)(E). Pub. L. 109–455, §§ 7(b), 13, temporarily added subpar. (E). See Termination Date of 2006 Amendment note below.

Subsec. (c). Pub. L. 109–455, §§ 5, 13, temporarily added subsec. (c). 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.

TERMINATION DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–455 to cease to have effect 7 years after Dec. 22, 2006, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 204(c) of Pub. L. 93–637 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].''

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) of this section, 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) of this section; and (D) promulgate, if appropriate, a final rule based on the matter in the rulemaking record (as defined in subsection (e)(1)(B) of this section), 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, in-

cluding 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) of this section 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) of this

section 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) of this section shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection. An exemption under subsection (g) of this section shall not be treated as an amendment or repeal of a rule.

(3) When any rule under subsection (a)(1)(B) of this section 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) of this section 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) of this section, 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 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) of this section that the petitioner is not entitled to conduct cross-examination or make rebuttal submissions, or

(ii) a Commission rule or ruling under subsection (c) of this section 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) of this section, 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) of this section. The contents and adequacy of any statement required by subsection (b)(1)(D) of this section shall not be subject to judicial review in any respect.

(f) Unfair or deceptive acts or practices by banks, savings and loan institutions, or Federal credit unions; promulgation of regulations by Board of Governors of Federal Reserve System, Federal Home Loan Bank Board, and National Credit Union Administration Board; agency enforcement and compliance proceedings; violations; power of other Federal agencies unaffected; reporting requirements

(1) In order to prevent unfair or deceptive acts or practices in or affecting commerce (including acts or practices which are unfair or deceptive to consumers) by banks or savings and loan institutions described in paragraph (3), each agen-

cy specified in paragraph (2) or (3) of this subsection shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by banks or savings and loan institutions described in paragraph (3) subject to its jurisdiction. The Board of Governors of the Federal Reserve System (with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3)) and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4)) shall prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices. Whenever the Commission prescribes a rule under subsection (a)(1)(B) of this section, then within 60 days after such rule takes effect each such Board shall promulgate substantially similar regulations prohibiting acts or practices of banks or savings and loan institutions described in paragraph (3), or Federal credit unions described in paragraph (4), as the case may be, which are substantially similar to those prohibited by rules of the Commission and which impose substantially similar requirements, unless (A) any such Board finds that such acts or practices of banks or savings and loan institutions described in paragraph (3), or Federal credit unions described in paragraph (4), as the case may be, are not unfair or deceptive, or (B) the Board of Governors of the Federal Reserve System finds that implementation of similar regulations with respect to banks, savings and loan institutions or Federal credit unions would seriously conflict with essential monetary and payments systems policies of such Board, and publishes any such finding, and the reasons therefor, in the Federal Register.

(2) ENFORCEMENT.—Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12, in the case of—

(A) national banks and Federal branches and Federal agencies of foreign banks, by the division of consumer affairs established by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a)[1] of the Federal Reserve Act [12 U.S.C. 601 et seq., 611 et seq.], 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[2] banks referred to in subparagraph (A) or (B)) and insured State branches of foreign banks, by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation.

(3) Compliance with regulations prescribed under this subsection shall be enforced under section 1818 of title 12 with respect to savings associations as defined in section 1813 of title 12.

(4) Compliance with regulations prescribed under this subsection shall be enforced with respect to Federal credit unions under sections 1766 and 1786 of title 12.

(5) For the purpose of the exercise by any agency referred to in paragraph (2) of its powers under any Act referred to in that paragraph, a violation of any regulation prescribed under this subsection shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (2), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with any regulation prescribed under this subsection, any other authority conferred on it by law.

(6) The authority of the Board of Governors of the Federal Reserve System to issue regulations under this subsection does not impair the authority of any other agency designated in this subsection to make rules respecting its own procedures in enforcing compliance with regulations prescribed under this subsection.

(7) Each agency exercising authority under this subsection shall transmit to the Congress each year a detailed report on its activities under this paragraph during the preceding calendar year.

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.

(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) of this section 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) of this section.

(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 adver-

[1] See References in Text note below.

[2] So in original. Probably should be "(other than".

[3] So in original. Probably should be "of".

tising 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.)

REFERENCES IN TEXT

Section 25(a) of the Federal Reserve Act, referred to in subsec. (f)(2)(B), which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102–242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§ 601 et seq.) of chapter 6 of Title 12.

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

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) of this section, 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.

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 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

Section 10(e) of Pub. L. 96–252 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).''

Section 11(c) of Pub. L. 96–252 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.

TRANSFER OF FUNCTIONS

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101–73, set out as a note under section 1437 of Title 12, Banks and Banking.

RESTRICTION ON USE OF FUNDS FOR PURPOSE OF INITIATING NEW RULEMAKING PROCEEDING

Section 11(b) of Pub. L. 96–252 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

Section 19 of Pub. L. 96–252 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

Section 22 of Pub. L. 96–252 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

Section 202(c) of Pub. L. 93–637 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

Section 202(d) of Pub. L. 93–637, 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.

§ 57a–1. Omitted

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.

EFFECTIVE DATE; TERMINATION DATE

Section 21(i) of Pub. L. 96–252 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) of this section 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) of this section.

(b) Nature of relief available

The court in an action under subsection (a) of this section 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) of this section relates, or the unfair or deceptive act or practice to which an action under subsection (a)(2) of this section 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.)

EFFECTIVE DATE

Section 206(b) of Pub. L. 93–637 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) of this section.

(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) of this section.

(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) of this section, 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.)

REFERENCES IN TEXT

The Clayton Act, referred to in subsec. (a)(8)(B), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, 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''.

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 or 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 exam-

[1] See References in Text note below.

ination 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 received 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 2405(j) of the Appendix to title 50, has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 2405(j)(4) of the Appendix to 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) of this section 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) of this section 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 3512[1] 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, Dec. 22, 2006, 120 Stat. 3376.)

AMENDMENT OF SECTION

For termination of amendment by section 13 of Pub. L. 109–455, see Termination Date of 2006 Amendment note below.

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 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

2006—Subsec. (b)(6). Pub. L. 109–455, §§ 6(a), 13, temporarily inserted ''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), and inserted concluding provisions. See Termination Date of 2006 Amendment note below.

Subsec. (f). Pub. L. 109–455, §§ 6(b), 13, temporarily inserted heading and amended text of subsec. (f) generally. Prior to amendment, 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,''.

TERMINATION DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–455 to cease to have effect 7 years after Dec. 22, 2006, 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.

§ 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.)

TERMINATION OF SECTION

For termination of section by section 13 of Pub. L. 109–455, see Termination Date note below.

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, as amended, 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.

TERMINATION DATE

Section to cease to have effect 7 years after Dec. 22, 2006, see section 13 of Pub. L. 109–455, 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.)

TERMINATION OF SECTION

For termination of section by section 13 of Pub. L. 109–455, see Termination Date note below.

TERMINATION DATE

Section to cease to have effect 7 years after Dec. 22, 2006, see section 13 of Pub. L. 109–455, 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.)

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) of this section 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.

(Sept. 26, 1914, ch. 311, § 23, as added Pub. L. 96–252, § 16, May 28, 1980, 94 Stat. 390.)

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.)

REFERENCES IN TEXT

The antitrust Acts, referred to in subsec. (a), are defined in section 44 of this title.

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.)

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''.

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

Section 11 of Pub. L. 103–312 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

Section 18 of Pub. L. 96–252 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

Section 20 of Pub. L. 96–252 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.)

TERMINATION OF SECTION

For termination of section by section 13 of Pub. L. 109–455, see Termination Date note below.

TERMINATION DATE

Section to cease to have effect 7 years after Dec. 22, 2006, see section 13 of Pub. L. 109–455, 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.)

TERMINATION OF SECTION

For termination of section by section 13 of Pub. L. 109–455, see Termination Date note below.

PRIOR PROVISIONS

A prior section 26 of act Sept. 26, 1914, was renumbered section 28 and is classified to section 58 of this title.

TERMINATION DATE

Section to cease to have effect 7 years after Dec. 22, 2006, see section 13 of Pub. L. 109–455, 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 termination of amendment renumbering this section by section 13 of Pub. L. 109–455, see

Termination Date of 2006 Amendment note below.

TERMINATION DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–455 to cease to have effect 7 years after Dec. 22, 2006, see section 13 of Pub. L. 109–455, set out as a note under section 44 of this title.

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'.''

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

Section 1(a) of Pub. L. 103–312 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

Section 1 of Pub. L. 96–252 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.)

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.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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].

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.

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.)

REFERENCES IN TEXT

The Act of September 26, 1914, referred to in subsec. (f), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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, as amended. 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.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 3 of Pub. L. 96–242 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

Section 12 of act Oct. 14, 1940, 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

Section 1 of act Oct. 14, 1940, provided that: ''This Act [this subchapter] may be cited as the 'Wool Products Labeling Act of 1939'.''

SEPARABILITY

Section 13 of act Oct. 14, 1940, 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.''

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 if 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.)

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.

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

Section 307 of title III of Pub. L. 98–417 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.

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.)

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).

[1] So in original. Probably should be ''wool''.

[2] See Codification note.

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.

§ 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.)

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.)

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.)

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.

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.)

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.)

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; 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.

(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.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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

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''.

EFFECTIVE DATE

Section 14 of act Aug. 8, 1951, 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

Section 1 of act Aug. 8, 1951, provided: ''That this Act [this subchapter] may be cited as the 'Fur Products Labeling Act' ''.

SEPARABILITY

Section 13 of act Aug. 8, 1951, 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.''

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.

(Aug. 8, 1951, ch. 298, § 3, 65 Stat. 176.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in section catchline and subsecs. (a) to (e), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.

§ 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.)

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 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 fur products or furs into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said fur products and furs, and any duty thereon, conditioned upon compliance with the provisions of this section.

(c) Verified statement of compliance

A verified statement from the manufacturer, producer of, or dealer in, imported fur products and furs showing information required under the provisions of this subchapter may be required under regulations prescribed by the Secretary of the Treasury.

(Aug. 8, 1951, ch. 298, § 6, 65 Stat. 178.)

REFERENCES IN TEXT

The Tariff Act of 1930, referred to in subsecs. (a) and (b), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§ 1202 et seq.) of Title 19, Customs Duties. Title IV of the Tariff Act of 1930 is classified generally to subtitle III (§ 1401 et seq.) of chapter 4 of Title 19. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.

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.

§ 69e. Name guide for fur products

(a) Fur Products Name Guide

The Commission shall, with the assistance and cooperation of the Department of Agriculture and the Department of the Interior, within six months after August 8, 1951, issue, after holding public hearings, a register setting forth the names of hair, fleece, and fur-bearing animals, which shall be known as the Fur Products Name Guide. The names used shall be the true English names for the animals in question, or in the absence of a true English name for an animal, the name by which such animal can be properly identified in the United States.

(b) Additions and deletions; public hearing

The Commission may, from time to time, with the assistance and cooperation of the Department of Agriculture and Department of the Interior, after holding public hearings, add to or delete from such register the name of any hair, fleece, or fur-bearing animal.

(c) Prevention of confusion or deception

If the name of an animal (as set forth in the Fur Products Name Guide) connotes a geographical origin or significance other than the true country or place of origin of such animal, the Commission may require whenever such name is used in setting forth the information re-

quired by this subchapter, such qualifying statements as it may deem necessary to prevent confusion or deception.

(Aug. 8, 1951, ch. 298, § 7, 65 Stat. 179.)

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.

§ 69f. Enforcement of subchapter

(a) Enforcement by Federal Trade Commission

(1) Except as otherwise specifically provided in this subchapter, sections 69a, 69d, and 69h(b) of this title shall be enforced by the Federal Trade Commission under rules, regulations, and procedure provided for in the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(2) The Commission is authorized and directed to prevent any person from violating the provisions of sections 69a, 69d, and 69h(b) of this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act [15 U.S.C. 41 et seq.] were incorporated into and made a part of this subchapter; and any such person violating any provision of section 69a, 69d, or 69h(b) of this title shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Act were incorporated into and made a part of this subchapter.

(b) Rules and regulations for disclosure of information

The Commission is authorized and directed to prescribe rules and regulations governing the manner and form of disclosing information required by this subchapter, and such further rules and regulations as may be necessary and proper for purposes of administration and enforcement of this subchapter.

(c) Inspection, analysis, tests for fur products; cooperation with other governmental agencies

The Commission is authorized (1) to cause inspections, analyses, tests, and examinations to be made of any fur product or fur subject to this subchapter; and (2) to cooperate, on matters related to the purposes of this subchapter, 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.

(d) Maintenance of records by manufacturer or dealer

(1) Every manufacturer or dealer in fur products or furs shall maintain proper records showing the information required by this subchapter with respect to all fur products or furs handled by him, and shall preserve such records for at least three years.

(2) The neglect or refusal to maintain and preserve such records is unlawful, and any such manufacturer or dealer who neglects or refuses 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.

(Aug. 8, 1951, ch. 298, § 8, 65 Stat. 179.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.

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.

§ 69g. Condemnation and injunction proceedings

(a) Grounds for condemnation; disposition of merchandise

(1) Any fur product or fur 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 fur product or fur is 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 such fur product or fur 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.

(2) If such fur products or furs 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 fur or fur products will not be disposed of until properly marked, advertised, and invoiced as required under the provisions of this subchapter; or by such charitable disposition as the court may deem proper. If such furs or fur products are disposed of by sale, the proceeds, less legal costs and charges, shall be paid into the Treasury of the United States as miscellaneous receipts.

(b) Grounds for temporary injunction or restraining order; issuance without bond

Whenever the Commission has reason to believe that—

(1) any person is volating,[1] or is about to violate, section 69a, 69d, or 69h(b) of this title; and

(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 [15 U.S.C. 41 et seq.] and such

[1] So in original. Probably should be "violating,".

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 said 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.

(Aug. 8, 1951, ch. 298, § 9, 65 Stat. 180.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.

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.

§ 69h. Guaranty

(a) Avoidance of liability; requirements

No person shall be guilty under section 69a 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 fur product or fur guaranteed was manufactured or from whom it was received, that said fur product is not misbranded or that said fur product or fur is not falsely advertised or invoiced under the provisions of this subchapter. Such guaranty shall be either (1) a separate guaranty specifically designating the fur product or fur guaranteed, in which case it may be on the invoice or other paper relating to such fur product or fur; or (2) a continuing guaranty filed with the Commission applicable to any fur product or fur handled by a guarantor, in such form as the Commission by rules and regulations may prescribe.

(b) Furnishing false guaranty

It shall be unlawful for any person to furnish, with respect to any fur product or fur, 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 fur product or fur guaranteed was manufactured or from whom it was received) with reason to believe the fur product or fur falsely guaranteed may be introduced, sold, transported, or distributed in commerce, and any person who violates the provisions of this subsection is guilty of an unfair method of competition, and an unfair or deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Aug. 8, 1951, ch. 298, § 10, 65 Stat. 181.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.

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.

§ 69i. Criminal penalty

(a) Any person who willfully violates section 69a, 69d, or 69h(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.

(b) 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.

(Aug. 8, 1951, ch. 298, § 11, 65 Stat. 181.)

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.

§ 69j. Application of other laws

The provisions 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 Congress.

(Aug. 8, 1951, ch. 298, § 12, 65 Stat. 181.)

SUBCHAPTER V—TEXTILE FIBER PRODUCTS IDENTIFICATION

§ 70. Definitions

As used in this subchapter—

(a) The term ''person'' means an individual, partnership, corporation, association or any other form of business enterprise.

(b) The term ''fiber'' or ''textile fiber'' means a unit of matter which is capable of being spun into a yarn or made into a fabric by bonding or by interlacing in a variety of methods including weaving, knitting, braiding, felting, twisting, or webbing, and which is the basic structural element of textile products.

(c) The term ''natural fiber'' means any fiber that exists as such in the natural state.

(d) The term ''manufactured fiber'' means any fiber derived by a process of manufacture from any substance which, at any point in the manufacturing process, is not a fiber.

(e) The term ''yarn'' means a strand of textile fiber in a form suitable for weaving, knitting, braiding, felting, webbing, or otherwise fabricating into a fabric.

(f) The term ''fabric'' means any material woven, knitted, felted, or otherwise produced from, or in combination with, any natural or manufactured fiber, yarn, or substitute therefor.

(g) The term ''household textile articles'' means articles of wearing apparel, costumes and accessories, draperies, floor coverings, furnishings, beddings, and other textile goods of a type customarily used in a household regardless of where used in fact.

(h) The term ''textile fiber product'' means—

(1) any fiber, whether in the finished or unfinished state, used or intended for use in household textile articles;

(2) any yarn or fabric, whether in the finished or unfinished state, used or intended for use in household textile articles; and

(3) any household textile article made in whole or in part of yarn or fabric;

except that such term does not include a product required to be labeled under the Wool Products Labeling Act of 1939 [15 U.S.C. 68 et seq.].

(i) The term ''affixed'' means attached to the textile fiber product in any manner.

(j) The term ''Commission'' means the Federal Trade Commission.

(k) 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.

(*l*) The term ''Territory'' includes the insular possessions of the United States, and also any Territory of the United States.

(m) The term ''ultimate consumer'' means a person who obtains a textile fiber product by purchase or exchange with no intent to sell or exchange such textile fiber product in any form.

(Pub. L. 85–897, § 2, Sept. 2, 1958, 72 Stat. 1717.)

REFERENCES IN TEXT

The Wool Products Labeling Act of 1939, referred to in subsec. (h)(3), is act Oct. 14, 1940, ch. 871, 54 Stat. 1128, as amended, which is classified generally to subchapter III (§ 68 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 68 of this title and Tables.

EFFECTIVE DATE

Section 15 of Pub. L. 85–897 provided that: ''This Act [this subchapter] shall take effect eighteen months after enactment [Sept. 2, 1958], except for the promulgation of rules and regulations by the Commission, which shall be promulgated within nine months after the enactment of this Act. The Commission shall provide for the exception of any textile fiber product acquired prior to the effective date of this Act.''

SHORT TITLE

Section 1 of Pub. L. 85–897 provided: ''That this Act [this subchapter] may be cited as the 'Textile Fiber Products Identification Act'.''

SEPARABILITY

Section 13 of Pub. L. 85–897 provided that: ''If any provision of this Act [this subchapter], or the application thereof to any person, as that term is herein defined, is held invalid, the remainder of the Act and the application of the remaining provisions to any person shall not be affected thereby.''

§ 70a. Violations of Federal Trade Commission Act

(a) Introduction or manufacture for introduction into commerce, sale, advertising or offering for sale in commerce

The introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product which is misbranded or falsely or deceptively advertised within the meaning of this subchapter or the rules and regulations promulgated thereunder, 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) Sale, offering for sale, advertising, delivery, transportation of products advertised for sale in commerce

The sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce, and which is misbranded or falsely or deceptively advertised, within the meaning of this subchapter or the rules and regulations promulgated thereunder, 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) Sale, offering for sale, advertising, delivery, transportation of products after shipment in commerce

The sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, which is misbranded or falsely or deceptively advertised, within the meaning of this subchapter or the rules and regulations promulgated thereunder, 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) Application of section to common carrier, freight forwarder, etc.

This section shall not apply—

(1) to any common carrier or contract carrier or freight forwarder with respect to a textile fiber product received, shipped, delivered, or handled by it for shipment in the ordinary course of its business;

(2) to any processor or finisher in performing a contract for the account of a person subject to the provisions of this subchapter if the processor or finisher does not change the textile fiber content of the textile fiber product contrary to the terms of such contract;

(3) with respect to the manufacture, delivery for transportation, transportation, sale, or offering for sale of a textile fiber product for exportation from the United States to any foreign country;

(4) to any publisher or other advertising agency or medium for the dissemination of ad-

vertising or promotional material, except the manufacturer, distributor, or seller of the textile fiber product to which the false or deceptive advertisement relates, if such publisher or other advertising agency or medium furnishes to the Commission, upon request, the name and post office address of the manufacturer, distributor, seller, or other person residing in the United States, who caused the dissemination of the advertising material; or

(5) to any textile fiber product until such product has been produced by the manufacturer or processor in the form intended for sale or delivery to, or for use by, the ultimate consumer: *Provided*, That this exemption shall apply only if such textile fiber product is covered by an invoice or other paper relating to the marketing or handling of the textile fiber product and such invoice or paper correctly discloses the information with respect to the textile fiber product which would otherwise be required under section 70b of this title to be on the stamp, tag, label, or other identification and the name and address of the person issuing the invoice or paper.

(Pub. L. 85–897, § 3, Sept. 2, 1958, 72 Stat. 1718.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) to (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.

§ 70b. Misbranded and falsely advertised textile fiber products

(a) False or deceptive identification

Except as otherwise provided in this subchapter, a textile fiber product shall be misbranded if it is falsely or deceptively stamped, tagged, labeled, invoiced, advertised, or otherwise identified as to the name or amount of constituent fibers contained therein.

(b) Stamp, tag, label or other means of identification; contents

Except as otherwise provided in this subchapter, a textile fiber product shall be misbranded if a stamp, tag, label, or other means of identification, or substitute therefor authorized by section 70c of this title, is not on or affixed to the product showing in words and figures plainly legible, the following:

(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 per centum or more of the total fiber weight of the product, but nothing in this section shall be construed as prohibiting the use of a nondeceptive trademark in conjunction with a designated generic name: *Provided*, That exclusive of permissible ornamentation, any fiber or group of fibers present in an amount of 5 per centum or less by weight of the total fiber content shall not be designated by the generic name or the trademark of such fiber or fibers, but shall be designated only as ''other fiber'' or ''other fibers'' as the case may be, but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount contained in such product.

(2) The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product, exclusive of ornamentation not exceeding 5 per centum by weight of the total fiber content: *Provided*, That, exclusive of permissible ornamentation, any fiber or group of fibers present in an amount of 5 per centum or less by weight of the total fiber content shall not be designated by the generic name or trademark of such fiber or fibers, but shall be designated only as ''other fiber'' or ''other fibers'' as the case may be but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount stated: *Provided further*, That in the case of a textile fiber product which contains more than one kind of fiber, deviation in the fiber content of any fiber in such product, from the amount stated on the stamp, tag, label, or other identification shall not be a misbranding under this section unless such deviation is in excess of reasonable tolerances which shall be established by the Commission: *And provided further*, That any such deviation which exceeds said tolerances shall not be a misbranding if the person charged proves that the deviation resulted from unavoidable variations in manufacture and despite due care to make accurate the statements on the tag, stamp, label, or other identification.

(3) The name, or other identification issued and registered by the Commission, of the manufacturer of the product or one or more persons subject to section 70a of this title with respect to such product.

(4) If it is an imported textile fiber product the name of the country where processed or manufactured.

(5) If it is a textile fiber product processed or manufactured in the United States, it be so identified.

(c) False or deceptive advertisement

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely or deceptively advertised if any disclosure or implication of fiber content is made in any written advertisement which is used to aid, promote, or assist directly or indirectly in the sale or offering for sale of such textile fiber product, unless the same information as that required to be shown on the stamp, tag, label, or other identification under subsection (b)(1) and (2) of this section is contained in the heading, body, or other part of such written advertisement, except that the percentages of the fiber present in the textile fiber product need not be stated.

(d) Additional information allowed

In addition to the information required in this section, the stamp, tag, label, or other means of identification, or advertisement may contain

other information not violating the provisions of this subchapter.

(e) Labelling of packages

For purposes of this subchapter, in addition to the textile fiber products contained therein, a package of textile fiber products intended for sale to the ultimate consumer shall be misbranded unless such package has affixed to it a stamp, tag, label, or other means of identification bearing the information required by subsection (b) of this section, with respect to such contained textile fiber products, or is transparent to the extent it allows for the clear reading of the stamp, tag, label, or other means of identification on the textile fiber 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 subsection (b) of this section, 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 textile fiber product contained therein.

(f) Fabric severed from bolts, pieces or rolls of fabric

This section shall not be construed as requiring designation of the fiber content of any portion of fabric, when sold at retail, which is severed from bolts, pieces, or rolls of fabric labeled in accordance with the provisions of this section at the time of such sale: *Provided*, That if any portion of fabric severed from a bolt, piece, or roll of fabric is in any manner represented as containing percentages of natural or manufactured fibers, other than that which is set forth on the labeled bolt, piece, or roll, this section shall be applicable thereto, and the information required shall be separately set forth and segregated as required by this section.

(g) Advertisement of textile product by use of name or symbol of fur-bearing animal

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely or deceptively advertised if the name or symbol of any fur-bearing animal is used in the advertisement of such product unless such product, or the part thereof in connection with which the name or symbol of a fur-bearing animal is used, is a fur or fur product within the meaning of the Fur Products Labeling Act [15 U.S.C. 69 et seq.]: *Provided, however*, That where a textile fiber product contains the hair or fiber of a fur-bearing animal, the name of such animal, in conjunction with the word ''fiber'', ''hair'', or ''blend'', may be used.

(h) Reused stuffing

For the purposes of this subchapter, a textile fiber product shall be misbranded if it is used as stuffing in any upholstered product, mattress, or cushion after having been previously used as stuffing in any other upholstered product, mattress, or cushion, unless the upholstered product, mattress, or cushion containing such textile fiber product bears a stamp, tag, or label approved by the Commission indicating in words plainly legible that it contains reused stuffing.

(i) Mail order catalog or promotional material

For the purposes of this subchapter, a textile fiber product shall be considered to be falsely or deceptively advertised in any mail order catalog or mail order promotional material which is used in the direct sale or direct offering for sale of such textile fiber product, unless such textile fiber product description states in a clear and conspicuous manner that such textile fiber product is processed or manufactured in the United States of America, or imported, or both.

(j) Location of stamp, tag, label, or other identification

For purposes of this subchapter, any textile fiber 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.

(k) Marking of certain sock products

(1) Notwithstanding any other provision of law, socks provided for in subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall be marked as legibly, indelibly, and permanently as the nature of the article or package will permit in such a manner as to indicate to the ultimate consumer in the United States the English name of the country of origin of the article. The marking required by this subsection shall be on the front of the package, adjacent to the size designation of the product, and shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the ultimate consumer.

(2) EXCEPTIONS.—Any package that contains several different types of goods and includes socks classified under subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall not be subject to the requirements of paragraph (1).

(Pub. L. 85–897, § 4, Sept. 2, 1958, 72 Stat. 1719; Pub. L. 89–35, §§ 1, 2, June 5, 1965, 79 Stat. 124; Pub. L. 98–417, title III, §§ 301–303, Sept. 24, 1984, 98 Stat. 1603, 1604; Pub. L. 108–429, title II, § 2004(h)(1), Dec. 3, 2004, 118 Stat. 2594.)

REFERENCES IN TEXT

The Harmonized Tariff Schedule of the United States, referred to in subsec. (k), is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of Title 19, Customs Duties.

The Fur Products Labeling Act, referred to in subsec. (g), is act Aug. 8, 1951, ch. 298, 65 Stat. 175, as amended, which is classified generally to subchapter IV (§ 69 et seq.) of this chapter. For complete classification of this

Act to the Code, see Short Title note set out under section 69 of this title and Tables.

AMENDMENTS

2004—Subsec. (k). Pub. L. 108–429 added subsec. (k).

1984—Subsec. (b)(5). Pub. L. 98–417, § 301, added par. (5).

Subsec. (e). Pub. L. 98–417, § 302, amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''This section shall not be construed as requiring the affixing of a stamp, tag, label, or other means of identification to each textile fiber product contained in a package if (1) such textile fiber 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 textile fiber products contained therein, the information required by subsection (b) of this section, 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 textile fiber product contained therein.''

Subsecs. (i), (j). Pub. L. 98–417, § 303, added subsecs. (i) and (j).

1965—Subsec. (b)(1). Pub. L. 89–35, § 1, inserted '', but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount contained in such product''.

Subsec. (b)(2). Pub. L. 89–35, § 2, inserted '', but nothing in this section shall be construed as prohibiting the disclosure of any fiber present in a textile fiber product which has a clearly established and definite functional significance where present in the amount stated''.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–429, title II, § 2004(h)(2), Dec. 3, 2004, 118 Stat. 2594, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date that is 15 months after the date of enactment of this Act [Dec. 3, 2004], and on and after the date that is 15 months after such date of enactment, any provision of part 303 of title 16, Code of Federal Regulations, that is inconsistent with such amendment shall not apply.''

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.

§ 70c. Removal of stamp, tag, label, or other identification

(a) Removal or mutilation after shipment in commerce

After shipment of a textile fiber product in commerce it shall be unlawful, except as provided in this subchapter, to remove or mutilate, or cause or participate in the removal or mutilation of, prior to the time any textile fiber product is sold and delivered to the ultimate consumer, any stamp, tag, label, or other identification required by this subchapter to be affixed to such textile fiber product, and any person violating this section shall be guilty of an unfair method of competition, and an unfair or deceptive act or practice, under the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(b) Substitution of stamp, tag, etc.

Any person—

(1) introducing, selling, advertising, or offering for sale, in commerce, or importing into the United States, a textile fiber product subject to the provisions of this subchapter, or

(2) selling, advertising, or offering for sale a textile fiber product whether in its original state or contained in other textile fiber products, which has been shipped, advertised, or offered for sale, in commerce,

may substitute for the stamp, tag, label, or other means of identification required to be affixed to such textile product pursuant to section 70b(b) of this title, a stamp, tag, label, or other means of identification conforming to the requirements of section 70b(b) of this title, and such substituted stamp, tag, label, or other means of identification shall show the name or other identification issued and registered by the Commission of the person making the substitution.

(c) Affixing of stamp, tag, etc. to individual unit of broken package

If any person other than the ultimate consumer breaks a package which bears a stamp, tag, label, or other means of identification conforming to the requirements of section 70b of this title, and if such package contains one or more units of a textile fiber product to which a stamp, tag, label, or other identification conforming to the requirements of section 70b of this title is not affixed, such person shall affix a stamp, tag, label, or other identification bearing the information on the stamp, tag, label, or other means of identification attached to such broken package to each unit of textile fiber product taken from such broken package.

(Pub. L. 85–897, § 5, Sept. 2, 1958, 72 Stat. 1720.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.

§ 70d. Records

(a) Maintenance and preservation by manufacturer

Every manufacturer of textile fiber products subject to this subchapter shall maintain proper records showing the fiber content as required by this subchapter of all such products made by him, and shall preserve such records for at least three years.

(b) Maintenance and preservation by person substituting stamp, tag, etc.

Any person substituting a stamp, tag, label, or other identification pursuant to section 70c(b) of this title shall keep such records as will show the information set forth on the stamp, tag, label, or other identification that he removed and the name or names of the person or persons from whom such textile fiber product was received, and shall preserve such records for at least three years.

(c) Neglect or refusal to maintain or preserve records

The neglect or refusal to maintain or preserve the records required by this section is unlawful, and any person neglecting or refusing to maintain such records 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.].

(Pub. L. 85–897, § 6, Sept. 2, 1958, 72 Stat. 1721.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (c), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.

§ 70e. Enforcement

(a) Enforcement by Federal Trade 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 [15 U.S.C. 41 et seq.].

(b) Terms of Federal Trade Commission Act incorporated into this subchapter

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 [15 U.S.C. 41 et seq.] 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 said Federal Trade Commission Act were incorporated into and made a part of this subchapter.

(c) Rules and regulations by Federal Trade Commission

The Commission is authorized and directed to make such rules and regulations, including the establishment of generic names of manufactured fibers, under and in pursuance of the terms of this subchapter as may be necessary and proper for administration and enforcement.

(d) Inspection, analyses, tests, etc.

The Commission is authorized to cause inspections, analyses, tests, and examinations to be made of any product subject to this subchapter.

(Pub. L. 85–897, § 7, Sept. 2, 1958, 72 Stat. 1721.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.

§ 70f. Injunction proceedings

Whenever the Commission has reason to believe—

(a) that any person is doing, or is about to do, an act which by section 70a, 70c, 70d, 70g, or 70h(b) of this title is declared to be unlawful; and

(b) that it would be to the public interest to enjoin the doing of such act until complaint is issued by the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] and such complaint is dismissed by the Commission or set aside by the court on review or until an 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 the doing of such act and upon proper showing a temporary injunction or restraining order shall be granted without bond.

(Pub. L. 85–897, § 8, Sept. 2, 1958, 72 Stat. 1721.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.

§ 70g. Exclusion of misbranded textile fiber products

All textile fiber products imported into the United States shall be stamped, tagged, labeled, or otherwise identified in accordance with the provisions of section 70b of this title, and all invoices of such products required pursuant to section 1484 of title 19, shall set forth, in addition to the matter therein specified, the information with respect to said products required under the provisions of section 70b(b) of this title, which information shall be in the invoices prior to their certification, if such certification is required pursuant to section 1484 of title 19. The falsification of, or failure to set forth the required information in such invoices, or the falsification or perjury of the consignee's declaration provided for in section 1485 of title 19, insofar as it relates to such information, 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.]; and any person who falsifies, or perjures the consignee's declaration insofar as it relates to such information, may thenceforth be prohibited by the Commission from importing, or participating in the importation of, any textile fiber product into the United States except upon filing bond with the Secretary of the Treasury in a sum double the value of said products and any duty thereon, conditioned upon compliance with the provisions of this subchapter. A verified statement from the manufacturer or producer of such products showing their fiber content as required under the provisions of this subchapter may be required under regulation prescribed by the Secretary of the Treasury.

(Pub. L. 85–897, § 9, Sept. 2, 1958, 72 Stat. 1722.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in text, is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amend-

ed, 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.

§ 70h. Guaranty

(a) Avoidance of liability; requirements

No person shall be guilty of an unlawful act under section 70a 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 textile fiber product guaranteed was manufactured or from whom it was received, that said product is not misbranded or falsely invoiced under the provisions of this subchapter. Said guaranty shall be (1) a separate guaranty specifically designating the textile fiber product guaranteed, in which case it may be on the invoice or other paper relating to said product; or (2) a continuing guaranty given by seller to the buyer applicable to all textile fiber products sold to or to be sold to buyer by seller in a form as the Commission, by rules and regulations, may prescribe; or (3) a continuing guaranty filed with the Commission applicable to all textile fiber products handled by a guarantor in such form as the Commission by rules and regulations may prescribe.

(b) Furnishing false guaranty

The furnishing of a false guaranty, except where the person furnishing such false guaranty relies on 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 product guaranteed was manufactured or from whom it was received, is unlawful, and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce, within the meaning of the Federal Trade Commission Act [15 U.S.C. 41 et seq.].

(Pub. L. 85–897, § 10, Sept. 2, 1958, 72 Stat. 1722.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, 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.

§ 70i. Criminal penalty

(a) Any person who willfully does an act which by section 70a, 70c, 70d, 70g, or 70h(b) of this title is declared to be unlawful 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 in this section shall limit any other provision of this subchapter.

(b) Whenever the Commission has reason to believe that any person is guilty of a misdemeanor under this section, it may certify all pertinent facts to the Attorney General. If, on the basis of the facts certified, the Attorney General concurs in such belief, it shall be his duty to cause appropriate proceedings to be brought for the enforcement of the provisions of this section against such person.

(Pub. L. 85–897, § 11, Sept. 2, 1958, 72 Stat. 1723.)

§ 70j. Exemptions

(a) None of the provisions of this subchapter shall be construed to apply to—

(1) upholstery stuffing, except as provided in section 70b(h) of this title;

(2) outer coverings of furniture, mattresses, and box springs;

(3) linings or interlinings incorporated primarily for structural purposes and not for warmth;

(4) filling or padding incorporated primarily for structural purposes and not for warmth;

(5) stiffenings, trimmings, facings, or interfacings;

(6) backings of, and paddings or cushions to be used under, floor coverings;

(7) sewing and handicraft threads;

(8) bandages, surgical dressings, and other textile fiber products, the labeling of which is subject to the requirements of the Federal Food, Drug and Cosmetic Act of 1938, as amended [21 U.S.C. 301 et seq.];

(9) waste materials not intended for use in a textile fiber product;

(10) textile fiber products incorporated in shoes or overshoes or similar outer footwear;

(11) textile fiber products incorporated in headwear, handbags, luggage, brushes, lampshades, or toys, catamenial devices, adhesive tapes and adhesive sheets, cleaning cloths impregnated with chemicals, or diapers.

The exemption provided for any article by paragraph (3) or (4) of this subsection shall not be applicable if any representation as to fiber content of such article is made in any advertisement, label, or other means of identification covered by section 70b of this title.

(b) The Commission may exclude from the provisions of this subchapter other textile fiber products (1) which have an insignificant or inconsequential textile fiber content, or (2) with respect to which the disclosure of textile fiber content is not necessary for the protection of the ultimate consumer.

(Pub. L. 85–897, § 12, Sept. 2, 1958, 72 Stat. 1723.)

REFERENCES IN TEXT

The Federal Food, Drug and Cosmetic Act of 1938, referred to in subsec. (a)(8), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

§ 70k. Application of other laws

The provisions 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.

(Pub. L. 85–897, § 14, Sept. 2, 1958, 72 Stat. 1724.)

SUBCHAPTER VI—PREVENTION OF UNFAIR METHODS OF COMPETITION

§ 71. "Person" defined

When used in this subchapter the term ''person'' includes partnerships, corporations, and associations.

(Sept. 8, 1916, ch. 463, title VIII, § 800, 39 Stat. 798.)

§ 72. Repealed. Pub. L. 108–429, title II, § 2006(a), Dec. 3, 2004, 118 Stat. 2597

Section, act Sept. 8, 1916, ch. 463, title VIII, § 801, 39 Stat. 798, related to importation or sale of articles at less than market value or wholesale price.

SAVINGS PROVISION

Pub. L. 108–429, title II, § 2006(b), Dec. 3, 2004, 118 Stat. 2597, provided that: ''The repeal made by subsection (a) [repealing this section] shall not affect any action under section 801 of the Act referred to in subsection (a) [this section] that was commenced before the date of the enactment of this Act [Dec. 3, 2004] and is pending on such date.''

§ 73. Agreements involving restrictions in favor of imported goods

If any article produced in a foreign country is imported into the United States under any agreement, understanding, or condition that the importer thereof or any other person in the United States shall not use, purchase, or deal in, or shall be restricted in his using, purchasing, or dealing in, the articles of any other person, there shall be levied, collected, and paid thereon, in addition to the duty otherwise imposed by law, a special duty equal to double the amount of such duty: *Provided*, That the above shall not be interpreted to prevent the establishing in this country on the part of a foreign producer of an exclusive agency for the sale in the United States of the products of said foreign producer or merchant, nor to prevent such exclusive agent from agreeing not to use, purchase, or deal in the article of any other person, but this proviso shall not be construed to exempt from the provisions of this section any article imported by such exclusive agent if such agent is required by the foreign producer or if it is agreed between such agent and such foreign producer that any agreement, understanding or condition set out in this section shall be imposed by such agent upon the sale or other disposition of such article to any person in the United States.

(Sept. 8, 1916, ch. 463, title VIII, § 802, 39 Stat. 799.)

§ 74. Rules and regulations

The Secretary of the Treasury shall make such rules and regulations as are necessary for the carrying out of the provisions of section 73 of this title.

(Sept. 8, 1916, ch. 463, title VIII, § 803, 39 Stat. 799.)

§ 75. Retaliation against country prohibiting importations

Whenever any country, dependency, or colony shall prohibit the importation of any article the product of the soil or industry of the United States and not injurious to health or morals, the President shall have power to prohibit, during the period such prohibition is in force, the importation into the United States of similar articles, or in case the United States does not import similar articles from that country, then other articles, the products of such country, dependency, or colony.

And the Secretary of the Treasury, with the approval of the President, shall make such rules and regulations as are necessary for the execution of the provisions of this section.

(Sept. 8, 1916, ch. 463, title VIII, § 804, 39 Stat. 799.)

§ 76. Retaliation against restriction of importations in time of war

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any country, colony, or dependency contrary to the law and practice of nations, the importation into their own or any other country, dependency, or colony of any article the product of the soil or industry of the United States and not injurious to health or morals is prevented or restricted the President is authorized and empowered to prohibit or restrict during the period such prohibition or restriction is in force, the importation into the United States of similar or other articles, products of such country, dependency, or colony as in his opinion the public interest may require; and in such case he shall make proclamation stating the article or articles which are prohibited from importation into the United States; and any person or persons who shall import, or attempt or conspire to import, or be concerned in importing, such article or articles, into the United States contrary to the prohibition in such proclamation, shall be liable to a fine of not less than $2,000 nor more than $50,000, or to imprisonment not to exceed two years, or both, in the discretion of the court. The President may change, modify, revoke, or renew such proclamation in his discretion.

(Sept. 8, 1916, ch. 463, title VIII, § 805, 39 Stat. 799.)

§ 77. Discrimination against neutral Americans in time of war

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that any vessel, American or foreign, is, on account of the laws, regulations, or practices of a belligerent Government, making or giving any undue or unreasonable preference or advantage in any respect whatsoever to any particular person, company, firm, or corporation, or any particular description of traffic in the United States or its possessions or to any citizens of the United States residing in neutral countries abroad, or is subjecting any particular person, company, firm, or corporation or any particular description of traffic in the United States or its possessions, or any citizens of the United States residing in neutral countries abroad to any undue or unreasonable prejudice, disadvantage, injury, or discrimination in regard to accepting, receiving, transporting, or delivering, or refusing to accept, receive, transfer, or deliver any cargo, freight, or passengers, or in any other respect whatsoever, he is authorized and empowered to direct the detention of such vessels by withholding clearance or by formal notice forbidding departure, and to revoke, modify, or renew any such direction.

Whenever, during the existence of a war in which the United States is not engaged, the President shall be satisfied that there is reasonable ground to believe that under the laws, regulations, or practices of any belligerent country or Government, American ships or American citizens are not accorded any of the facilities of commerce which the vessels or citizens of that belligerent country enjoy in the United States or its possessions, or are not accorded by such belligerent equal privileges or facilities of trade with vessels or citizens of any nationality other than that of such belligerent, the President is authorized and empowered to withhold clearance from one or more vessels of such belligerent country until such belligerent shall restore to such American vessels and American citizens reciprocal liberty of commerce and equal facilities of trade; or the President may direct that similar privileges and facilities, if any, enjoyed by vessels or citizens of such belligerent in the United States or its possessions be refused to vessels or citizens of such belligerent; and in such case he shall make proclamation of his direction, stating the facilities and privileges which shall be refused, and the belligerent to whose vessels or citizens they are to be refused, and thereafter the furnishing of such prohibited privileges and facilities to any vessel or citizen of the belligerent named in such proclamation shall be unlawful; and he may change, modify, revoke, or renew such proclamation; and any person or persons who shall furnish or attempt or conspire to furnish or be concerned in furnishing or in the concealment of furnishing facilities or privileges to ships or persons contrary to the prohibition in such proclamation shall be liable to a fine of not less than $2,000 nor more than $50,000 or to imprisonment not to exceed two years, or both, in the discretion of the court.

In case any vessel which is detained by virtue of this subchapter shall depart or attempt to depart from the jurisdiction of the United States without clearance or other lawful authority, the owner or master or person or persons having charge or command of such vessel shall be severally liable to a fine of not less than $2,000 nor more than $10,000, or to imprisonment not to exceed two years, or both, and in addition such vessel shall be forfeited to the United States.

The President of the United States is authorized and empowered to employ such part of the land or naval forces of the United States as shall be necessary to carry out the purposes of this subchapter.

(Sept. 8, 1916, ch. 463, title VIII, § 806, 39 Stat. 799.)

DELEGATION OF FUNCTIONS

For delegation to Secretary of Homeland Security of authority vested in President by this section, see section 1(j), (k) of Ex. Ord. No. 10637, Sept. 16, 1955, 20 F.R. 7025, as amended, set out as a note under section 301 of Title 3, The President.

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