''(1) it is feasible to fund some or all of the enforcement and market surveillance activities of the Commodity Futures Trading Commission, as required by the amendments to the Commodity Exchange Act made by the Futures Trading Practices Act of 1992 [see Short Title of 1992 Amendment note set out under section 1 of this title], through the imposition of an assessment on commodity futures and options transactions executed pursuant to the Commodity Exchange Act [7 U.S.C. 1 et seq.]; and

''(2) a program of assessment-based funding for some or all of such enforcement and market surveillance activities would better provide resources to the Commodity Futures Trading Commission to enable the Commission to—

''(A) protect the interests of market users (including hedgers and speculators), producers of commodities traded on the futures markets, and the general public; and

''(B) maintain and enhance the credibility of such futures and options markets.

''(b) REPORT.—Not later than one year after the date of enactment of this Act [Oct. 28, 1992], the Comptroller General shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report containing the Comptroller General's determinations pursuant to subsection (a), together with any appropriate recommendations for the implementation of such a program of assessment-based funding for some or all of the Commodity Futures Trading Commission's enforcement and market surveillance activities.''

§ 17. Separability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the chapter and of the application of such provision to other persons and circumstances shall not be affected thereby.

(Sept. 21, 1922, ch. 369, § 10, 42 Stat. 1003.)

§ 17a. Separability of 1936 amendment

If any provision of the act of June 15, 1936, ch. 545, 49 Stat. 1491, which amends this chapter, or the application thereof to any person or circumstances is held invalid, the provisions of the section of this chapter which is amended by such provision of said act shall apply to such person or circumstances. No proceeding shall be abated by reason of any amendment to this chapter made by said act but shall be disposed of pursuant to said act.

(June 15, 1936, ch. 545, § 12, 49 Stat. 1501.)

CODIFICATION

Section was not enacted as part of the Commodity Exchange Act which comprises this chapter.

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 17b. Separability of 1968 amendment

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby, and the provisions of the section of this chapter which is amended by such provision of this Act shall apply to such person or circumstances. Pending proceedings shall not be abated by reason of any provision of this Act but shall be disposed of pursuant to the provisions of this chapter, in effect prior to the effective date of this Act.

(Pub. L. 90–258, § 27, Feb. 19, 1968, 82 Stat. 34.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 90–258, Feb. 19, 1968, 82 Stat. 26. For complete classification of this Act to the Code, see Tables.

Effective date of this Act, referred to in text, as one hundred and twenty days after Feb. 19, 1968, see section 28 of Pub. L. 90–258, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

CODIFICATION

Section was not enacted as part of the Commodity Exchange Act which comprises this chapter.

§ 18. Complaints against registered persons

(a) Petition for actual damages

(1) Any person complaining of any violation of any provision of this chapter, or any rule, regulation, or order issued pursuant to this chapter, by any person who is registered under this chapter may, at any time within two years after the cause of action accrues, apply to the Commission for an order awarding—

(A) actual damages proximately caused by such violation. If an award of actual damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award; and

(B) in the case of any action arising from a willful and intentional violation in the execution of an order on the floor of a registered entity, punitive or exemplary damages equal to no more than two times the amount of such actual damages. If an award of punitive or exemplary damages is made against a floor broker in connection with the execution of a customer order, and the futures commission merchant which selected the floor broker for the execution of the customer order is held to be responsible under section 2(a)(1) of this title for the floor broker's violation, such futures commission merchant may be required to satisfy such award if the floor broker fails to do so, except that such requirement shall apply to the futures commission merchant only if it willfully and intentionally selected the floor broker with the intent to assist or facilitate the floor broker's violation.

(2)(A) An action may be brought under this subsection by any one or more persons described in this subsection for and in behalf of such person or persons and other persons similarly situated, if the Commission permits such actions pursuant to a final rule issued by the Commission.

(B) Not later than two hundred and seventy days after October 28, 1992, the Commission shall propose and publish for public comment such

rules as are necessary to carry out subparagraph (A). In developing such rules, the Commission shall consider the potential impact of such actions on resources available to the reparations system established under this chapter and the relative merits of bringing such actions in Federal court.

(b) Rules and regulations; control over right of appeal

The Commission may promulgate such rules, regulations, and orders as it deems necessary or appropriate for the efficient and expeditious administration of this section. Notwithstanding any other provision of law, such rules, regulations, and orders may prescribe, or otherwise condition, without limitation, the form, filing, and service of pleadings or orders, the nature and scope of discovery, counterclaims, motion practice (including the grounds for dismissal of any claim or counterclaim), hearings (including the waiver thereof, which may relate to the amount in controversy), rights of appeal, if any, and all other matters governing proceedings before the Commission under this section.

(c) Bond requirement when complainant is nonresident; waiver

In case a complaint is made by a nonresident of the United States, the complainant shall be required, before any formal action is taken on his complaint, to furnish a bond in double the amount of the claim conditioned upon the payment of costs, including a reasonable attorney's fee for the respondent if the respondent shall prevail, and any reparation award that may be issued by the Commission against the complainant on any counterclaim by respondent: *Provided*, That the Commission shall have authority to waive the furnishing of a bond by a complainant who is a resident of a country which permits the filing of a complaint by a resident of the United States without the furnishing of a bond.

(d) Enforcement of reparation award

(1) If any person against whom an award has been made does not pay the reparation award within the time specified in the Commission's order, the complainant, or any person for whose benefit such order was made, within three years of the date of the order, may file a certified copy of the order of the Commission, in the district court of the United States for the district in which he resides or in which is located the principal place of business of the respondent, for enforcement of such reparation award by appropriate orders. The orders, writs, and processes of such district court may in such case run, be served, and be returnable anywhere in the United States. The petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. Subject to the right of appeal under subsection (e) of this section, an order of the Commission awarding reparations shall be final and conclusive.

(2) A reparation award shall be directly enforceable in district court as if it were a judgment pursuant to section 1963 of title 28. This paragraph shall operate retroactively from the effective date of its enactment, and shall apply to all reparation awards for which a proceeding described in paragraph (1) is commenced within 3 years of the date of the Commission's order.

(e) Review

Any order of the Commission entered hereunder shall be reviewable on petition of any party aggrieved thereby, by the United States Court of Appeals for any circuit in which a hearing was held, or if no hearing was held, any circuit in which the appellee is located, under the procedure provided in sections 9 and 15 of this title. Such appeal shall not be effective unless within 30 days from and after the date of the reparation order the appellant also files with the clerk of the court a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States. The appellee shall not be liable for costs in said court. If the appellee prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs.

(f) Automatic bar from trading and suspension for noncompliance; effect of appeal

Unless the party against whom a reparation order has been issued shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for compliance with such order that either an appeal as herein authorized has been taken or payment of the full amount of the order (or any agreed settlement thereof) has been made, such party shall be prohibited automatically from trading on all registered entities and, if the party is registered with the Commission, such registration shall be suspended automatically at the expiration of such fifteen-day period until such party shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed, the automatic prohibition against trading and suspension of registration shall become effective at the expiration of thirty days from the date of judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction, the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.

(g) Predispute resolution agreements for institutional customers

Nothing in this section prohibits a registered futures commission merchant from requiring a customer that is an eligible contract participant, as a condition to the commission merchant's conducting a transaction for the customer, to enter into an agreement waiving the right to file a claim under this section.

(Sept. 21, 1922, ch. 369, § 14, as added Pub. L. 93–463, title I, § 106, Oct. 23, 1974, 88 Stat. 1393; amended Pub. L. 94–16, § 3, Apr. 16, 1975, 89 Stat. 77; Pub. L. 95–405, § 21, Sept. 30, 1978, 92 Stat. 875; Pub. L. 97–444, title II, § 231, Jan. 11, 1983, 96 Stat. 2319; Pub. L. 102–546, title II, §§ 209(b)(7), 222(b), 224, title IV, § 402(11), Oct. 28, 1992, 106 Stat. 3607, 3615, 3617, 3625; Pub. L. 106–554, § 1(a)(5) [title I, §§ 118, 123(a)(23)], Dec. 21, 2000, 114 Stat. 2763, 2763A–403, 2763A–410; Pub. L. 110–234, title XIII, § 13105(k), May 22, 2008, 122 Stat. 1435; Pub. L. 110–246, § 4(a), title XIII, § 13105(k), June 18, 2008, 122 Stat. 1664, 2197.)

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 made identical amendments to this section. The amendments by Pub. L. 110–234 were repealed by section 4(a) of Pub. L. 110–246.

AMENDMENTS

2008—Subsec. (d). Pub. L. 110–246, § 13105(k), designated existing provisions as par. (1) and added par. (2).

2000—Subsec. (a)(1)(B). Pub. L. 106–554, § 1(a)(5) [title I, § 123(a)(23)(A)], substituted ''registered entity'' for '' contract market''.

Subsec. (f). Pub. L. 106–554, § 1(a)(5) [title I, § 123(a)(23)(B)], substituted ''registered entities'' for '' contract markets''.

Subsec. (g). Pub. L. 106–554, § 1(a)(5) [title I, § 118], added subsec. (g) and struck out former subsec. (g) which read as follows: ''The provisions of this section shall not become effective until fifteen months after October 23, 1974: *Provided*, That claims which arise within one year immediately prior to the effective date of this section may be heard by the Commission after such 15-month period.''

1992—Subsec. (a). Pub. L. 102–546, § 224, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Pub. L. 102–546, § 222(b), substituted ''awarding—'' and pars. (1) and (2) for ''awarding actual damages proximately caused by such violation.''

Subsec. (e). Pub. L. 102–546, § 209(b)(7), made technical amendment to reference to sections 9 and 15 of this title to reflect change in reference to corresponding section of original act.

Subsec. (g). Pub. L. 102–546, § 402(11), substituted ''15-month'' for second reference to ''fifteen months''.

1983—Subsec. (a). Pub. L. 97–444, § 231(1), substituted provisions relating to complaints against violations by persons ''registered under this chapter'' for provisions relating to complaints against persons ''registered or required to be registered under section 6d, 6e, 6j, or 6m of this title'', and substituted provisions for application to Commission for an award of actual damages caused by such violation, for provisions authorizing application to Commission by petition, and forwarding of complaint, if warranted, to respondent for satisfaction or answer.

Subsec. (b). Pub. L. 97–444, § 231(2), substituted provisions relating to promulgation by Commission of rules, regulations, and orders necessary or appropriate for administration of this section, including rules of practice and procedure governing proceedings before the Commission, for provisions relating to investigation and service of complaint by Commission, and hearing thereon before an Administrative Law Judge, except that where amount claimed as damages did not exceed $5,000, hearing need not be held, and proofs could be supplied by deposition or verified statements of fact.

Subsec. (c). Pub. L. 97–444, § 231(3), (4), redesignated subsec. (d) as (c). Former subsec. (c), which provided that after opportunity for hearing on complaints where the damages claimed exceeded the sum of $5,000 had been provided or waived and on complaints where damages claimed did not exceed the sum of $5,000 not requiring hearing as provided herein, Commission would determine whether or not the respondent had violated any provision of this chapter or any rule, regulation, or order thereunder, was struck out.

Subsec. (d). Pub. L. 97–444, § 231(4), (5), redesignated subsec. (f) as (d) and substituted ''subsection (e)'' for ''subsection (g)''. Former subsec. (d) was redesignated (c).

Subsec. (e). Pub. L. 97–444, § 231(3), (4), redesignated subsec. (g) as (e). Former subsec. (e), which provided that if, after a hearing on a complaint made by any person under subsection (a) of this section, or without hearing as provided in subsections (b) and (c) of this section, or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Commission determined that the respondent had violated any provision of this chapter, or any rule, regulation, or order thereunder, the Commission would unless the offender had already made reparation to the person complaining, determine the amount of damage, if any, to which such person was entitled as a result of such violation and would make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order, and that if, after the respondent had filed his answer to the complaint, it appeared therein that the respondent had admitted liability for a portion of the amount claimed in the complaint as damages, the Commission under such rules and regulations as it would prescribe, unless the respondent had already made reparation to the person complaining, could issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination, with the remaining disputed amount to be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Commission with respect to the undisputed sum, was struck out.

Subsec. (f). Pub. L. 97–444, § 231(4), (6), redesignated subsec. (h) as (f), made certain grammatical changes, and inserted provision allowing party against whom a reparation order has been issued to show compliance by payment of the full amount of the order or any agreed settlement thereof.

Subsecs. (g) to (i). Pub. L. 97–444, § 231(4), redesignated subsecs. (g), (h), and (i), as (e), (f), and (g), respectively.

1978—Subsec. (a). Pub. L. 95–405, § 21(1), substituted ''who is registered or required to be registered'' for ''registered''.

Subsecs. (b), (c). Pub. L. 95–405, § 21(2), (3), substituted ''$5,000'' for ''$2,500'' wherever appearing.

1975—Subsec. (i). Pub. L. 94–16 substituted ''fifteen months'' for ''one year'' in two places, and ''one year'' for ''nine months''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective 120 days after Jan. 11, 1983, or such earlier date as the Commission shall prescribe by regulation, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–405 effective Oct. 1, 1978, see section 28 of Pub. L. 95–405, set out as a note under section 2 of this title.

§ 19. Consideration of costs and benefits and antitrust laws

(a) Costs and benefits

(1) In general

Before promulgating a regulation under this chapter or issuing an order (except as provided in paragraph (3)), the Commission shall consider the costs and benefits of the action of the Commission.

(2) Considerations

The costs and benefits of the proposed Commission action shall be evaluated in light of—

(A) considerations of protection of market participants and the public;

(B) considerations of the efficiency, competitiveness, and financial integrity of futures markets;

(C) considerations of price discovery;

(D) considerations of sound risk management practices; and

(E) other public interest considerations.

(3) Applicability

This subsection does not apply to the following actions of the Commission:

(A) An order that initiates, is part of, or is the result of an adjudicatory or investigative process of the Commission.

(B) An emergency action.

(C) A finding of fact regarding compliance with a requirement of the Commission.

(b) Antitrust laws

The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this chapter, as well as the policies and purposes of this chapter, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 6(c) or 6c(b) of this title), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 21 of this title.

(Sept. 21, 1922, ch. 369, § 15, as added Pub. L. 93–463, title I, § 107, Oct. 23, 1974, 88 Stat. 1395; amended Pub. L. 102–546, title V, § 502(b), Oct. 28, 1992, 106 Stat. 3631; Pub. L. 106–554, § 1(a)(5) [title I, § 119], Dec. 21, 2000, 114 Stat. 2763, 2763A–403.)

AMENDMENTS

2000—Pub. L. 106–554 inserted section catchline, added subsec. (a), designated existing provisions as subsec. (b), and inserted subsec. (b) heading.

1992—Pub. L. 102–546 substituted ''regulation (including any exemption under section 6(c) or 6c(b) of this title)'' for ''regulation''.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

§ 20. Market reports

(a) Information

The Commission may conduct regular investigations of the markets for goods, articles, services, rights, and interests which are the subject of futures contracts, and furnish reports of the findings of these investigations to the public on a regular basis. These market reports shall, where appropriate, include information on the supply, demand, prices, and other conditions in the United States and other countries with respect to such goods, articles, services, rights, interests, and information respecting the futures markets.

(b) Avoidance of duplication

The Commission shall cooperate with the Department of Agriculture and any other Department or Federal agency which makes market investigations to avoid unnecessary duplication of information-gathering activities.

(c) Furnishing of information; confidentiality

The Department of Agriculture and any other Department or Federal agency which has market information sought by the Commission shall furnish it to the Commission upon the request of any authorized employee of the Commission. The Commission shall abide by any rules of confidentiality applying to such information.

(d) Disclosure of business transactions, market positions, trade secrets, or names of customers

The Commission shall not disclose in such reports data and information which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers except as provided in section 12 of this title.

(e) Application

This section shall not apply to investigations involving any security underlying a security futures product.

(Sept. 21, 1922, ch. 369, § 16, as added Pub. L. 93–463, title IV, § 414, Oct. 23, 1974, 88 Stat. 1414; amended Pub. L. 97–444, title II, § 232, Jan. 11, 1983, 96 Stat. 2320; Pub. L. 106–554, § 1(a)(5) [title II, § 251(e)], Dec. 21, 2000, 114 Stat. 2763, 2763A–443.)

AMENDMENTS

2000—Subsec. (e). Pub. L. 106–554 added subsec. (e).

1983—Subsec. (d). Pub. L. 97–444 prohibited disclosure of market positions.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–444 effective Jan. 11, 1983, see section 239 of Pub. L. 97–444, set out as a note under section 2 of this title.

EFFECTIVE DATE

For effective date of section, see section 418 of Pub. L. 93–463, set out as an Effective Date of 1974 Amendment note under section 2 of this title.

STUDY OF TRADING IN CATTLE FUTURES CONTRACTS

Pub. L. 99–641, title I, § 111, Nov. 10, 1986, 100 Stat. 3561, provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct and complete a comprehensive study of the effect of trading in contracts for the future delivery of live cattle on the cash market price of live cattle, with particular emphasis on—

''(1) whether the reaction of the live cattle futures market to the results of the milk production termination program in March 1986, conducted under section 201(d)(3) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)(3)), was based on and accurately reflected the then prevailing conditions of supply and demand;