

§ 13a. Nonenforcement of rules of government or other violations; cease and desist orders; fines and penalties; imprisonment; misdemeanor; separate offenses

If any contract market is not enforcing or has not enforced its rules of government made a condition of its designation as set forth in section 7 of this title, or if any contract market, or any director, officer, agent, or employee of any contract market otherwise is violating or has violated any of the provisions of this chapter or any of the rules, regulations, or orders of the Commission thereunder, the Commission may, upon notice and hearing on the record and subject to appeal as in other cases provided for in section 8(b) of this title, make and enter an order directing that such contract market, director, officer, agent, or employee shall cease and desist from such violation, and assess a civil penalty of not more than \$500,000 for each such violation. If such contract market, director, officer, agent, or employee, after the entry of such a cease and desist order and the lapse of the period allowed for appeal of such order or after the affirmance of such order, shall fail or refuse to obey or comply with such order, such contract market, director, officer, agent, or employee shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500,000 or imprisoned for not less than six months nor more than one year, or both. Each day during which such failure or refusal to obey such cease and desist order continues shall be deemed a separate offense. If the offending contract market or other person upon whom such penalty is imposed, after the lapse of the period allowed for appeal or after the affirmance of such penalty, shall fail to pay such penalty, the Commission shall refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court. In determining the amount of the money penalty assessed under this section, the Commission shall consider the gravity of the offense, and in the case of a contract market shall further consider whether the amount of the penalty will materially impair the contract market's ability to carry on its operations and duties.

(Sept. 21, 1922, ch. 369, §6b, as added June 15, 1936, ch. 545, §9, 49 Stat. 1500; amended Feb. 19, 1968, Pub. L. 90-258, §18, 82 Stat. 31; Oct. 23, 1974, Pub. L. 93-463, title II, §212(b), 88 Stat. 1403; Sept. 30, 1978, Pub. L. 95-405, §14, 92 Stat. 872; Oct. 28, 1992, Pub. L. 102-546, title II, §§209(b)(5), 212(c), 106 Stat. 3607, 3609.)

AMENDMENTS

1992—Pub. L. 102-546 substituted "section 8(b) of this title" for "paragraph (a) of section 8 of this title", substituted "\$500,000" for "\$100,000" in two places, and in last sentence struck out "the appropriateness of such penalty to the net worth of the offending person and" after "Commission shall consider".

1978—Pub. L. 95-405 inserted "on the record" after "notice and hearing".

1974—Pub. L. 93-463 inserted provision for assessment of a civil penalty of not more than \$100,000 for each violation, substituted "not more than \$100,000" for "not less than \$500 nor more than \$10,000" as permissible range of fines imposed, inserted provisions for enforcement of a penalty, and substituted "orders of the Commission" for "orders of the Secretary of Agriculture or the commission".

1968—Pub. L. 90-258 amended section to clarify application only to boards of trade designated as contract markets, to include as grounds for cease and desist orders failure to enforce the market's rules of government made a condition of its designation and violation of rules or regulations of the commission or orders of the Secretary, and to authorize such orders in conjunction with a suspension or revocation of designation as a contract market rather than in lieu of suspension or revocation.

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.

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by Pub. L. 93-463, see section 418 of Pub. L. 93-463, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-258 effective 120 days after Feb. 19, 1968, see section 28 of Pub. L. 90-258, set out as a note under section 2 of this title.

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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6j, 12e of this title.

§ 13a-1. Enjoining or restraining violations

(a) Action to enjoin or restrain violations

Whenever it shall appear to the Commission that any contract market or other person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule, regulation, or order thereunder, or is restraining trading in any commodity for future delivery, the Commission may bring an action in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such act or practice, or to enforce compliance with this chapter, or any rule, regulation or order thereunder, and said courts shall have jurisdiction to entertain such actions: *Provided*, That no restraining order (other than a restraining order which prohibits any person from destroying, altering or disposing of, or refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records or other documents or which prohibits any person from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property, and other than an order appointing a temporary receiver to administer such restraining order and to perform such other duties as the court may consider appropriate) or injunction for violation of the provisions of this chapter shall be issued ex parte by said court.

(b) Injunction or restraining order

Upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond.

(c) Writs or other orders

Upon application of the Commission, the district courts of the United States and the United