REFERENCES IN TEXT

This chapter, referred to in provision preceding par. (1), and in pars. (10) and (13), was in the original ''this Act'', meaning Pub. L. 91–598, Dec. 30, 1970, 84 Stat. 1636. For complete classification of this Act to the Code, see Tables.

The Bankruptcy Act, referred to in provision preceding par. (1), is act July 1, 1898, ch. 541, 30 Stat. 544, as amended, which was classified generally to former Title 11, Bankruptcy. The Act was repealed effective Oct. 1, 1979, by Pub. L. 95–598, §§401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682, section 101 of which enacted revised Title 11.

The Securities Act of 1933, referred to in par. (14), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1987—Par. (12). Pub. L. 100–181 inserted ''other than a government securities broker or government securities dealer registered under section 78*o*–5(a)(1)(A) of this title''.

1982—Par. (14). Pub. L. 97–303 inserted ''any put, call, straddle, option, or privilege on any security, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency,'' after ''the Securities Act of 1933 [15 U.S.C.A. §77a et seq.]),'' and substituted ''Except as specifically provided above, the term 'security' does not include'' for ''The term 'security' does not include''.

1978—Par. (1). Pub. L. 95–598, §308(*o*)(1), (3), struck out par. (1) definition of ''Bankruptcy Act'' and redesignated par. (2) as (1).

Pars. (2) to (6). Pub. L. 95–598, §309(*o*)(3), redesignated pars. (3) to (7) as (2) to (6), respectively. Former par. (2) redesignated (1).

Par. (7). Pub. L. 95–598, §308(*o*)(2), (3), redesignated par. (8) as (7) and substituted in subpar. (A) ''if a petition under title 11 concerning the debtor was filed before such date'' for ''if a petition was filed before such date by or against the debtor under the Bankruptcy Act, or under chapter X or XI of such Act, as now in effect or as amended from time to time''. Former par. (7) redesignated (6).

Pars. (8) to (15). Pub. L. 95–598, §308(*o*)(3), redesignated pars. (9) to (15) as (8) to (14), respectively. Former par. (8) redesignated (7).

Pub. L. 95–283 in introductory text inserted requirement for applicability of terms to a liquidation proceeding involving the Bankruptcy Act, in par. (1) heading substituted ''Bankruptcy Act'' for ''Self-regulatory organization'', and in text substituted provisions defining such terms, in par. (2) heading substituted ''Commission'' for ''Financial responsibility rules'', and in text substituted provisions defining such terms, in par. (3) heading substituted ''Customer'' for ''Examining authority'', and in text substituted provisions defining such terms, and added pars. (4) to (15).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of section by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78ccc, 78fff, 78fff–4 of this title.

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 77ccc, 77hhh, 77jjj, 77kkk, 77www, 77zzz, 78c, 80a–2, 80a–3, 80a–37, 80a–49, 80b–2 of this title; title 7 section 12a; title 16 sections 824, 824a–3, 824e, 825d, 825q, 839f; title 29 sections 306, 432; title 42 section 7651b.

§ 79. Short title of chapter

This chapter may be cited as the ''Public Utility Holding Company Act of 1935''.

(Aug. 26, 1935, ch. 687, title I, § 36, formerly § 33, 49 Stat. 838; renumbered § 35, Oct. 24, 1992, Pub. L. 102–486, title VII, § 711, 106 Stat. 2905; renumbered § 36, Feb. 8, 1996, Pub. L. 104–104, title I, § 103, 110 Stat. 81.)

STATE AUTHORITIES; CONSTRUCTION

Section 731 of title VII of Pub. L. 102–486 provided that: ''Nothing in this title [enacting sections 79z–5a and 79z–5b of this title and sections 824*l*, 824m, and 825*o*–1 of Title 16, Conservation, amending sections 796, 824, 824j, 824k, 825n, 825*o*, and 2621 of Title 16, and amending provisions set out as a note under section 79k of this title] or in any amendment made by this title shall be construed as affecting or intending to affect, or in any way to interfere with, the authority of any State or local government relating to environmental protection or the siting of facilities.''

CROSS REFERENCES

Corporation of Foreign Bondholders Act, 1933, see section 77mm of this title.

Investment Advisers Act of 1940, see section 80b–20 of this title.

Investment Company Act of 1940, see section 80a–51 of this title.

Securities Act of 1933, see section 77a of this title.

Securities Exchange Act of 1934, see section 78a of this title.

Trust Indenture Act of 1939, see section 77aaa of this title.

§ 79a. Necessity for control of holding companies

(a) Interstate nature of holding companies

Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, (1) their securities are widely marketed and distributed by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States; (2) their service, sales, construction, and other contracts and arrangements are often made and performed by means of the mails and instrumentalities of interstate commerce; (3) their subsidiary public-utility companies often sell and transport gas and electric energy by the use of means and instrumentalities of interstate commerce; (4) their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage; (5) their activities extending over many States are not susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies.

(b) Protection of investors and interests of consumers

Upon the basis of facts disclosed by the reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session), the reports of the Committee on Interstate and Foreign Commerce, House of Representatives, made pursuant to H. Res. 59 (Seventy-second Congress, first session) and H. J. Res. 572 (Seventy-second Congress, second session) and otherwise disclosed and ascertained, it is declared that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers of electric energy and natural and manufactured gas, are or may be adversely affected—

(1) when such investors cannot obtain the information necessary to appraise the financial position or earning power of the issuers, because of the absence of uniform standard accounts; when such securities are issued without the approval or consent of the States having jurisdiction over subsidiary public-utility companies; when such securities are issued

upon the basis of fictitious or unsound asset values having no fair relation to the sums invested in or the earning capacity of the properties and upon the basis of paper profits from intercompany transactions, or in anticipation of excessive revenues from subsidiary public-utility companies; when such securities are issued by a subsidiary public-utility company under circumstances which subject such company to the burden of supporting an overcapitalized structure and tend to prevent voluntary rate reductions;

(2) when subsidiary public-utility companies are subjected to excessive charges for services, construction work, equipment, and materials, or enter into transactions in which evils result from an absence of arm's-length bargaining or from restraint of free and independent competition; when service, management, construction, and other contracts involve the allocation of charges among subsidiary public-utility companies in different States so as to present problems of regulation which cannot be dealt with effectively by the States;

(3) when control of subsidiary public-utility companies affects the accounting practices and rate, dividend, and other policies of such companies so as to complicate and obstruct State regulation of such companies, or when control of such companies is exerted through disproportionately small investment;

(4) when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties; or

(5) when in any other respect there is lack of economy of management and operation of public-utility companies or lack of efficiency and adequacy of service rendered by such companies, or lack of effective public regulation, or lack of economies in the raising of capital.

(c) Declaration of policy of chapter

When abuses of the character above enumerated become persistent and wide-spread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is declared to be the policy of this chapter, in accordance with which policy all the provisions of this chapter shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this chapter.

(Aug. 26, 1935, ch. 687, title I, § 1, 49 Stat. 803.)

CHANGE OF NAME

Committee on Interstate and Foreign Commerce of House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. 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.

CROSS REFERENCES

Findings and declaration of policy under Investment Company Act of 1940, see section 80a–1 of this title.

Findings under Investment Advisers Act of 1940, see section 80b–1 of this title.

Necessity for regulation under—

Securities Exchange Act of 1934, see section 78b of this title.

Trust Indenture Act of 1939, see section 77bbb of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 839f.

§ 79b. Definitions; application of chapter

(a) Definitions

When used in this chapter, unless the context otherwise requires—

(1) ''Person'' means an individual or company.

(2) ''Company'' means a corporation, a partnership, an association, a joint-stock company, a business trust, or an organized group of persons, whether incorporated or not; or any receiver, trustee, or other liquidating agent of any of the foregoing in his capacity as such.

(3) ''Electric utility company'' means any company which owns or operates facilities used for the generation, transmission, or distribution of electric energy for sale, other than sale to tenants or employees of the company operating such facilities for their own use and not for resale. The Commission, upon application, shall by order declare a company operating any such facilities not to be an electric utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of an electric utility company, and by reason of the small amount of electric energy sold by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered an electric utility company for the purposes of this chapter, or (B) such company is one operating within a single State, and substantially all of its outstanding securities are owned directly or indirectly by another company to which such operating company sells or furnishes electric energy which it generates; such other company uses and does not resell such electric energy, is engaged primarily in manufacturing (other than the manufacturing of electric energy or gas) and is not controlled by any other company; and by reason of the small amount of electric energy sold or furnished by such operating company to other persons it is not necessary in the public interest or for the protection of investors or consumers that it be considered an electric utility company for the purposes of this chapter. The filing of an application hereunder in good faith shall exempt such company (and the owner of the facilities operated by such company) from the applica-

tion of this paragraph until the Commission has acted upon such application. As a condition to the entry of any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clause (A) or (B) of this paragraph are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clause (A) or (B) of this paragraph, and the owners of the facilities operated by such companies, shall not be deemed electric utility companies within the meaning of this paragraph.

(4) ''Gas utility company'' means any company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. The Commission, upon application, shall by order declare a company operating any such facilities not to be a gas utility company if the Commission finds that (A) such company is primarily engaged in one or more businesses other than the business of a gas utility company, and (B) by reason of the small amount of natural or manufactured gas distributed at retail by such company it is not necessary in the public interest or for the protection of investors or consumers that such company be considered a gas utility company for the purposes of this chapter. The filing of an application hereunder in good faith shall exempt such company (and the owner of the facilities operated by such company) from the application of this paragraph until the Commission has acted upon such application. As a condition to the entry of any such order, and as a part thereof, the Commission may require application to be made periodically for a renewal of such order, and may require the filing of such periodic or special reports regarding the business of the company as the Commission may find necessary or appropriate to insure that such company continues to be entitled to such exemption during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke such order whenever it finds that the conditions specified in clauses (A) and (B) of this paragraph are not satisfied in the case of such company. Any action of the Commission under the preceding sentence shall be by order. Application under this paragraph may be made by the company in respect of which the order is to be issued or by the owner of the facilities operated by such company. Any order issued under this paragraph shall apply equally to such company and such owner. The Commission may by rules or regulations conditionally or unconditionally provide that any specified class or classes of companies which it determines to satisfy the conditions specified in clauses (A) and (B) of this paragraph, and the owners of the facilities operated by such companies, shall not be deemed gas utility companies within the meaning of this paragraph.

(5) ''Public-utility company'' means an electric utility company or a gas utility company.

(6) ''Commission'' means the Securities and Exchange Commission.

(7) ''Holding company'' means—

(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B) of this paragraph, unless the Commission, as hereinafter provided, by order declares such company not to be a holding company; and

(B) any person which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this chapter upon holding companies.

The Commission, upon application, shall by order declare that a company is not a holding company under clause (A) of this paragraph if the Commission finds that the applicant (i) does not, either alone or pursuant to an arrangement or understanding with one or more other persons, directly or indirectly control a public-utility or holding company either through one or more intermediary persons or by any means or device whatsoever, (ii) is not an intermediary company through which such control is exercised, and (iii) does not, directly or indirectly, exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon holding companies. The filing of an application hereunder in good faith by a company other than a registered holding company shall exempt the applicant from any

obligation, duty, or liability imposed in this chapter upon the applicant as a holding company, until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of any order granting such application and as a part of any such order, the Commission may require the applicant to apply periodically for a renewal of such order and to do or refrain from doing such acts or things, in respect of exercise of voting rights, control over proxies, designation of officers and directors, existence of interlocking officers, directors and other relationships, and submission of periodic or special reports regarding affiliations or intercorporate relationships of the applicant, as the Commission may find necessary or appropriate to ensure that in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) of this paragraph are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application of the company affected, shall revoke the order declaring such company not to be a holding company whenever in its judgment any condition specified in clauses (i), (ii), or (iii) of this paragraph is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) of this paragraph are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order.

(8) ''Subsidiary company'' of a specified holding company means—

(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B) of this paragraph), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies.

The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) of this paragraph if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) of this paragraph are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clauses (i), (ii), or (iii) of this paragraph is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) of this paragraph are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order. Any application under this paragraph may be made by the holding company or the company in respect of which the order is to be entered, but as used in this paragraph the term ''applicant'' means only the company in respect of which the order is to be entered.

(9) ''Holding-company system'' means any holding company, together with all its subsidiary companies, and all mutual service companies (as defined in paragraph (13) of this subsection) of which such holding company or any subsidiary company thereof is a member company (as defined in paragraph (14) of this subsection).

(10) ''Associate company'' of a company means any company in the same holding-company system with such company.

(11) ''Affiliate'' of a specified company means—

(A) any person that directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of such specified company;

(B) any company 5 per centum or more of whose outstanding voting securities are owned, controlled, or held with power to vote, directly or indirectly, by such specified company;

(C) any individual who is an officer or director of such specified company, or of any company which is an affiliate thereof under clause (A) of this paragraph; and

(D) any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to such specified company that there is liable to be such an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this chapter upon affiliates of a company.

(12) ''Registered holding company'' means a person whose registration is in effect under section 79e of this title.

(13) ''Mutual service company'' means a company approved as a mutual service company under section 79m of this title.

(14) ''Member company'' means a company which is a member of an association or group of companies mutually served by a mutual service company.

(15) ''Director'' means any director of a corporation or any individual who performs similar functions in respect of any company.

(16) ''Security'' means any note, draft, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, receiver's or trustee's certificate, or, in general, any instrument commonly known as a ''security''; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase, any of the foregoing.

(17) ''Voting security'' means any security presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company, or any security issued under or pursuant to any trust, agreement, or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such security are presently entitled to vote in the direction or management of the affairs of a company; and a specified per centum of the outstanding voting securities of a company means such amount of the outstanding voting securities of such company as entitles the holder or holders thereof to cast said specified per centum of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast in the direction or management of the affairs of such company.

(18) ''Utility assets'' means the facilities, in place, of any electric utility company or gas utility company for the production, transmission, transportation, or distribution of electric energy or natural or manufactured gas.

(19) ''Service contract'' means any contract, agreement, or understanding whereby a person undertakes to sell or furnish, for a charge, any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service, information, or data.

(20) ''Sales contract'' means any contract, agreement, or understanding whereby a person undertakes to sell, lease, or furnish, for a charge, any goods, equipment, materials, supplies, appliances, or similar property. As used in this paragraph the term ''property'' does not include electric energy or natural or manufactured gas.

(21) ''Construction contract'' means any contract, agreement, or understanding for the construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company for a charge.

(22) ''Buy'', ''acquire'', ''acquisition'', or ''purchase'' includes any purchase, acquisition by lease, exchange, merger, consolidation, or other acquisition.

(23) ''Sale'' or ''sell'' includes any sale, disposition by lease, exchange or pledge, or other disposition.

(24) ''State'' means any State of the United States or the District of Columbia.

(25) ''United States'', when used in a geographical sense, means the States.

(26) ''State commission'' means any commission, board, agency, or officer, by whatever name designated, of a State, municipality, or other political subdivision of a State which under the law of such State has jurisdiction to regulate public-utility companies.

(27) ''State securities commission'' means any commission, board, agency, or officer, by whatever name designated, other than a State commission as defined in paragraph (26) of this subsection, which under the law of a State has jurisdiction to regulate, approve, or control the issue or sale of a security by a company.

(28) ''Interstate commerce'' means trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(29) ''Integrated public-utility system'' means—

(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical

interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation: *Provided*, That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region.

(b) Order of Commission essential to status as "holding company", "subsidiary company", or "affiliate"

No person shall be deemed to be a holding company under clause (B) of paragraph (7) of subsection (a) of this section, or a subsidiary company under clause (B) of paragraph (8) of such subsection, or an affiliate under clause (D) of paragraph (11) of such subsection, unless the Commission, after appropriate notice and opportunity for hearing, has issued an order declaring such person to be a holding company, a subsidiary company, or an affiliate, or declaring a class of which such person is a member to be affiliates. Such an order shall not become effective for at least thirty days after the mailing of a copy thereof to the person thereby declared to be a holding company, subsidiary company, or affiliate; or, in the case of determination of affiliates by classes, until at least thirty days after appropriate publication thereof in such manner as the Commission shall determine. Whenever the Commission, on its own motion or upon application by the person declared to be a holding company, subsidiary company, or affiliate, finds that the circumstances which gave rise to the issuance of any such order no longer exist, the Commission shall by order revoke such order.

(c) Chapter inapplicable to United States, States, or their governmental agencies

No provision in this chapter shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(Aug. 26, 1935, ch. 687, title I, § 2, 49 Stat. 804.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

NONAPPLICABILITY OF CHAPTER

Pub. L. 102–486, title IV, § 404(c), Oct. 24, 1992, 106 Stat. 2880, provided that:

"(1) A company shall not be considered to be a gas utility company under section 2(a)(4) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79b(a)(4)) solely because it owns or operates facilities used for the distribution at retail of vehicular natural gas.

"(2) Notwithstanding section 11(b)(1) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79k(b)(1)), a holding company registered under such Act [15 U.S.C. 79 et seq.] solely by reason of the application of section 2(a)(7)(A) or (B) of such Act with respect to control of a gas utility company or subsidiary thereof, may acquire or retain, in any geographic area, any interest in a company that is not a public utility company and which, as a primary business, is involved in the sale of vehicular natural gas or the manufacture, sale, transport, installation, servicing, or financing of equipment related to the sale for consumption of vehicular natural gas.

"(3) The sale or transportation of vehicular natural gas by a company, or any subsidiary of such company, shall not be taken into consideration in determining whether under section 3 of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79c) such company is exempt from registration.

"(4) For purposes of this subsection, terms that are defined under the Public Utility Holding Company Act of 1935 shall have the meaning given such terms in such Act.

"(5) For purposes of this subsection, the term 'vehicular natural gas' means natural or manufactured gas that is ultimately used as a fuel in a self-propelled vehicle."

CROSS REFERENCES

Affiliate, unlawful acquisition of security of public-utility company, see section 79i of this title.

Applicability to United States, States or their governmental agencies of—

- Investment Advisers Act of 1940, see section 80b–2 of this title.
- Investment Company Act of 1940, see section 80a–2 of this title.
- Securities Exchange Act of 1934, see section 78c of this title.

Definition of terms—

- Director, voting security, and sale or sell under Indenture Trust Act of 1939, see section 77ccc of this title.
- Person, company, affiliated company, affiliated person, director, security, voting security, and sale or sell under Investment Company Act of 1940, see section 80a–2 of this title.
- Person, company, director, and security under Investment Advisers Act of 1940, see section 80b–2 of this title.
- Person, director, security, and sale or sell under Securities Exchange Act of 1934, see section 78c of this title.
- Person, security, and sale or sell under Securities Act of 1933, see section 77b of this title.
- Registered holding company, subsidiary company, associate company, and affiliate as applicable to issue or sale by registered holding company of its securities to indenture trustee of such company, see section 77kkk of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 77kkk, 79i, 79z–5a, 79z–5b, 79z–5c of this title; title 16 sections 824m, 839f; title 26 section 1083; title 42 section 7651*o*.

§ 79c. Exemptions regarding holding companies

(a) Exemption of holding companies

The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this chapter, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;

(3) such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public-utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company;

(4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities; or

(5) such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

(b) Exemption of subsidiary companies of holding company

The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any subsidiary company, as such, of a holding company from any provision or provisions of this chapter, the application of which to such subsidiary company the Commission finds is not necessary in the public interest or for the protection of investors, if such subsidiary company derives no material part of its income, directly or indirectly, from sources within the United States, and neither it nor any of its subsidiary companies is a public-utility company operating in the United States.

(c) Filing for exemption

Within a reasonable time after the receipt of an application for exemption under subsection (a) or (b) of this section, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application. The filing of an application in good faith under subsection (a) of this section by a person other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a holding company until the Commission has acted upon such application. The filing of an application in good faith under subsection (b) of this section shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a subsidiary company until the Commission has acted upon such application. Whenever the Commission, on its own motion, or upon application by the holding company or any subsidiary company thereof exempted by any order issued under subsection (a) of this section, or by the subsidiary company exempted by any order issued under subsection (b) of this section, finds that the circumstances which gave rise to the issuance of such order no longer exist, the Commission shall by order revoke such order.

(d) Exemption of specified class or classes of persons

The Commission may, by rules and regulations, conditionally or unconditionally exempt any specified class or classes of persons from the obligations, duties, or liabilities imposed upon such persons as subsidiary companies or affiliates under any provision or provisions of this chapter, and may provide within the extent of any such exemption that such specified class or classes of persons shall not be deemed subsidiary companies or affiliates within the meaning of any such provision or provisions, if and to the extent that it deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this chapter.

(Aug. 26, 1935, ch. 687, title I, § 3, 49 Stat. 810.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 79t of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 79z–5, 79z–5b, 79z–5c of this title; title 26 section 1081.

§ 79d. Transactions by unregistered holding companies

(a) Transactions after December 1, 1935

After December 1, 1935, unless a holding company is registered under section 79e of this title, it shall be unlawful for such holding company, directly or indirectly—

(1) to sell, transport, transmit, or distribute, or own or operate any utility assets for the

transportation, transmission, or distribution of, natural or manufactured gas or electric energy in interstate commerce;

(2) by use of the mails or any means or instrumentality of interstate commerce, to negotiate, enter into, or take any step in the performance of, any service, sales, or construction contract undertaking to perform services or construction work for, or sell goods to, any public-utility company or holding company;

(3) to distribute or make any public offering for sale or exchange of any security of such holding company, any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company, by use of the mails or any means or instrumentality of interstate commerce, or to sell any such security having reason to believe that such security, by use of the mails or any means or instrumentality of interstate commerce, will be distributed or made the subject of a public offering;

(4) by use of the mails or any means or instrumentality of interstate commerce, to acquire or negotiate for the acquisition of any security or utility assets of any subsidiary company or affiliate of such holding company, any public-utility company, or any holding company;

(5) to engage in any business in interstate commerce; or

(6) to own, control, or hold with power to vote, any security of any subsidiary company thereof that does any of the acts enumerated in paragraphs (1) to (5) of this subsection.

(b) Outstanding securities held by nonresidents; registration

Every holding company which has outstanding any security any of which, by use of the mails or any means or instrumentality of interstate commerce, has been distributed or made the subject of a public offering subsequent to January 1, 1925, and any of which security was owned or held on October 1, 1935 (or, if such company is not a holding company on that date, on the date such company becomes a holding company) by persons not resident in the State in which such holding company is organized, shall register under section 79e of this title on or before December 1, 1935 or the thirtieth day after such company becomes a holding company, whichever date is later.

(Aug. 26, 1935, ch. 687, title I, § 4, 49 Stat. 812.)

CROSS REFERENCES

Fine for violation by holding company, see section 79z–3 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 79z–3 of this title.

§ 79e. Registration of holding companies

(a) Notification of registration; effective date of registration

On or at any time after October 1, 1935, any holding company or any person purposing to become a holding company may register by filing with the Commission a notification of registration, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. A person shall be deemed to be registered upon receipt by the Commission of such notification of registration.

(b) Registration statement; contents

It shall be the duty of every registered holding company to file with the Commission, within such reasonable time after registration as the Commission shall fix by rules and regulations or order, a registration statement in such form as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such registration statement shall include—

(1) such copies of the charter or articles of incorporation, partnership, or agreement, with all amendments thereto, and the bylaws, trust indentures, mortgages, underwriting arrangements, voting-trust agreements, and similar documents, by whatever name known, of or relating to the registrant or any of its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers;

(2) such information in such form and in such detail relating to, and copies of such documents of or relating to, the registrant and its associate companies as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

(A) the organization and financial structure of such companies and the nature of their business;

(B) the terms, position, rights, and privileges of the different classes of their securities outstanding;

(C) the terms and underwriting arrangements under which their securities, during not more than the five preceding years, have been offered to the public or otherwise disposed of and the relations of underwriters to, and their interest in, such companies;

(D) the directors and officers of such companies, their remuneration, their interest in the securities of, their material contracts with, and their borrowings from, any of such companies;

(E) bonus and profit-sharing arrangements;

(F) material contracts, not made in the ordinary course of business, and service, sales, and construction contracts;

(G) options in respect of securities;

(H) balance sheets for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(I) profit and loss statements for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission, by an independent public accountant;

(3) such further information or documents regarding the registrant or its associate com-

panies or the relations between them as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(c) Preliminary registration statement prior to complete statement

The Commission by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors or consumers, may permit a registrant to file a preliminary registration statement without complying with the provisions of subsection (b) of this section; but every registrant shall file a complete registration statement with the Commission within such reasonable period of time as the Commission shall fix by rules and regulations or order, but not later than one year after the date of registration.

(d) Cessation of existence as holding company

Whenever the Commission, upon application, finds that a registered holding company has ceased to be a holding company, it shall so declare by order and upon the taking effect of such order the registration of such company shall, upon such terms and conditions as the Commission finds and in such order prescribes as necessary for the protection of investors, cease to be in effect. The denial of any such application by the Commission shall be by order.

(Aug. 26, 1935, ch. 687, title I, § 5, 49 Stat. 812.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Approval of acquisition of securities and utility assets and other interests, application for containing information and documents required by this section, see section 79j of this title.

Periodic and other reports, see section 79n of this title.

Registered holding company, definition of, see section 79b of this title.

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 79t of this title.

Transactions by unregistered holding companies unlawful, see section 79d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 79b, 79d, 79n of this title.

§ 79f. Unlawful transactions by registered companies

(a) Issuing, selling, or altering rights of stockholders to declaration

Except in accordance with a declaration effective under section 79g of this title and with the order under such section permitting such declaration to become effective, it shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly (1) to issue or sell any security of such company; or (2) to exercise any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security of such company.

(b) Exemptions from operation of subsection (a)

The provisions of subsection (a) of this section shall not apply to the issue, renewal, or guaranty by a registered holding company or subsidiary company thereof of a note or draft (including the pledge of any security as collateral therefor) if such note or draft (1) is not part of a public offering, (2) matures or is renewed for not more than nine months, exclusive of days of grace, after the date of such issue, renewal, or guaranty thereof, and (3) aggregates (together with all other then outstanding notes and drafts of a maturity of nine months or less, exclusive of days of grace, as to which such company is primarily or secondarily liable) not more than 5 per centum of the principal amount and par value of the other securities of such company then outstanding, or such greater per centum thereof as the Commission upon application may by order authorize as necessary or appropriate in the public interest or for the protection of investors or consumers. In the case of securities having no principal amount or no par value, the value for the purposes of this subsection shall be the fair market value as of the date of issue. The Commission by rules and regulations or order, subject to such terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers, shall exempt from the provisions of subsection (a) of this section the issue or sale of any security by any subsidiary company of a registered holding company, if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company and have been expressly authorized by the State commission of the State in which such subsidiary company is organized and doing business, or if the issue and sale of such security are solely for the purpose of financing the business of such subsidiary company when such subsidiary company is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public utility company, or an investment company. The provisions of subsection (a) of this section shall not apply to the issue, by a registered holding company or subsidiary company thereof, of a security issued pursuant to the terms of any security outstanding on January 1, 1935, giving the holder of such outstanding security the right to convert such outstanding security into another security of the same issuer or of another person, or giving the right to subscribe to another security of the same issuer or another issuer. Within ten days after any issue, sale, renewal, or guaranty exempted from the application of subsection (a) of this section by or under authority of this subsection, such holding company or subsidiary company thereof shall file with the Commission a certificate of notification in such form and setting forth such of the information required in a declaration under section 79g of this title as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public inter-

est or for the protection of investors or consumers.

(c) Selling from house to house; causing officer or employer of subsidiary to sell

It shall be unlawful, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, for any registered holding company or any subsidiary company thereof, directly or indirectly—

(1) to sell or offer for sale or to cause to be sold or offered for sale, from house to house, any security of such holding company; or

(2) to cause any officer or employee of any subsidiary company of such holding company to sell or cause to be sold any security of such holding company.

As used in this subsection the term ''house'' shall not include an office used for business purposes.

(Aug. 26, 1935, ch. 687, title I, § 6, 49 Stat. 814.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Declarations by registered companies in respect to security transactions, see section 79g of this title.

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 79t of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 79g of this title.

§ 79g. Declarations by registered companies in respect to security transactions

(a) Contents

A registered holding company or subsidiary company thereof may file a declaration with the Commission, regarding any of the acts enumerated in subsection (a) of section 79f of this title, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such declaration shall include—

(1) such of the information and documents which are required to be filed in order to register a security under section 77g of this title, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers; and

(2) such additional information, in such form and detail, and such documents regarding the declarant or any associate company thereof, the particular security and compliance with such State laws as may apply to the act in question as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(b) Effective date of declaration; order of Commission

A declaration filed under this section shall become effective within such reasonable period of time after the filing thereof as the Commission shall fix by rules and regulations or order, unless the Commission prior to the expiration of such period shall have issued an order to the declarant to show cause why such declaration should become effective. Within a reasonable time after an opportunity for hearing upon an order to show cause under this subsection, unless the declarant shall withdraw its declaration, the Commission shall enter an order either permitting such declaration to become effective as filed or amended, or refusing to permit such declaration to become effective. Amendments to a declaration may be made upon such terms and conditions as the Commission may prescribe.

(c) Conditions precedent to permitting declaration to become effective

The Commission shall not permit a declaration regarding the issue or sale of a security to become effective unless it finds that—

(1) such security is (A) a common stock having a par value and being without preference as to dividends or distribution over, and having at least equal voting rights with, any outstanding security of the declarant; (B) a bond (i) secured by a first lien on physical property of the declarant, or (ii) secured by an obligation of a subsidiary company of the declarant secured by a first lien on physical property of such subsidiary company, or (iii) secured by any other assets of the type and character which the Commission by rules and regulations or order may prescribe as appropriate in the public interest or for the protection of investors; (C) a guaranty of, or assumption of liability on, a security of another company; or (D) a receiver's or trustee's certificate duly authorized by the appropriate court or courts; or

(2) such security is to be issued or sold solely (A) for the purpose of refunding, extending, exchanging, or discharging an outstanding security of the declarant and/or a predecessor company thereof or for the purpose of effecting a merger, consolidation, or other reorganization; (B) for the purpose of financing the business of the declarant as a public-utility company; (C) for the purpose of financing the business of the declarant, when the declarant is neither a holding company nor a public-utility company; and/or (D) for necessary and urgent corporate purposes of the declarant where the requirements of the provisions of paragraph (1) of this subsection would impose an unreasonable financial burden upon the declarant and are not necessary or appropriate in the public interest or for the protection of investors or consumers; or

(3) such security is one the issuance of which was authorized by the company prior to January 1, 1935, and which the Commission by rules and regulations or order authorizes as necessary or appropriate in the public interest or for the protection of investors or consumers.

(d) Conditions having permission of effectiveness

If the requirements of subsections (c) and (g) of this section are satisfied, the Commission shall permit a declaration regarding the issue or sale of a security to become effective unless the Commission finds that—

(1) the security is not reasonably adapted to the security structure of the declarant and other companies in the same holding-company system;

(2) the security is not reasonably adapted to the earning power of the declarant;

(3) financing by the issue and sale of the particular security is not necessary or appropriate to the economical and efficient operation of a business in which the applicant lawfully is engaged or has an interest;

(4) the fees, commissions, or other remuneration, to whomsoever paid, directly or indirectly, in connection with the issue, sale, or distribution of the security are not reasonable;

(5) in the case of a security that is a guaranty of, or assumption of liability on, a security of another company, the circumstances are such as to constitute the making of such guaranty or the assumption of such liability an improper risk for the declarant; or

(6) the terms and conditions of the issue or sale of the security are detrimental to the public interest or the interest of investors or consumers.

(e) Declaration regarding alterations, priorities, voting power, and other rights of security holders

If the requirements of subsection (g) of this section are satisfied, the Commission shall permit a declaration to become effective regarding the exercise of a privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of an outstanding security unless the Commission finds that such exercise of such privilege or right will result in an unfair or inequitable distribution of voting power among holders of the securities of the declarant or is otherwise detrimental to the public interest or the interest of investors or consumers.

(f) Order permitting declaration to become effective

Any order permitting a declaration to become effective may contain such terms and conditions as the Commission finds necessary to assure compliance with the conditions specified in this section.

(g) Compliance with State laws as condition to permission of effectiveness

If a State commission or State securities commission, having jurisdiction over any of the acts enumerated in subsection (a) of section 79f of this title, shall inform the Commission, upon request by the Commission for an opinion or otherwise, that State laws applicable to the act in question have not been complied with, the Commission shall not permit a declaration regarding the act in question to become effective until and unless the Commission is satisfied that such compliance has been effected.

(Aug. 26, 1935, ch. 687, title I, § 7, 49 Stat. 815.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 79t of this title.

Unlawful transactions by registered companies except in accordance with declaration effective under this section, see section 79f of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 79f of this title.

§ 79h. Acquiring interest in electric and gas companies serving same territory

Whenever a State law prohibits, or requires approval or authorization of, the ownership or operation by a single company of the utility assets of an electric utility company and a gas utility company serving substantially the same territory, it shall be unlawful for a registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise—

(1) to take any step, without the express approval of the State commission of such State, which results in its having a direct or indirect interest in an electric utility company and a gas utility company serving substantially the same territory; or

(2) if it already has any such interest, to acquire, without the express approval of the State commission, any direct or indirect interest in an electric utility company or gas utility company serving substantially the same territory as that served by such companies in which it already has an interest.

(Aug. 26, 1935, ch. 687, title I, § 8, 49 Stat. 817; Dec. 4, 1987, Pub. L. 100–181, title IV, § 401, 101 Stat. 1259.)

AMENDMENTS

1987—Pub. L. 100–181 substituted ''otherwise—'' for ''otherwise,—''.

CROSS REFERENCES

Approval of unlawful or detrimental acquisitions barred, see section 79j of this title.

§ 79i. Acquisition of securities and utility assets and other interests

(a) Acquisition prohibited prior to Commission approval

Unless the acquisition has been approved by the Commission under section 79j of this title, it shall be unlawful—

(1) for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to acquire, directly or indirectly, any securities or utility assets or any other interest in any business;

(2) for any person, by use of the mails or any means or instrumentality of interstate commerce, to acquire, directly or indirectly, any security of any public-utility company, if such person is an affiliate under clause (A) of paragraph (11) of subsection (a) of section 79b of this title, of such company and of any other public utility or holding company, or will by virtue of such acquisition become such an affiliate.

(b) Acquisition of utility assets authorized by State Commission; holding company systems organized in same State

Subsection (a) of this section shall not apply to—

(1) the acquisition by a public-utility company of utility assets the acquisition of which has been expressly authorized by a State commission; or

(2) the acquisition by a public-utility company of securities of a subsidiary public-utility company thereof, provided that both such public-utility companies and all other public-utility companies in the same holding-company system are organized in the same State, that the business of each such company in such system is substantially confined to such State, and that the acquisition of such securities has been expressly authorized by the State commission of such State.

(c) Acquisition of securities guaranteed by United States, State, or political subdivision; other securities and commercial paper held appropriate by Commission

Subsection (a) of this section shall not apply to the acquisition by a registered holding company, or a subsidiary company thereof, of—

(1) securities of, or securities the principal or interest of which is guaranteed by, the United States, a State, or political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing;

(2) such other readily marketable securities within the limitation of such amounts, as the Commission may by rules and regulations prescribe as appropriate for investment of current funds and as not detrimental to the public interest or the interest of investors or consumers; or

(3) such commercial paper and other securities, within such limitations, as the Commission may by rules and regulations or order prescribe as appropriate in the ordinary course of business of a registered holding company or subsidiary company thereof and as not detrimental to the public interest or the interest of investors or consumers.

(Aug. 26, 1935, ch. 687, title I, § 9, 49 Stat. 817.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations, authority of Commission to make, issue, amend, and rescind, see section 79t of this title.

§ 79j. Approval of acquisition of securities and utility assets and other interests

(a) Contents of application

A person may apply for approval of the acquisition of securities or utility assets, or of any other interest in any business, by filing an application in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors and consumers. Such application shall include—

(1) in the case of the acquisition of securities, such information and copies of such documents as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers in respect of—

(A) the security to be acquired, the consideration to be paid therefor, and compliance with such State laws as may apply in respect of the issue, sale, or acquisition thereof,

(B) the outstanding securities of the company whose security is to be acquired, the terms, position, rights, and privileges of each class and the options in respect of any such securities,

(C) the names of all security holders of record (or otherwise known to the applicant) owning, holding, or controlling 1 per centum or more of any class of security of such company, the officers and directors of such company, and their remuneration, security holdings in, material contracts with, and borrowings from such company and the offices or directorships held, and securities owned, held, or controlled, by them in other companies,

(D) the bonus, profit-sharing and voting-trust agreements, underwriting arrangements, trust indentures, mortgages, and similar documents, by whatever name known, of or relating to such company,

(E) the material contracts, not made in the ordinary course of business, and the service, sales, and construction contracts of such company,

(F) the securities owned, held, or controlled, directly or indirectly, by such company,

(G) balance sheets and profit and loss statements of such company for not more than the five preceding fiscal years, certified, if required by the rules and regulations of the Commission by an independent public accountant,

(H) any further information regarding such company and any associate company or affiliate thereof or its relations with the applicant company, and

(I) if the applicant be not a registered holding company, any of the information and documents which may be required under section 79e of this title from a registered holding company;

(2) in the case of the acquisition of utility assets, such information concerning such assets, the value thereof and consideration to be paid therefor, the owner or owners thereof and their relation to, agreements with, and interest in the securities of, the applicant or any associate company thereof as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers; and

(3) in the case of the acquisition of any other interest in any business, such information

concerning such business and the interest to be acquired, and the consideration to be paid, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(b) Conditions affecting approval

If the requirements of subsection (f) of this section are satisfied, the Commission shall approve the acquisition unless the Commission finds that—

(1) such acquisition will tend towards interlocking relations or the concentration of control of public-utility companies, of a kind or to an extent detrimental to the public interest or the interest of investors or consumers;

(2) in case of the acquisition of securities or utility assets, the consideration, including all fees, commissions, and other remuneration, to whomsoever paid, to be given, directly or indirectly, in connection with such acquisition is not reasonable or does not bear a fair relation to the sums invested in or the earning capacity of the utility assets to be acquired or the utility assets underlying the securities to be acquired; or

(3) such acquisition will unduly complicate the capital structure of the holding-company system of the applicant or will be detrimental to the public interest or the interest of investors or consumers or the proper functioning of such holding-company system.

The Commission may condition its approval of the acquisition of securities of another company upon such a fair offer to purchase such of the other securities of the company whose security is to be acquired as the Commission may find necessary or appropriate in the public interest or for the protection of investors or consumers.

(c) Conditions barring approval

Notwithstanding the provisions of subsection (b) of this section, the Commission shall not approve—

(1) an acquisition of securities or utility assets, or of any other interest, which is unlawful under the provisions of section 79h of this title or is detrimental to the carrying out of the provisions of section 79k of this title; or

(2) the acquisition of securities or utility assets of a public-utility or holding company unless the Commission finds that such acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system. This paragraph shall not apply to the acquisition of securities or utility assets of a public-utility company operating exclusively outside the United States.

(d) Approval to be granted in reasonable time

Within such reasonable time after the filing of an application under this section as the Commission shall fix by rules and regulations or order, the Commission shall enter an order either granting or, after notice and opportunity for hearing, denying approval of the acquisition unless the applicant shall withdraw its application. Amendments to an application may be made upon such terms and conditions as the Commission may prescribe.

(e) Terms and conditions of order granting approval

The Commission, in any order approving the acquisition of securities or utility assets, may prescribe such terms and conditions in respect of such acquisition, including the price to be paid for such securities or utility assets, as the Commission may find necessary or appropriate in the public interest or for the protection of investors or consumers.

(f) Compliance with State laws as condition of approval

The Commission shall not approve any acquisition as to which an application is made under this section unless it appears to the satisfaction of the Commission that such State laws as may apply in respect of such acquisition have been complied with, except where the Commission finds that compliance with such State laws would be detrimental to the carrying out of the provisions of section 79k of this title.

(Aug. 26, 1935, ch. 687, title I, § 10, 49 Stat. 818.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Unlawful acquisition of securities and utility assets, see section 79i of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18, 79i of this title.

§ 79k. Simplification of holding company systems

(a) Examination by Commission with view to simplification

It shall be the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding-company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding-company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public-utility system.

(b) Limitations on operations of holding company systems

It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such

other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however*, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 79x of this title.

(c) Time for compliance with order limiting operations

Any order under subsection (b) of this section shall be complied with within one year from the date of such order; but the Commission shall, upon a showing (made before or after the entry of such order) that the applicant has been or will be unable in the exercise of due diligence to comply with such order within such time, extend such time for an additional period not exceeding one year if it finds such extension necessary or appropriate in the public interest or for the protection of investors or consumers.

(d) Court enforcement of order for simplification; appointment of trustee; disposition of assets; reorganization plan

The Commission may apply to a court, in accordance with the provisions of subsection (f)[1] of section 79r of this title, to enforce compliance with any order issued under subsection (b) of this section. In any such proceeding, the court as a court of equity may, to such extent as it deems necessary for purposes of enforcement of such order, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction, in any such proceeding, to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer under the direction of the court the assets so possessed. In any proceeding for the enforcement of an order of the Commission issued under subsection (b) of this section, the trustee with the approval of the court shall have power to dispose of any or all of such assets and, subject to such terms and conditions as the court may prescribe, may make such disposition in accordance with a fair and equitable reorganization plan which shall have been approved by the Commission after opportunity for hearing. Such reorganization plan may be proposed in the first instance by the Commission, or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization.

(e) Submission by company of plan for simplification; court enforcement of order of approval; appointment of trustee

In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or

[1] See References in Text note below.

any subsidiary company thereof to comply with the provisions of subsection (b) of this section. If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) of this section and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f)[1] of section 79r of this title, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of this section, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

(f) Commission as trustee; submission of reorganization plan by Commission or interested party

In any proceeding in a court of the United States, whether under this section or otherwise, in which a receiver or trustee is appointed for any registered holding company, or any subsidiary company thereof, the court may constitute and appoint the Commission as sole trustee or receiver, subject to the directions and orders of the court, whether or not a trustee or receiver shall theretofore have been appointed, and in any such proceeding the court shall not appoint any person other than the Commission as trustee or receiver without notifying the Commission and giving it an opportunity to be heard before making any such appointment. In no proceeding under this section or otherwise shall the Commission be appointed as trustee or receiver without its express consent. In any such proceeding a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court. Notwithstanding any other provision of law, any such reorganization plan may be proposed in the first instance by the Commission or, subject to such rules and regulations as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, by any person having a bona fide interest (as defined by the rules and regulations of the Commission) in the reorganization. The Commission may, by such rules and regulations or order as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers, require that any or all fees, expenses, and remuneration, to whomsoever paid, in connection with any reorganization, dissolution, liquidation, case under title 11, or receivership of a registered holding company or subsidiary company thereof, in any such proceeding, shall be subject to approval by the Commission.

(g) Solicitation of proxies, powers of attorney, etc., in respect of reorganization plan

It shall be unlawful for any person to solicit or permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, consent, authorization, power of attorney, deposit, or dissent in respect of any reorganization plan of a registered holding company or any subsidiary company thereof under this section, or otherwise, or in respect of any plan under this section for the divestment of control, securities, or other assets, or for the dissolution of any registered holding company or any subsidiary company thereof, unless—

(1) the plan has been proposed by the Commission, or the plan and such information regarding it and its sponsors as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers has been submitted to the Commission by a person having a bona fide interest (as defined by the rules and regulations of the Commission) in such reorganization;

(2) each such solicitation is accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission; and

(3) each such solicitation is made not in contravention of such rules and regulations or orders as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers.

Nothing in this subsection or the rules and regulations thereunder shall prevent any person from appearing before the Commission or any court through an attorney or proxy.

(Aug. 26, 1935, ch. 687, title I, § 11, 49 Stat. 820; Nov. 6, 1978, Pub. L. 95–598, title III, § 309, 92 Stat. 2676.)

REFERENCES IN TEXT

Subsection (f) of section 79r of this title, referred to in subsecs. (d) and (e), was redesignated as subsection (e) of that section by Pub. L. 100–181, title IV, § 402(1), Dec. 4, 1987, 101 Stat. 1259.

AMENDMENTS

1978—Subsec. (f). Pub. L. 95–598 substituted ''case under title 11'' for ''bankruptcy''.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

GAS RELATED ACTIVITIES

Pub. L. 101–572, Nov. 15, 1990, 104 Stat. 2810, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Gas Related Activities Act of 1990'.

''SEC. 2. RULE OF CONSTRUCTION.

''(a) TREATMENT OF CERTAIN ACQUISITIONS INVOLVING GAS COMPANIES OR GAS TRANSPORTATION OR STORAGE.—The acquisition by a registered company of any interest in any natural gas company or of any interest in any company organized to participate in activities involving the transportation or storage of natural gas, shall be deemed, for the purposes of section 11(b)(1) of the Act [15 U.S.C. 79k(b)(1)], to be reasonably incidental or economically necessary or appropriate to the operation of such gas utility companies.

''(b) TREATMENT OF ACQUISITIONS RELATED TO SUPPLY OF NATURAL GAS; COMMISSION DETERMINATION OF CUSTOMER INTEREST.—The acquisition by a registered company of any interest in any company organized to participate in activities (other than those of a natural gas company or involving the transportation or storage of natural gas) related to the supply of natural gas, including exploration, development, production, marketing, manufacture, or other similar activities related to the supply of natural or manufactured gas, shall be deemed, for purposes of section 11(b)(1) of the Act [15 U.S.C. 79k(b)(1)], to be reasonably incidental or economically necessary or appropriate to the operation of such gas utility companies, if—

''(1) the Commission determines, after notice and opportunity for hearing in which the company proposing the acquisition shall have the burden of proving, that such acquisition is in the interest of consumers of each gas utility company of such registered company or consumers of any other subsidiary of such registered company; and

''(2) the Commission determines that such acquisition will not be detrimental to the interest of consumers of any such gas utility company or other subsidiary or to the proper functioning of the registered holding company system.

''(c) CASE-BY-CASE DECISIONS REQUIRED.—Each such determination under this section shall be made on a case-by-case basis, and not be based on any preset criteria.

''(d) SAVINGS PROVISION.—Nothing herein shall be construed to affect the applicability of any other provisions of the Act to the acquisition or retention of any such interest by any such company.

''(e) DEFINITIONS.—For purposes of this section—

''(1) the term 'registered company' means a company registered under the Act solely by reason of direct or indirect ownership of voting securities of one or more gas utility companies, or any subsidiary company of such registered company;

''(2) the term 'natural gas company' has the meaning given such term under the Natural Gas Act (15 U.S.C. 717(a) et seq.) [15 U.S.C. 717 et seq.; term defined in 15 U.S.C. 717a]; and

''(3) the term 'the Act' means the Public Utility Holding Company Act of 1935 [15 U.S.C. 79 et seq.].''

COGENERATION ACTIVITIES BY GAS UTILITY HOLDING COMPANY SYSTEMS

Pub. L. 99–186, Dec. 18, 1985, 99 Stat. 1180, as amended by Pub. L. 99–553, Oct. 27, 1986, 100 Stat. 3087; Pub. L. 102–486, title VII, § 713, Oct. 24, 1992, 106 Stat. 2911, provided that:

''SECTION 1. Notwithstanding section 11(b)(1) of the Public Utility Holding Company Act of 1935 [15 U.S.C. 79k(b)(1)], a company registered under said Act [15 U.S.C. 79 et seq.], or a subsidiary company of such registered company, may acquire or retain, in any geographic area, an interest in any qualifying cogeneration facilities and qualifying small power production facilities as defined pursuant to the Public Utility Regulatory Policies Act of 1978 [see Short Title note set out under 16 U.S.C. 2601], and shall qualify for any exemption relating to the Public Utility Holding Company Act of 1935 prescribed pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 824a–3].

''SEC. 2. Nothing herein shall be construed to affect the applicability of section 3(17)(C) or section 3(18)(B) of the Federal Power Act [16 U.S.C. 796(17)(C), (18)(B)] or any provision of the Public Utility Holding Company Act of 1935, other than section 11(b)(1), to the acquisition or retention of any such interest by any such company.''

CROSS REFERENCES

Exchanges and distributions upon orders of Commission, see section 1081 et seq. of Title 26, Internal Revenue Code.

No approval for acquisition of securities and utility assets and other interests when detrimental to carrying out provisions of this section, see section 79j of this title.

Penalties for violations, exemption, see section 79z–3 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 79j, 79z–3, 79z–5a, 79z–5b, 79z–5c of this title; title 26 sections 1081, 1083; title 42 section 8221.

§ 79*l*. Intercompany and other transactions relating to registered companies

(a) Borrowing from other companies in same system

It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to borrow, or to receive any extension of credit or indemnity, from any public-utility company in the same holding-company system or from any subsidiary company of such holding company, but it shall not be unlawful under this subsection to renew, or extend the time of, any loan, credit, or indemnity outstanding on August 26, 1935.

(b) Loans to other companies in same system

It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly, to lend or in any manner extend its credit to or indemnify any company in the same holding-company system in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(c) Payment of dividends or retirement of securities

It shall be unlawful for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to declare or pay any dividend on any security of such company or to acquire, retire, or redeem any security of such company, in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate to protect the financial integrity of companies in holding-company systems, to safeguard the working capital of public-utility companies, to prevent the payment of dividends out of capital or unearned surplus, or to prevent the cir-

cumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(d) Sale of securities of other companies

It shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to sell any security which it owns of any public-utility company, or any utility assets, in contravention of such rules and regulations or orders regarding the consideration to be received for such sale, maintenance of competitive conditions, fees and commissions, accounts, disclosure of interest, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(e) Solicitation of proxies, powers of attorney, etc., regarding securities

It shall be unlawful for any person to solicit or to permit the use of his or its name to solicit, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, any proxy, power of attorney, consent, or authorization regarding any security of a registered holding company or a subsidiary company thereof in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(f) Negotiations or transactions with other companies in contravention of rules and regulations of Commission

It shall be unlawful for any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this chapter, with any company in the same holding-company system or with any affiliate of a company in such holding-company system in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules and regulations thereunder.

(g) Negotiations or transactions by affiliate in contravention of rules and regulations of Commission

It shall be unlawful for any affiliate of any public-utility company, by use of the mails or any means or instrumentality of interstate commerce, or for any affiliate of any public-utility company engaged in interstate commerce, or of any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to negotiate, enter into, or take any step in the performance of any transaction not otherwise unlawful under this chapter, with any such company of which it is an affiliate, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate to prevent the circumvention of the provisions of this chapter.

(h) Political contributions forbidden

It shall be unlawful for any registered holding company, or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, directly or indirectly—

(1) to make any contribution whatsoever in connection with the candidacy, nomination, election or appointment of any person for or to any office or position in the Government of the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing; or

(2) to make any contribution to or in support of any political party or any committee or agency thereof.

The term ''contribution'' as used in this subsection includes any gift, subscription, loan, advance, or deposit of money or anything of value, and includes any contract, agreement, or promise, whether or not legally enforceable, to make a contribution.

(i) Representation before Congress or Commissions; filing statement of employment, compensation, etc.

It shall be unlawful for any person employed or retained by any registered holding company, or any subsidiary company thereof, to present, advocate, or oppose any matter affecting any registered holding company or any subsidiary company thereof, before the Congress or any Member or committee thereof, or before the Commission or Federal Power Commission, or any member, officer, or employee of either such Commission, unless such person shall file with the Commission in such form and detail and at such time as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers, a statement of the subject matter in respect of which such person is retained or employed, the nature and character of such retainer or employment, and the amount of compensation received or to be received by such person, directly or indirectly, in connection therewith. It shall be the duty of every such person so employed or retained to file with the Commission within ten days after the close of each calendar month during such retainer or employment, in such form and detail as the Commission shall by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers, a statement of the expenses incurred and the compensation received by such person during such month in connection with such retainer or employment.

(Aug. 26, 1935, ch. 687, title I, § 12, 49 Stat. 823.)

TRANSFER OF FUNCTIONS

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

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

POLITICAL CONTRIBUTIONS

Definition of term ''contribution or expenditure'' for purposes of subsec. (h) of this section as including any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in section 441b of Title 2, The Congress, but not including (A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock, see section 441b(b)(2) of Title 2, The Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 441b.

§ 79m. Service, sales, and construction contracts

(a) Contracts by holding companies

After April 1, 1936, it shall be unlawful for any registered holding company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof which is a public-utility or mutual service company. This provision shall not apply to such transactions, involving special or unusual circumstances or not in the ordinary course of business, as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers.

(b) Contracts by subsidiary or mutual service companies

After April 1, 1936, it shall be unlawful for any subsidiary company of any registered holding company or for any mutual service company, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract by which such company undertakes to perform services or construction work for, or sell goods to, any associate company thereof except in accordance with such terms and conditions and subject to such limitations and prohibitions as the Commission by rules and regulations or order shall prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers and to insure that such contracts are performed economically and efficiently for the benefit of such associate companies at cost, fairly and equitably allocated among such companies. This provision shall not apply to such transactions as the Commission by rules and regulations or order may conditionally or unconditionally exempt as being necessary or appropriate in the public interest or for the protection of investors or consumers, if such transactions (1) are with any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public-utility company operating within the United States, or (2) involve special or unusual circumstances or are not in the ordinary course of business.

(c) Determination and allocation of costs; duration of contracts; regulation by rules of Commission

The rules and regulations and orders of the Commission under this section may prescribe, among other things, such terms and conditions regarding the determination of costs and the allocation thereof among specified classes of companies and for specified classes of service, sales, and construction contracts, the duration of such contracts, the making and keeping of accounts and cost-accounting procedures, the filing of annual and other periodic and special reports, the maintenance of competitive conditions, the disclosure of interests, and similar matters, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

(d) Application for approval as mutual service company and nature of business; regulation by rules of Commission

The rules and regulations and orders of the Commission under this section shall prescribe, among other things, such terms and conditions regarding the manner in which application may be made for approval as a mutual service company and the granting and continuance of such approval, the nature and enforcement of agreements for the sharing of expenses and distributing of revenues among member companies, and matters relating to such agreements, the nature and types of businesses and transactions in which mutual service companies may engage, and the manner of engaging therein, and the relations and transactions with member companies and affiliates, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers. The Commission shall not approve, or continue the approval of, any company as a mutual service company unless the Commission finds such company is so organized as to ownership, costs, revenues, and the sharing thereof as reasonably to insure the efficient and economical performance of service, sales, or construction contracts by such company for member companies, at cost

fairly and equitably allocated among such member companies, at a reasonable saving to member companies over the cost to such companies of comparable contracts performed by independent persons. The Commission, upon its own motion or at the request of a member company or a State commission, may, after notice and opportunity for hearing, by order require a reallocation or reapportionment of costs among member companies of a mutual service company if it finds the existing allocation inequitable and may require the elimination of a service or services to a member company which does not bear its fair proportion of costs or which, by reason of its size or other circumstances, does not require such service or services. The Commission, after notice and opportunity for hearing, by order shall revoke, suspend, or modify the approval given any mutual service company if it finds that such company has persistently violated any provision of this section or any rule, regulation, or order thereunder.

(e) Contracts by affiliate in contravention of rules and regulations of Commission

It shall be unlawful for any affiliate of any public-utility company engaged in interstate commerce, or of any registered holding company or subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract, by which such affiliate undertakes to perform services or construction work for, or sell goods to, any such company of which it is an affiliate, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters, as the Commission deems necessary or appropriate to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(f) Contracts by persons engaged in performance of service, sales and construction in contravention of rules of Commission

It shall be unlawful for any person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies, by use of the mails or any means or instrumentality of interstate commerce, to enter into or take any step in the performance of any service, sales, or construction contract with any public-utility company, or for any such person, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to enter into or take any step in the performance of any service, sales, or construction contract with any public-utility company engaged in interstate commerce, or with any registered holding company or any subsidiary company of a registered holding company, in contravention of such rules and regulations or orders regarding reports, accounts, costs, maintenance of competitive conditions, disclosure of interest, duration of contracts, and similar matters as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or to prevent the circumvention of the provisions of this chapter or the rules, regulations, or orders thereunder.

(g) Investigations and recommendations by Commission

The Commission, in order to obtain information to serve as a basis for recommending further legislation, shall from time to time conduct investigations regarding the making, performance, and costs of service, sales, and construction contracts with holding companies and subsidiary companies thereof and with public-utility companies, the economies resulting therefrom, and the desirability thereof. The Commission shall report to Congress, from time to time, the results of such investigations, together with such recommendations for legislation as it deems advisable. On the basis of such investigations the Commission shall classify the different types of such contracts and the work done thereunder, and shall make recommendations from time to time regarding the standards and scope of such contracts in relation to public-utility companies of different kinds and sizes and the costs incurred thereunder and economies resulting therefrom. Such recommendations shall be made available to State commissions, public-utility companies, and to the public in such form and at such reasonable charge as the Commission may prescribe.

(Aug. 26, 1935, ch. 687, title I, § 13, 49 Stat. 825.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Mutual service company, definition of, see section 79b of this title.

Periodic and other reports, see section 79n of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 79b, 79n of this title.

§ 79n. Periodic and other reports

Every registered holding company and every mutual service company shall file with the Commission such annual, quarterly, and other periodic and special reports, the answers to such specific questions and the minutes of such directors', stockholders', and other meetings, as the Commission may by rules and regulations or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. Such reports, if required by the rules and regulations of the Commission, shall be certified by an independent public accountant, and shall be made and filed at such time and in such form and detail as the Commission shall prescribe. The Commission may require that there be included in reports filed with it such information and documents as it finds necessary or appropriate to keep reasonably current the information filed under section 79e or 79m of this title, and such further information concerning the financial condition, security structure, security holdings, assets, and cost

thereof, wherever determinable, and affiliations of the reporting company and the associate companies, member companies, and affiliates thereof as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

(Aug. 26, 1935, ch. 687, title I, § 14, 49 Stat. 827.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79*o*. Accounts and records

(a) Duty of holding companies to keep

Every registered holding company and every subsidiary company thereof shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this chapter or the rules, regulations, or orders thereunder.

(b) Duty of affiliates to keep

Every affiliate of a registered holding company or of any subsidiary company thereof, or of any public-utility company engaged in interstate commerce or not so engaged, shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records relating to any transaction of such affiliate which is subject to any provision of this chapter or any rule, regulation, or order thereunder, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this chapter or the rules, regulations, or orders thereunder.

(c) Duty of mutual service companies to keep

Every mutual service company, and every affiliate of a mutual service company as to any transaction of such affiliate which is subject to any provision of this chapter or any rule, regulation, or order thereunder, shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this chapter or the rules, regulations, or orders thereunder.

(d) Duty of persons engaged in service, sales, or construction to keep

Every person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies shall make, keep, and preserve for such periods, such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records, relating to any transaction by such person which is subject to any provision of this chapter or any rule, regulation, or order thereunder, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers or for the enforcement of the provisions of this chapter or the rules and regulations thereunder.

(e) Use of forms other than prescribed by Commission unlawful

After the Commission has prescribed the form and manner of making and keeping accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records to be kept by any person hereunder, it shall be unlawful for any such person to keep any accounts, cost-accounting procedures, correspondence, memoranda, papers, books, or other records other than those prescribed or such as may be approved by the Commission, or to keep his or its accounts, cost-accounting procedures, correspondence, memoranda, papers, books, or other records in any manner other than that prescribed or approved by the Commission.

(f) Examinations by Commission

All accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records kept or required to be kept by persons subject to any provision of this section shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. The Commission, after notice and opportunity for hearing, may prescribe the account or accounts in which particular outlays, receipts, and other transactions shall be entered, charged, or credited and the manner in which such entry, charge, or credit shall be made, and may require an entry to be modified or supplemented so as properly to show the cost of any asset or any other cost.

(g) Submission by holding company or subsidiary to examination by holders of securities

It shall be the duty of every registered holding company and of every subsidiary company thereof and of every affiliate of a company insofar as such affiliate is subject to any provision of this chapter or any rule, regulation, or order thereunder, to submit the accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records of such holding company, subsidiary company, or affiliate, as the case may be, to such examinations, in person or by duly appointed attorney, by the holder of any security of such holding company, subsidiary company, or affiliate, as the case may be, as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

(h) Submission by mutual service companies and persons engaged in rendering service to examination by other companies

It shall be the duty of every mutual service company, and of every affiliate of a mutual service company, and of every person whose principal business is the performance of service, sales, or construction contracts for public-utility or holding companies, insofar as such affiliate or such person is subject to any provision of this chapter or any rule, regulation, or order

thereunder, to submit the accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records of such mutual service company, affiliate, or person to such examinations, in person or by duly appointed attorney, by member companies of such mutual service company and by public-utility or holding companies for which such person performs service, sales, or construction contracts as the Commission deems necessary or appropriate in the public interest or for the protection of investors or consumers.

(i) Uniform methods for keeping accounts; power of Commission to prescribe

The Commission, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors or consumers may prescribe for persons subject to the provisions of subsections (a), (b), (c), or (d) of this section uniform methods for keeping accounts required under any provision of this section, including, among other things, the manner in which the cost of all assets, whenever determinable, shall be shown, the methods of classifying and segregating accounts, and the manner in which cost-accounting procedures shall be maintained.

(Aug. 26, 1935, ch. 687, title I, § 15, 49 Stat. 828.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79p. Misleading statements, penalty; rights and remedies additional to those existing under other laws

(a) Any person who shall make or cause to be made any statement in any application, report, registration statement, or document filed pursuant to any provision of this chapter, or any rule, regulation, or order thereunder, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact shall be liable in the same manner, to the same extent, and subject to the same limitations as provided in section 18 of the Securities Exchange Act of 1934 [15 U.S.C. 78r] with respect to an application, report, or document filed pursuant to the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.].

(b) The rights and remedies provided by this chapter, except as provided in section 79q(b) of this title, shall be in addition to any and all other rights and remedies that may exist under the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or otherwise at law or in equity; but no person permitted to maintain a suit for damages under the provisions of this chapter shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

(Aug. 26, 1935, ch. 687, title I, § 16, 49 Stat. 829.)

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsecs. (a) and (b), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified generally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Securities Act of 1933, referred to in subsec. (b), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

CROSS REFERENCES

Trust Indenture Act of 1939—
Jurisdiction under this section as affected by, see section 77zzz of this title.
Rights and remedies under, see section 77www of this title.

§ 79q. Officers and directors

(a) Statement of ownership of securities; duty to file

Every person who is an officer or director of a registered holding company shall file with the Commission in such form as the Commission shall prescribe (1) at the time of the registration of such holding company, or within ten days after such person becomes an officer or director, a statement of the securities of such registered holding company or any subsidiary company thereof of which he is, directly or indirectly, the beneficial owner, and (2) within ten days after the close of each calendar month thereafter, if there has been any change in such ownership during such month, a statement of such ownership as of the close of such calendar month and of the changes in such ownership that have occurred during such calendar month.

(b) Limitation on profits in purchase and sale of securities

For the purpose of preventing the unfair use of information which may have been obtained by any such officer or director by reason of his relationship to such registered holding company or any subsidiary company thereof, any profit realized by any such officer or director from any purchase and sale, or any sale and purchase, of any security of such registered holding company or any subsidiary company thereof within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the holding company or subsidiary company in respect of the security of which such profit was realized, irrespective of any intention on the part of such officer or director in entering into such transaction to hold the security purchased or not to repurchase the security sold for a period of more than six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the company entitled thereto or by the owner of any security of such company in the name and in the behalf of such company if such company shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not cover any transaction where such person was not an officer or director at the times of the purchase and

sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may, as necessary or appropriate in the public interest or for the protection of investors or consumers, exempt as not comprehended within the purpose of this subsection. Nothing in this subsection shall be construed to give a remedy in the case of any transaction in respect of which a remedy is given under subsection (b) of section 78p of this title.

(c) Officers or representatives of banking institutions disqualified to serve as officers or directors

After one year from August 26, 1935, no registered holding company or any subsidiary company thereof shall have, as an officer or director thereof, any executive officer, director, partner, appointee, or representative of any bank, trust company, investment banker, or banking association or firm, or any executive officer, director, partner, appointee, or representative of any corporation a majority of whose stock, having the unrestricted right to vote for the election of directors, is owned by any bank, trust company, investment banker, or banking association or firm, except in such cases as rules and regulations prescribed by the Commission may permit as not adversely affecting the public interest or the interest of investors or consumers.

(Aug. 26, 1935, ch. 687, title I, § 17, 49 Stat. 830.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 79p of this title.

§ 79r. Investigations, injunctions, and enforcement of law

(a) Investigations to determine violations, aid in enforcement and as basis for recommendations

The Commission, in its discretion, may investigate any facts, conditions, practices, or matters which it may deem necessary or appropriate to determine whether any person has violated or is about to violate any provision of this chapter or any rule or regulation thereunder, or to aid in the enforcement of the provisions of this chapter, in the prescribing of rules and regulations thereunder, or in obtaining information to serve as a basis for recommending further legislation concerning the matters to which this chapter relates. The Commission may require or permit any person to file with it a statement in writing, under oath or otherwise as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of investigation. The Commission, in its discretion, may publish, or make available to State commissions, information concerning any such subject.

(b) Investigation of business, financial condition, etc., of companies

The Commission upon its own motion or at the request of a State commission may investigate, or obtain any information regarding the business, financial condition, or practices of any registered holding company or subsidiary company thereof or facts, conditions, practices, or matters affecting the relations between any such company and any other company or companies in the same holding-company system.

(c) Administering oaths; subpenas; examining witnesses

For the purpose of any investigation or any other proceeding under this chapter, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(d) Court aid to compel giving testimony; penalty for refusal to testify

In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who, without just cause, shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpena of the Commission, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(e) Injunctions to restrain violations; prosecutions

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an ac-

tion in the proper district court of the United States or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this chapter.

(f) Mandamus to compel compliance with law

Upon application of the Commission, the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder.

(Aug. 26, 1935, ch. 687, title I, § 18, 49 Stat. 831; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 15, 1970, Pub. L. 91–452, title II, § 214, 84 Stat. 929; Dec. 4, 1987, Pub. L. 100–181, title IV, § 402, 101 Stat. 1259.)

CODIFICATION

As originally enacted subsecs. (e) and (f) contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted ''the district court of the United States for the District of Columbia'' for ''the Supreme Court of the District of Columbia''. Pub. L. 100–181 struck out reference to the district court of the United States for the District of Columbia. Previously, act June 25, 1948, as amended by act May 24, 1949, had substituted ''United States District Court for the District of Columbia'' for ''district court of the United States for the District of Columbia'', but such words had been editorially eliminated as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which provides that ''There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district'', and section 88 of Title 28 which provides that ''the District of Columbia constitutes one judicial district''.

AMENDMENTS

1987—Subsecs. (e) to (g). Pub. L. 100–181 redesignated subsecs. (f) and (g) as (e) and (f), respectively, and, in each, struck out '', the district court of the United States for the District of Columbia,'' after ''district courts of the United States''. See Codification note above.

1970—Subsec. (e). Pub. L. 91–452 struck out subsec. (e) which related to immunity from prosecution of any individual compelled to testify or produce evidence, documentary or otherwise, after claiming his privilege against self-incrimination.

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 Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

FEDERAL RULES OF APPELLATE PROCEDURE

Injunction pending appeal, see rule 8, Title 28, Appendix, Judiciary and Judicial Procedure.

Review and enforcement of orders of administrative agencies, boards, commissions, and officers, see rule 15 et seq.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

Mandamus as abolished but relief yet available by appropriate action or motion under rules, see rule 81.

Subpoena, see rule 45.

FEDERAL RULES OF CRIMINAL PROCEDURE

Criminal contempt, see rule 42, Title 18, Appendix, Crimes and Criminal Procedure.

CROSS REFERENCES

Action to enjoin violations and institution of criminal proceedings under—
- Investment Advisers Act of 1940, see section 80b–9 of this title.
- Investment Company Act of 1940, see section 80a–41 of this title.
- Securities Act of 1933, see section 77t of this title.
- Securities Exchange Act of 1934, see section 78u of this title.
- Trust Indenture Act of 1939, see section 77uuu of this title.

Administration of oaths, etc., under—
- Investment Advisers Act of 1940, see section 80b–9 of this title.
- Investment Company Act of 1940, see section 80a–41 of this title.
- Securities Act of 1933, see section 77s of this title.
- Securities Exchange Act of 1934, see section 78u of this title.
- Trust Indenture Act of 1939, see section 77uuu of this title.

Attendance of witnesses and production of documents, judicial enforcement of orders under—
- Investment Advisers Act of 1940, see section 80b–9 of this title.
- Investment Company Act of 1940, see section 80a–41 of this title.
- Securities Act of 1933, see section 77v of this title.
- Securities Exchange Act of 1934, see section 78u of this title.
- Trust Indenture Act of 1939, see section 77uuu of this title.

Contempt proceedings, see sections 401, 402, 3285, and 3691 of Title 18, Crimes and Criminal Procedure.

Immunity of witnesses, see section 6001 et seq. of Title 18.

Investigation of facts by Commission under—
- Investment Advisers Act of 1940, see section 80b–9 of this title.
- Investment Company Act of 1940, see section 80a–41 of this title.
- Securities Act of 1933, see section 77t of this title.
- Securities Exchange Act of 1934, see section 78u of this title.
- Trust Indenture Act of 1939, see section 77uuu of this title.

Issuance of mandamus under—

Securities Act of 1933, see section 77t of this title.
Securities Exchange Act of 1934, see section 78u of this title.
Limitations on operations of holding company systems, enforcement of orders, see section 79k of this title.
Misleading statements, liability for, see section 79p of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78u, 79k of this title.

§ 79s. Hearings before Commission

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept. In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State, State commission, State securities commission, municipality, or other political subdivision of a State, and may admit as a party any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers.

(Aug. 26, 1935, ch. 687, title I, § 19, 49 Stat. 832.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Hearings by Commission under—
Investment Advisers Act of 1940, see section 80b-12 of this title.
Investment Company Act of 1940, see section 80a-40 of this title.
Securities Act of 1933, see section 77u of this title.
Securities Exchange Act of 1934, see section 78v of this title.
Trust Indenture Act of 1939, see section 77ttt of this title.

§ 79t. Rules, regulations, and orders

(a) Authority of Commission to make

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate to carry out the provisions of this chapter, including rules and regulations defining accounting, technical, and trade terms used in this chapter. Among other things, the Commission shall have authority, for the purposes of this chapter, to prescribe the form or forms in which information required in any statement, declaration, application, report, or other document filed with the Commission shall be set forth, the items or details to be shown in balance sheets, profit and loss statements, and surplus accounts, the manner in which the cost of all assets, whenever determinable, shall be shown in regard to such statements, declarations, applications, reports, and other documents filed with the Commission, or accounts required to be kept by the rules, regulations, or orders of the Commission, and the methods to be followed in the keeping of accounts and cost-accounting procedures and the preparation of reports, in the segregation and allocation of costs, in the determination of liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the keeping or preparation, where the Commission deems it necessary or appropriate, of separate or consolidated balance sheets or profit and loss statements for any companies in the same holding-company system.

(b) Consistency with laws of United States or States

In the case of the accounts of any company whose methods of accounting are prescribed under the provisions of any law of the United States or of any State, the rules and regulations or orders of the Commission in respect of accounts shall not be inconsistent with the requirements imposed by such law or any rule or regulation thereunder; nor shall anything in this chapter relieve any public-utility company from the duty to keep the accounts, books, records, or memoranda which may be required to be kept by the law of any State in which it operates or by the State Commission of any such State. But this provision shall not prevent the Commission from imposing such additional requirements regarding reports or accounts as it may deem necessary or appropriate in the public interest or for the protection of investors or consumers.

(c) Effective date; classification of persons and matters; hearings

The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. For the purpose of its rules, regulations, or orders the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. Orders of the Commission under this chapter shall be issued only after opportunity for hearing.

(d) Filing information or documents by reference

The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors or consumers, may authorize the filing of any information or documents required to be filed with the Commission under this chapter, or under the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], or under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this chapter or either of such Acts. No provision of this chapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(Aug. 26, 1935, ch. 687, title I, § 20, 49 Stat. 833.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (d), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (d), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified generally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Rules and regulations—
- Acquisition of securities and utility assets and other interests, see section 79i of this title.
- Approval of acquisition of securities and utility assets and other interests, see section 79j of this title.
- Declarations by registered companies in respect to security transactions, see section 79g of this title.
- Exemptions regarding holding companies, subsidiary companies, and affiliates, power of Commission to make, see section 79c of this title.
- Integration of procedure with other acts, see section 77hhh of this title.
- Investment Advisers Act of 1940, see section 80b–11 of this title.
- Investment Company Act of 1940, see section 80a–37 of this title.
- Registration of holding companies and registration statements, see section 79e of this title.
- Securities Act of 1933, see section 77s of this title.
- Securities Exchange Act of 1934, see sections 78c and 78w of this title.
- Trust Indenture Act of 1939, see section 77sss of this title.
- Unlawful transactions by registered companies, see section 79f of this title.

§ 79u. Effect on other laws

Nothing in this chapter shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] over any person, security, or contract, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this chapter affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person, security, or contract, insofar as such jurisdiction does not conflict with any provision of this chapter or any rule, regulation, or order thereunder.

(Aug. 26, 1935, ch. 687, title I, § 21, 49 Stat. 834.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in text, is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Securities Exchange Act of 1934, referred to in text, is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified generally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79v. Information filed with Commission

(a) Public disclosure of information; protection of trade secrets

When in the judgment of the Commission the disclosure of such information would be in the public interest or the interest of investors or consumers, the information contained in any statement, application, declaration, report, or other document filed with the Commission shall be available to the public, and copies thereof may be furnished to any person at such reasonable charge and under such reasonable limitations as the Commission may prescribe: *Provided, however*, That nothing in this chapter shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, declaration, report, or document filed with the Commission under this chapter.

(b) Written objection to public disclosure

Any person filing such application, declaration, report, or document may make written objection to the public disclosure of information contained therein, stating the grounds for such objection, and the Commission is authorized to hear objections in any such case where it finds it advisable.

(c) Disclosure of nonpublic information to other than Commission personnel

It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer, or employee of the Commission, or to use for personal benefit, any information contained in any application, declaration, report, or document filed with the Commission which is not made available to the public pursuant to this section.

(Aug. 26, 1935, ch. 687, title I, § 22, 49 Stat. 834.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79w. Annual reports of Commission

The Commission shall submit annually a report to the Congress covering the work of the Commission for the preceding year and including such information, data, and recommendations for further legislation in connection with the matters covered by this chapter as it may find advisable.

(Aug. 26, 1935, ch. 687, title I, § 23, 49 Stat. 834.)

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of

such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79x. Court review of orders

(a) Petition; jurisdiction; findings of Commission; additional evidence; finality

Any person or party aggrieved by an order issued by the Commission under this chapter may obtain a review of such order in the United States court of appeals within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission, or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for 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 by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) Stay of Commission's order

The commencement of proceedings under subsection (a) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(Aug. 26, 1935, ch. 687, title I, §24, 49 Stat. 834; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Aug. 28, 1958, Pub. L. 85–791, §15, 72 Stat. 946; Dec. 4, 1987, Pub. L. 100–181, title IV, §403, 101 Stat. 1259.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–181 substituted ''section 1254 of title 28'' for ''sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)''.

1958—Subsec. (a). Pub. L. 85–791, in second sentence, substituted ''transmitted by the clerk of the court to any member of the Commission, or'' for ''served upon any member of the Commission, or upon'', substituted ''file in the court'' for ''certify and file in the court a transcript of'', and inserted ''as provided in section 2112 of title 28'', and in third sentence substituted ''petition'' for ''transcript'' and ''jurisdiction, which upon the filing of the record shall be exclusive'' for ''exclusive jurisdiction''.

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''.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

FEDERAL RULES OF APPELLATE PROCEDURE

Review and enforcement of orders of administrative agencies, boards, commissions and officers, see rule 15 et seq., Title 28, Appendix, Judiciary and Judicial Procedure.

CROSS REFERENCES

Review of orders under—
- Investment Advisers Act of 1940, see section 80b–13 of this title.
- Investment Company Act of 1940, see section 80a–42 of this title.
- Securities Act of 1933, see section 77i of this title.
- Securities Exchange Act of 1934, see section 78y of this title.
- Trust Indenture Act of 1939, see section 77vvv of this title.

Simplification of holding company systems, review of commission's orders, see section 79k of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 79k of this title.

§ 79y. Jurisdiction of offenses and suits

The District Courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this chapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this chapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this chapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292,

and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against the Commission in any court.

(Aug. 26, 1935, ch. 687, title I, § 25, 49 Stat. 835; June 25, 1936, ch. 804, 49 Stat. 1921; June 25, 1948, ch. 646, § 32(b), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Dec. 4, 1987, Pub. L. 100–181, title IV, § 404, 101 Stat. 1260.)

CODIFICATION

As originally enacted section contained references to the Supreme Court of the District of Columbia. Act June 25, 1936, substituted ''the district court of the United States for the District of Columbia'' for ''the Supreme Court of the District of Columbia''. Pub. L. 100–181 struck out reference to the district court of the United States for the District of Columbia. Previously, act June 25, 1948, as amended by act May 24, 1949, had substituted ''United States District Court for the District of Columbia'' for ''district court of the United States for the District of Columbia'', but such words had been editorially eliminated as superfluous in view of section 132(a) of Title 28, Judiciary and Judicial Procedure, which provides that ''There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district'', and section 88 of title 28 which provides that ''the District of Columbia constitutes one judicial district''.

AMENDMENTS

1987—Pub. L. 100–181 struck out '', the district court of the United States for the District of Columbia,'' after ''District Courts of the United States'' and substituted ''sections 1254, 1291, 1292, and 1294 of title 28'' for ''sections 128 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 225 and 347), and section 7, as amended, of the Act entitled 'An Act to establish a court of appeals for the District of Columbia', approved February 9, 1893 (D.C. Code, title 18, sec. 26)''. See Codification note above.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

FEDERAL RULES OF APPELLATE PROCEDURE

Review and enforcement of orders of administrative agencies, boards, commissions, and officers, see rule 15 et seq., Title 28, Appendix, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Costs, see rule 54, Title 28, Appendix, Judiciary and Judicial Procedure.
One form of action, see rule 2.
Process, see rule 4.

FEDERAL RULES OF CRIMINAL PROCEDURE

Special venue provisions of section as unaffected by rule 18, see Notes of Advisory Committee on Rules set out under rule 18, Title 18, Appendix, Crimes and Criminal Procedure.
Venue, see rules 18 to 22.

CROSS REFERENCES

Jurisdiction of offenses and suits under—
Investment Advisers Act of 1940, see section 80b–14 of this title.
Investment Company Act of 1940, see section 80a–43 of this title.
Securities Act of 1933, see section 77v of this title.
Securities Exchange Act of 1934, see section 78aa of this title.
Trust Indenture Act of 1939, see section 77vvv of this title.
Venue generally, see section 1391 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 79z. Validity of contracts

(a) Waiver provisions

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this chapter or with any rule, regulation, or order thereunder shall be void.

(b) Contract provisions in violation of chapter; actual knowledge of violations

Every contract made in violation of any provision of this chapter or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this chapter, or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, regulation, or order.

(c) Validity of loans, extensions of credit and creation of liens; actual knowledge of violations

Nothing in this chapter shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this chapter, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien is a violation of the provisions of this chapter or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this chapter or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien.

(Aug. 26, 1935, ch. 687, title I, § 26, 49 Stat. 835.)

§ 79z–1. Liability of controlling person; preventing compliance with law

(a) It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this chapter or any rule, regulation, or order thereunder.

(b) It shall be unlawful for any person without just cause to hinder, delay, or obstruct the mak-

ing, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this chapter or any rule, regulation, or order thereunder.

(Aug. 26, 1935, ch. 687, title I, § 27, 49 Stat. 836.)

CROSS REFERENCES

Liability of controlling persons under—
Investment Company Act of 1940, see section 80a–47 of this title.
Securities Act of 1933, see section 77*o* of this title.
Securities Exchange Act of 1934, see section 78t of this title.

§ 79z–2. Representation of guaranty or recommendation by United States

It shall be unlawful for any person in issuing, selling, or offering for sale any security of a registered holding company or subsidiary company thereof, to represent or imply in any manner whatsoever that such security has been guaranteed, sponsored, or recommended for investment by the United States or any agency or officer thereof.

(Aug. 26, 1935, ch. 687, title I, § 28, 49 Stat. 836.)

§ 79z–3. Penalties

Any person who willfully violates any provision of this chapter or any rule, regulation, or order thereunder (other than an order of the Commission under subsections (b), (d), (e), or (f) of section 79k of this title), or any person who willfully makes any statement or entry in any application, report, document, account, or record filed or kept or required to be filed or kept under the provisions of this chapter or any rule, regulation, or order thereunder, knowing such statement or entry to be false or misleading in any material respect, or any person who willfully destroys (except after such time as may be prescribed under any rules or regulations under this chapter), mutilates, alters, or by any means or device falsifies any account, correspondence, memorandum, book, paper, or other record kept or required to be kept under the provisions of this chapter or any rule, regulation, or order thereunder, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both, except that in the case of a violation of a provision of subsection (a) or (b) of section 79d of this title by a holding company which is not an individual, the fine imposed upon such holding company shall be a fine not exceeding $200,000; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no knowledge of such rule, regulation, or order.

(Aug. 26, 1935, ch. 687, title I, § 29, 49 Stat. 836; June 4, 1975, Pub. L. 94–29, § 27(c), 89 Stat. 163.)

AMENDMENTS

1975—Pub. L. 94–29 substituted ''or imprisoned not more than five years'' for ''or imprisoned not more than two years''.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–29 effective June 4, 1975, see section 31(a) of Pub. L. 94–29, set out as a note under section 78b of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Fraud and false statements, see chapter 47 (§ 1001 et seq.) of Title 18, Crimes and Criminal Procedure.

§ 79z–4. Study of public-utility companies; recommendation

The Commission is hereby authorized and directed to make studies and investigations of public-utility companies, the territories served or which can be served by public-utility companies, and the manner in which the same are or can be served, to determine the sizes, types, and locations of public-utility companies which do or can operate most economically and efficiently in the public interest, in the interest of investors and consumers, and in furtherance of a wider and more economical use of gas and electric energy; upon the basis of such investigations and studies the Commission shall make public from time to time its recommendations as to the type and size of geographically and economically integrated public-utility systems which, having regard for the nature and character of the locality served, can best promote and harmonize the interests of the public, the investor, and the consumer.

(Aug. 26, 1935, ch. 687, title I, § 30, 49 Stat. 837; Dec. 4, 1987, Pub. L. 100–181, title IV, § 405, 101 Stat. 1260.)

AMENDMENTS

1987—Pub. L. 100–181 struck out at end ''The Commission is authorized and directed to make a study of the functions and activities of investment trusts and investment companies, the corporate structures, and investment policies of such trusts and companies, the influence exerted by such trusts and companies upon companies in which they are interested, and the influence exerted by interests affiliated with the management of such trusts and companies upon their investment policies, and to report the results of its study and its recommendations to the Congress on or before January 4, 1937.''

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

CROSS REFERENCES

Findings and declaration of policy under Investment Company Act of 1940, see section 80a–1 of this title.
Findings under Investment Advisers Act of 1940, see section 80b–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 80a–1, 80b–1 of this title.

§ 79z–5. Hiring and leasing authority of Commission

The provisions of section 78d(b) of this title shall be applicable with respect to the power of the Commission—

(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this chapter, and

(2) to lease and allocate such real property as may be necessary for carrying out its functions under this chapter.

(Aug. 26, 1935, ch. 687, title I, § 31, 49 Stat. 837; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Nov. 15, 1990, Pub. L. 101–550, title I, § 104(a), 104 Stat. 2713.)

AMENDMENTS

1990—Pub. L. 101–550 amended section generally. Prior to amendment, section related to appointment and compensation of employees.

1949—Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

REPEALS

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

TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

§ 79z–5a. Exempt wholesale generators

(a) Definitions

For purposes of this section—

(1) Exempt wholesale generator

The term ''exempt wholesale generator'' means any person determined by the Federal Energy Regulatory Commission to be engaged directly, or indirectly through one or more affiliates as defined in section 79b(a)(11)(B) of this title, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale. No person shall be deemed to be an exempt wholesale generator under this section unless such person has applied to the Federal Energy Regulatory Commission for a determination under this paragraph. A person applying in good faith for such a determination shall be deemed an exempt wholesale generator under this section, with all of the exemptions provided by this section, until the Federal Energy Regulatory Commission makes such determination. The Federal Energy Regulatory Commission shall make such determination within 60 days of its receipt of such application and shall notify the Commission whenever a determination is made under this paragraph that any person is an exempt wholesale generator. Not later than 12 months after October 24, 1992, the Federal Energy Regulatory Commission shall promulgate rules implementing the provisions of this paragraph. Applications for determination filed after the effective date of such rules shall be subject thereto.

(2) Eligible facility

The term ''eligible facility'' means a facility, wherever located, which is either—

(A) used for the generation of electric energy exclusively for sale at wholesale, or

(B) used for the generation of electric energy and leased to one or more public utility companies; *Provided*, That any such lease shall be treated as a sale of electric energy at wholesale for purposes of sections 824d and 824e of title 16.

Such term shall not include any facility for which consent is required under subsection (c) of this section if such consent has not been obtained. Such term includes interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale. For purposes of this paragraph, the term ''facility'' may include a portion of a facility subject to the limitations of subsection (d) of this section and shall include a facility the construction of which has not been commenced or completed.

(3) Sale of electric energy at wholesale

The term ''sale of electric energy at wholesale'' shall have the same meaning as provided in section 824(d) of title 16.

(4) Retail rates and charges

The term ''retail rates and charges'' means rates and charges for the sale of electric energy directly to consumers.

(b) Foreign retail sales

Notwithstanding paragraphs (1) and (2) of subsection (a) of this section, retail sales of electric energy produced by a facility located in a foreign country shall not prevent such facility from being an eligible facility, or prevent a person owning or operating, or both owning and operating, such facility from being an exempt wholesale generator if none of the electric energy generated by such facility is sold to consumers in the United States.

(c) State consent for existing rate-based facilities

If a rate or charge for, or in connection with, the construction of a facility, or for electric energy produced by a facility (other than any portion of a rate or charge which represents recovery of the cost of a wholesale rate or charge) was in effect under the laws of any State as of October 24, 1992, in order for the facility to be considered an eligible facility, every State commission having jurisdiction over any such rate or charge must make a specific determination that allowing such facility to be an eligible facility (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law; *Provided*, That in the case of such a rate or charge which is a rate or charge of an affiliate of a registered holding company:

(A) such determination with respect to the facility in question shall be required from every State commission having jurisdiction over the retail rates and charges of the affiliates of such registered holding company; and

(B) the approval of the Commission under this chapter shall not be required for the transfer of the facility to an exempt wholesale generator.

(d) Hybrids

(1) No exempt wholesale generator may own or operate a portion of any facility if any other portion of the facility is owned or operated by

an electric utility company that is an affiliate or associate company of such exempt wholesale generator.

(2) ELIGIBLE FACILITY.—Notwithstanding paragraph (1), an exempt wholesale generator may own or operate a portion of a facility identified in paragraph (1) if such portion has become an eligible facility as a result of the operation of subsection (c) of this section.

(e) Exemption of EWGS

An exempt wholesale generator shall not be considered an electric utility company under section 79b(a)(3) of this title and, whether or not a subsidiary company, an affiliate, or an associate company of a holding company, an exempt wholesale generator shall be exempt from all provisions of this chapter.

(f) Ownership of EWGS by exempt holding companies

Notwithstanding any provision of this chapter, a holding company that is exempt under section 79c of this title shall be permitted, without condition or limitation under this chapter, to acquire and maintain an interest in the business of one or more exempt wholesale generators.

(g) Ownership of EWGS by registered holding companies

Notwithstanding any provision of this chapter and the Commission's jurisdiction as provided under subsection (h) of this section, a registered holding company shall be permitted (without the need to apply for, or receive, approval from the Commission, and otherwise without condition under this chapter) to acquire and hold the securities, or an interest in the business, of one or more exempt wholesale generators.

(h) Financing and other relationships between EWGS and registered holding companies

The issuance of securities by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, the guarantee of securities of an exempt wholesale generator by a registered holding company, the entering into service, sales or construction contracts, and the creation or maintenance of any other relationship in addition to that described in subsection (g) of this section between an exempt wholesale generator and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under this chapter: *Provided*, That—

(1) section 79k of this title shall not prohibit the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located), and such ownership by a registered holding company shall be deemed consistent with the operation of an integrated public utility system;

(2) the ownership of an interest in the business of one or more exempt wholesale generators by a registered holding company (regardless of where facilities owned or operated by such exempt wholesale generators are located) shall be considered as reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system;

(3) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, or (B) the guarantee of a security of an exempt wholesale generator by a registered holding company, the Commission shall not make a finding that such security is not reasonably adapted to the earning power of such company or to the security structure of such company and other companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, unless the Commission first finds that the issue or sale of such security, or the making of the guarantee, would have a substantial adverse impact on the financial integrity of the registered holding company system;

(4) in determining whether to approve (A) the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator, or (B) other transactions by such registered holding company or by its subsidiaries other than with respect to exempt wholesale generators, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator upon the registered holding company system, unless the approval of the issue or sale or other transaction, together with the effect of such capitalization and earnings, would have a substantial adverse impact on the financial integrity of the registered holding company system;

(5) the Commission shall make its decision under paragraph (3) to approve or disapprove the issue or sale of a security or the guarantee of a security within 120 days of the filing of a declaration concerning such issue, sale or guarantee; and

(6) the Commission shall promulgate regulations with respect to the actions which would be considered, for purposes of this subsection, to have a substantial adverse impact on the financial integrity of the registered holding company system; such regulations shall ensure that the action has no adverse impact on any utility subsidiary or its customers, or on the ability of State commissions to protect such subsidiary or customers, and shall take into account the amount and type of capital invested in exempt wholesale generators, the ratio of such capital to the total capital invested in utility operations, the availability of books and records, and the financial and operating experience of the registered holding company and the exempt wholesale generator; the Commission shall promulgate such regulations within 6 months after October 24, 1992; after such 6-month period the Commission shall not approve any actions under paragraph (3), (4) or (5) except in accordance with such issued regulations.

(i) Application of chapter to other eligible facilities

In the case of any person engaged directly and exclusively in the business of owning or operat-

ing (or both owning and operating) all or part of one or more eligible facilities, an advisory letter issued by the Commission staff under this chapter after October 24, 1992, or an order issued by the Commission under this chapter after October 24, 1992, shall not be required for the purpose, or have the effect, of exempting such person from treatment as an electric utility company under section 79b(a)(3) of this title or exempting such person from any provision of this chapter.

(j) Ownership of exempt wholesale generators and qualifying facilities

The ownership by a person of one or more exempt wholesale generators shall not result in such person being considered as being primarily engaged in the generation or sale of electric power within the meaning of sections 796(17)(C)(ii) and 796(18)(B)(ii) of title 16.

(k) Protection against abusive affiliate transactions

(1) Prohibition

After October 24, 1992, an electric utility company may not enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator if the exempt wholesale generator is an affiliate or associate company of the electric utility company.

(2) State authority to exempt from prohibition

Notwithstanding paragraph (1), an electric utility company may enter into a contract to purchase electric energy at wholesale from an exempt wholesale generator that is an affiliate or associate company of the electric utility company—

(A) if every State commission having jurisdiction over the retail rates of such electric utility company makes each of the following specific determinations in advance of the electric utility company entering into such contract:

(i) A determination that such commission has sufficient regulatory authority, resources and access to books and records of the electric utility company and any relevant associate, affiliate or subsidiary company to exercise its duties under this subparagraph.

(ii) A determination that the transaction—

(I) will benefit consumers,

(II) does not violate any State law (including where applicable, least cost planning),

(III) would not provide the exempt wholesale generator any unfair competitive advantage by virtue of its affiliation or association with the electric utility company, and

(IV) is in the public interest; or

(B) if such electric utility company is not subject to State commission retail rate regulation and the purchased electric energy:

(i) would not be resold to any affiliate or associate company, or

(ii) the purchased electric energy would be resold to an affiliate or associate company and every State commission having jurisdiction over the retail rates of such affiliate or associate company makes each of the determinations provided under subparagraph (A), including the determination concerning a State commission's duties.

(*l*) Reciprocal arrangements prohibited

Reciprocal arrangements among companies that are not affiliates or associate companies of each other that are entered into in order to avoid the provisions of this section are prohibited.

(Aug. 26, 1935, ch. 687, title I, § 32, as added Oct. 24, 1992, Pub. L. 102–486, title VII, § 711, 106 Stat. 2905.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c)(B) and (e) to (i), was in the original ''this Act'' and was translated as reading ''this title'', meaning title I of act Aug. 26, 1935, ch. 687, known as the Public Utility Holding Company Act of 1935, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 32 of act Aug. 26, 1935, ch. 687, was renumbered section 35 and is classified to section 79z–6 of this title.

STATE AUTHORITIES; CONSTRUCTION

Nothing in this section to be construed as affecting or intending to affect, or in any way to interfere with, authority of any State or local government relating to environmental protection or siting of facilities, see section 731 of Pub. L. 102–486, set out as a note under section 79 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 sections 796, 2621.

§ 79z–5b. Treatment of foreign utilities

(a) Exemptions for foreign utility companies

(1) In general

A foreign utility company shall be exempt from all of the provisions of this chapter, except as otherwise provided under this section, and shall not, for any purpose under this chapter, be deemed to be a public utility company under section 79b(a)(5) of this title, notwithstanding that the foreign utility company may be a subsidiary company, an affiliate, or an associate company of a holding company or of a public utility company.

(2) State commission certification

Section[1] (a)(1) shall not apply or be effective unless every State commission having jurisdiction over the retail electric or gas rates of a public utility company that is an associate company or an affiliate of a company otherwise exempted under section[1] (a)(1) (other than a public utility company that is an associate company or an affiliate of a registered holding company) has certified to the Commission that it has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority. Such certification, upon the filing of a notice by such State commission, may be revised or withdrawn by the State commission prospec-

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

tively as to any future acquisition. The requirement of State certification shall be deemed satisfied if the relevant State commission had, prior to October 24, 1992, on the basis of prescribed conditions of general applicability, determined that ratepayers of a public utility company are adequately insulated from the effects of diversification and the diversification would not impair the ability of the State commission to regulate effectively the operations of such company.

(3) "Foreign utility company" defined

For purposes of this section, the term ''foreign utility company'' means any company that—

(A) owns or operates facilities that are not located in any State and that are used for the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, if such company—

(i) derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale or the distribution at retail of natural or manufactured gas for heat, light, or power, within the United States; and

(ii) neither the company nor any of its subsidiary companies is a public utility company operating in the United States; and

(B) provides notice to the Commission, in such form as the Commission may prescribe, that such company is a foreign utility company.

(b) Ownership of foreign utility companies by exempt holding companies

Notwithstanding any provision of this chapter except as provided under this section, a holding company that is exempt under section 79c of this title shall be permitted without condition or limitation under the[2] chapter to acquire and maintain an interest in the business of one or more foreign utility companies.

(c) Registered holding companies

(1) Ownership of foreign utility companies by registered holding companies

Notwithstanding any provision of this chapter except as otherwise provided under this section, a registered holding company shall be permitted as of October 24, 1992 (without the need to apply for, or receive approval from the Commission) to acquire and hold the securities or an interest in the business, of one or more foreign utility companies. The Commission shall promulgate rules or regulations regarding registered holding companies' acquisition of interests in foreign utility companies which shall provide for the protection of the customers of a public utility company which is an associate company of a foreign utility company and the maintenance of the financial integrity of the registered holding company system.

(2) Issuance of securities

The issuance of securities by a registered holding company for purposes of financing the acquisition of a foreign utility company, the guarantee of securities of a foreign utility company by a registered holding company, the entering into service, sales, or construction contracts, and the creation or maintenance of any other relationship between a foreign utility company and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under this chapter (unless otherwise exempted under this chapter, in the case of a transaction with an affiliate or associate company located outside of the United States). Any State commission with jurisdiction over the retail rates of a public utility company which is part of a registered holding company system may make such recommendations to the Commission regarding the registered holding company's relationship to a foreign utility company, and the Commission shall reasonably and fully consider such State recommendation.

(3) Construction

Any interest in the business of 1 or more foreign utility companies, or 1 or more companies organized exclusively to own, directly or indirectly, the securities or other interest in a foreign utility company, shall for all purposes of this chapter, be considered to be—

(A) consistent with the operation of a single integrated public utility system, within the meaning of section 79k of this title; and

(B) reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system, within the meaning of section 79k of this title.

(d) Effect on existing law; no State preemption

Nothing in this section shall—

(1) preclude any person from qualifying for or maintaining any exemption otherwise provided for under this chapter or the rules, regulations, or orders promulgated or issued under this chapter; or

(2) be deemed or construed to limit the authority of any State (including any State regulatory authority) with respect to—

(A) any public utility company or holding company subject to such State's jurisdiction; or

(B) any transaction between any foreign utility company (or any affiliate or associate company thereof) and any public utility company or holding company subject to such State's jurisdiction.

(e) Reporting requirements

(1) Filing of reports

A public utility company that is an associate company of a foreign utility company shall file with the Commission such reports (with respect to such foreign utility company) as the Commission may by rules, regulations, or order prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers.

(2) Notice of acquisitions

Not later than 30 days after the consummation of the acquisition of an interest in a foreign utility company by an associate company

[2] So in original. Probably should be ''this''.

of a public utility company that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates or by such public utility company, such associate company or such public utility company, shall provide notice of such acquisition to every State commission having jurisdiction over the retail electric or gas rates of such public utility company, in such form as may be prescribed by the State commission.

(f) Prohibition on assumption of liabilities

(1) In general

No public utility company that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall issue any security for the purpose of financing the acquisition, or for the purposes of financing the ownership or operation, of a foreign utility company, nor shall any such public utility company assume any obligation or liability as guarantor, endorser, surety, or otherwise in respect of any security of a foreign utility company.

(2) Exception for holding companies which are predominantly public utility companies

Subsection (f)(1) of this section shall not apply if:

(A) the public utility company that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates is a holding company and is not an affiliate under section 79b(a)(11)(B) of this title of another holding company or is not subject to regulation as a holding company and has no affiliate as defined in section 79b(a)(11)(A) of this title that is a public utility company subject to the jurisdiction of a State commission with respect to its retail electric or gas rates; and

(B) each State commission having jurisdiction with respect to the retail electric and gas rates of such public utility company expressly permits such public utility to engage in a transaction otherwise prohibited under section[3] (f)(1); and

(C) the transaction (aggregated with all other then-outstanding transactions exempted under this subsection) does not exceed 5 per centum of the then-outstanding total capitalization of the public utility.

(g) Prohibition on pledging or encumbering utility assets

No public utility company that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall pledge or encumber any utility assets or utility assets of any subsidiary thereof for the benefit of an associate foreign utility company.

(Aug. 26, 1935, ch. 687, title I, § 33, as added Oct. 24, 1992, Pub. L. 102–486, title VII, § 715, 106 Stat. 2912.)

REFERENCES IN TEXT

This chapter and the chapter, referred to in subsecs. (a)(1), (b), (c), and (d)(1), was in the original ''this Act'' and ''the Act'', respectively, and was translated as reading ''this title'', meaning title I of act Aug. 26, 1935, ch. 687, known as the Public Utility Holding Company Act of 1935, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 33 of act Aug. 26, 1935, ch. 687, was renumbered section 36 and is classified to section 79 of this title.

STATE AUTHORITIES; CONSTRUCTION

Nothing in this section to be construed as affecting or intending to affect, or in any way to interfere with, authority of any State or local government relating to environmental protection or siting of facilities, see section 731 of Pub. L. 102–486, set out as a note under section 79 of this title.

[3] So in original. Probably should be ''subsection''.

§ 79z–5c. Exempt telecommunications companies

(a) Definitions

For purposes of this section—

(1) Exempt telecommunications company

The term ''exempt telecommunications company'' means any person determined by the Federal Communications Commission to be engaged directly or indirectly, wherever located, through one or more affiliates (as defined in section 79b(a)(11)(B) of this title), and exclusively in the business of providing—

(A) telecommunications services;

(B) information services;

(C) other services or products subject to the jurisdiction of the Federal Communications Commission; or

(D) products or services that are related or incidental to the provision of a product or service described in subparagraph (A), (B), or (C).

No person shall be deemed to be an exempt telecommunications company under this section unless such person has applied to the Federal Communications Commission for a determination under this paragraph. A person applying in good faith for such a determination shall be deemed an exempt telecommunications company under this section, with all of the exemptions provided by this section, until the Federal Communications Commission makes such determination. The Federal Communications Commission shall make such determination within 60 days of its receipt of any such application filed after February 8, 1996, and shall notify the Commission whenever a determination is made under this paragraph that any person is an exempt telecommunications company. Not later than 12 months after February 8, 1996, the Federal Communications Commission shall promulgate rules implementing the provisions of this paragraph which shall be applicable to applications filed under this paragraph after the effective date of such rules.

(2) Other terms

For purposes of this section, the terms ''telecommunications services'' and ''information services'' shall have the same meanings as provided in the Communications Act of 1934 [47 U.S.C. 151 et seq.].

(b) State consent for sale of existing rate-based facilities

If a rate or charge for the sale of electric energy or natural gas (other than any portion of a

rate or charge which represents recovery of the cost of a wholesale rate or charge) for, or in connection with, assets of a public utility company that is an associate company or affiliate of a registered holding company was in effect under the laws of any State as of December 19, 1995, the public utility company owning such assets may not sell such assets to an exempt telecommunications company that is an associate company or affiliate unless State commissions having jurisdiction over such public utility company approve such sale. Nothing in this subsection shall preempt the otherwise applicable authority of any State to approve or disapprove the sale of such assets. The approval of the Commission under this chapter shall not be required for the sale of assets as provided in this subsection.

(c) Ownership of ETCS by exempt holding companies

Notwithstanding any provision of this chapter, a holding company that is exempt under section 79c of this title shall be permitted, without condition or limitation under this chapter, to acquire and maintain an interest in the business of one or more exempt telecommunications companies.

(d) Ownership of ETCS by registered holding companies

Notwithstanding any provision of this chapter, a registered holding company shall be permitted (without the need to apply for, or receive, approval from the Commission, and otherwise without condition under this chapter) to acquire and hold the securities, or an interest in the business, of one or more exempt telecommunications companies.

(e) Financing and other relationships between ETCS and registered holding companies

The relationship between an exempt telecommunications company and a registered holding company, its affiliates and associate companies, shall remain subject to the jurisdiction of the Commission under this chapter: *Provided*, That—

(1) section 79k of this title shall not prohibit the ownership of an interest in the business of one or more exempt telecommunications companies by a registered holding company (regardless of activities engaged in or where facilities owned or operated by such exempt telecommunications companies are located), and such ownership by a registered holding company shall be deemed consistent with the operation of an integrated public utility system;

(2) the ownership of an interest in the business of one or more exempt telecommunications companies by a registered holding company (regardless of activities engaged in or where facilities owned or operated by such exempt telecommunications companies are located) shall be considered as reasonably incidental, or economically necessary or appropriate, to the operations of an integrated public utility system;

(3) the Commission shall have no jurisdiction under this chapter over, and there shall be no restriction or approval required under this chapter with respect to (A) the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt telecommunications company, or (B) the guarantee of a security of an exempt telecommunications company by a registered holding company; and

(4) except for costs that should be fairly and equitably allocated among companies that are associate companies of a registered holding company, the Commission shall have no jurisdiction under this chapter over the sales, service, and construction contracts between an exempt telecommunications company and a registered holding company, its affiliates and associate companies.

(f) Reporting obligations concerning investments and activities of registered public-utility holding company systems

(1) Obligations to report information

Any registered holding company or subsidiary thereof that acquires or holds the securities, or an interest in the business, of an exempt telecommunications company shall file with the Commission such information as the Commission, by rule, may prescribe concerning—

(A) investments and activities by the registered holding company, or any subsidiary thereof, with respect to exempt telecommunications companies, and

(B) any activities of an exempt telecommunications company within the holding company system,

that are reasonably likely to have a material impact on the financial or operational condition of the holding company system.

(2) Authority to require additional information

If, based on reports provided to the Commission pursuant to paragraph (1) of this subsection or other available information, the Commission reasonably concludes that it has concerns regarding the financial or operational condition of any registered holding company or any subsidiary thereof (including an exempt telecommunications company), the Commission may require such registered holding company to make additional reports and provide additional information.

(3) Authority to limit disclosure of information

Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any information required to be reported under this subsection. Nothing in this subsection shall authorize the Commission to withhold the information from Congress, or prevent the Commission from complying with a request for information from any other Federal or State department or agency requesting the information for purposes within the scope of its jurisdiction. For purposes of section 552 of title 5, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(g) Assumption of liabilities

Any public utility company that is an associate company, or an affiliate, of a registered holding company and that is subject to the ju-

risdiction of a State commission with respect to its retail electric or gas rates shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an exempt telecommunications company. Any public utility company that is an associate company, or an affiliate, of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not assume any obligation or liability as guarantor, endorser, surety, or otherwise by the public utility company in respect of any security of an exempt telecommunications company.

(h) Pledging or mortgaging of assets

Any public utility company that is an associate company, or affiliate, of a registered holding company and that is subject to the jurisdiction of a State commission with respect to its retail electric or gas rates shall not pledge, mortgage, or otherwise use as collateral any assets of the public utility company or assets of any subsidiary company thereof for the benefit of an exempt telecommunications company.

(i) Protection against abusive affiliate transactions

A public utility company may enter into a contract to purchase services or products described in subsection (a)(1) of this section from an exempt telecommunications company that is an affiliate or associate company of the public utility company only if—

(1) every State commission having jurisdiction over the retail rates of such public utility company approves such contract; or

(2) such public utility company is not subject to State commission retail rate regulation and the purchased services or products—

(A) would not be resold to any affiliate or associate company; or

(B) would be resold to an affiliate or associate company and every State commission having jurisdiction over the retail rates of such affiliate or associate company makes the determination required by subparagraph (A).

The requirements of this subsection shall not apply in any case in which the State or the State commission concerned publishes a notice that the State or State commission waives its authority under this subsection.

(j) Nonpreemption of rate authority

Nothing in this chapter shall preclude the Federal Energy Regulatory Commission or a State commission from exercising its jurisdiction under otherwise applicable law to determine whether a public utility company may recover in rates the costs of products or services purchased from or sold to an associate company or affiliate that is an exempt telecommunications company, regardless of whether such costs are incurred through the direct or indirect purchase or sale of products or services from such associate company or affiliate.

(k) Reciprocal arrangements prohibited

Reciprocal arrangements among companies that are not affiliates or associate companies of each other that are entered into in order to avoid the provisions of this section are prohibited.

(*l*) Books and records

(1) Upon written order of a State commission, a State commission may examine the books, accounts, memoranda, contracts, and records of—

(A) a public utility company subject to its regulatory authority under State law;

(B) any exempt telecommunications company selling products or services to such public utility company or to an associate company of such public utility company; and

(C) any associate company or affiliate of an exempt telecommunications company which sells products or services to a public utility company referred to in subparagraph (A),

wherever located, if such examination is required for the effective discharge of the State commission's regulatory responsibilities affecting the provision of electric or gas service in connection with the activities of such exempt telecommunications company.

(2) Where a State commission issues an order pursuant to paragraph (1), the State commission shall not publicly disclose trade secrets or sensitive commercial information.

(3) Any United States district court located in the State in which the State commission referred to in paragraph (1) is located shall have jurisdiction to enforce compliance with this subsection.

(4) Nothing in this section shall—

(A) preempt applicable State law concerning the provision of records and other information; or

(B) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

(m) Independent audit authority for State commissions

(1) State may order audit

Any State commission with jurisdiction over a public utility company that—

(A) is an associate company of a registered holding company; and

(B) transacts business, directly or indirectly, with a subsidiary company, an affiliate or an associate company that is an exempt telecommunications company,

may order an independent audit to be performed, no more frequently than on an annual basis, of all matters deemed relevant by the selected auditor that reasonably relate to retail rates: *Provided*, That such matters relate, directly or indirectly, to transactions or transfers between the public utility company subject to its jurisdiction and such exempt telecommunications company.

(2) Selection of firm to conduct audit

(A) If a State commission orders an audit in accordance with paragraph (1), the public utility company and the State commission shall jointly select, within 60 days, a firm to perform the audit. The firm selected to perform the audit shall possess demonstrated qualifications relating to—

(i) competency, including adequate technical training and professional proficiency

in each discipline necessary to carry out the audit; and

(ii) independence and objectivity, including that the firm be free from personal or external impairments to independence, and should assume an independent position with the State commission and auditee, making certain that the audit is based upon an impartial consideration of all pertinent facts and responsible opinions.

(B) The public utility company and the exempt telecommunications company shall cooperate fully with all reasonable requests necessary to perform the audit and the public utility company shall bear all costs of having the audit performed.

(3) Availability of auditor's report

The auditor's report shall be provided to the State commission not later than 6 months after the selection of the auditor, and provided to the public utility company not later than 60 days thereafter.

(n) Applicability of telecommunications regulation

Nothing in this section shall affect the authority of the Federal Communications Commission under the Communications Act of 1934 [47 U.S.C. 151 et seq.], or the authority of State commissions under State laws concerning the provision of telecommunications services, to regulate the activities of an exempt telecommunications company.

(Aug. 26, 1935, ch. 687, title I, § 34, as added Feb. 8, 1996, Pub. L. 104–104, title I, § 103, 110 Stat. 81.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsecs. (a)(2) and (n), 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.

This chapter, referred to in subsecs. (b) to (e) and (j), was in the original ''this Act'', and was translated as reading ''this title'', meaning title I of act Aug. 26, 1935, ch. 687, known as the Public Utility Holding Company Act of 1935, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 34 of act Aug. 26, 1935, ch. 687, was renumbered section 35 and is classified to section 79z–6 of this title.

§ 79z–6. Separability clause

If any provision of this chapter or the application of such provision to any person or circumstances shall be held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(Aug. 26, 1935, ch. 687, title I, § 35, formerly § 32, 49 Stat. 837; renumbered § 34, Oct. 24, 1992, Pub. L. 102–486, title VII, § 711, 106 Stat. 2905; renumbered § 35, Feb. 8, 1996, Pub. L. 104–104, title I, § 103, 110 Stat. 81.)

PRIOR PROVISIONS

A prior section 35 of act Aug. 26, 1935, ch. 687, was renumbered section 36 and is classified to section 79 of this title.

CHAPTER 2D—INVESTMENT COMPANIES AND ADVISERS

SUBCHAPTER I—INVESTMENT COMPANIES

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