

the Commission may issue a deficiency order under this section to remove such officer, director, committee member, or employee.

**(5) Designation as contract market**

Notwithstanding section 8 of this title, during the period that a proposed or final deficiency order under this section is in effect, the Commission may refrain from approving any application for designation as a contract market made by the board of trade whose contract market is the subject of such deficiency order.

**(6) Delegation**

The Commission shall not delegate the authority to issue deficiency orders under this subsection.

**(c) Rescission, modification, or delay of deficiency orders**

Before any proposed deficiency order issued by the Commission under subsection (b) of this section may become final, the Commission shall—

(1) provide the affected contract market with an opportunity for a hearing through submission of written data, views, or arguments and, under terms set by the Commission at the request of the contract market, through an oral presentation of views and comments to the Commission, in order to petition the Commission to rescind, modify, or delay such deficiency order; and

(2) rule on such petition, not less than twenty days before the deficiency order takes effect, making findings, as appropriate, as to whether—

(A) the deficiencies cited by the Commission have been corrected or are being corrected under an expeditious timetable acceptable to the Commission;

(B) the trade monitoring system of the contract market is deficient as noted in the deficiency order; or

(C) the timetable for corrective action by the contract market in the proposed deficiency order, and the particular corrective action proposed, is appropriate in light of the deficiencies noted and the purposes of this chapter.

**(d) Penalties**

Violation of a final deficiency order issued under subsection (c) of this section shall be considered a violation of an order of the Commission for purposes of—

(1) establishing liability and assessing penalties against a contract market or any director, officer, agent, or employee thereof under section 13a or 13a-1 of this title; or

(2) initiating proceedings under section 7b or 8(a) of this title.

**(e) Judicial review**

**(1) Persons**

Any person, other than a contract market, aggrieved by a deficiency order issued under subsection (b)(4) of this section, may obtain review of such deficiency order when issued by the Commission under the terms and conditions in section 8(b) of this title.

**(2) Contract markets**

Any contract market that has petitioned the Commission to rescind, modify, or delay any

proposed deficiency order issued under subsection (b) of this section may obtain judicial review of any final such deficiency order only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, under the standards applicable to rulemaking proceedings under section 553 of title 5.

(Sept. 21, 1922, ch. 369, §8e, as added Oct. 28, 1992, Pub. L. 102-546, title II, §202(a), 106 Stat. 3598.)

REFERENCES IN TEXT

Section 8 of this title, referred to in subsec. (b)(5), was in the original "section 6" meaning section 6 of act Sept. 21, 1922, ch. 369, which is classified to sections 8, 9, 9a, 13b, and 15 of this title. See Codification note set out under section 8 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6j of this title.

**§ 13. Violations generally; punishment; costs of prosecution**

**(a) Felonies generally**

It shall be a felony punishable by a fine of not more than \$1,000,000 (or \$500,000 in the case of a person who is an individual) or imprisonment for not more than five years, or both, together with the costs of prosecution, for:

(1) Any person registered or required to be registered under this chapter, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to such person's use or to the use of another, any money, securities, or property having a value in excess of \$100, which was received by such person or any employee or agent thereof to margin, guarantee, or secure the trades or contracts of any customer or accruing to such customer as a result of such trades or contracts or which otherwise was received from any customer, client, or pool participant in connection with the business of such person. The word "value" as used in this paragraph means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(2) Any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market, or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 6, section 6b, subsections (a) through (e) of subsection<sup>1</sup> 6c, section 6h, section 6o(1), or section 23 of this title.

(3) Any person knowingly to make, or cause to be made, any statement in any application, report, or document required to be filed under

<sup>1</sup> So in original. Probably should be "section".

this chapter or any rule or regulation thereunder or any undertaking contained in a registration statement required under this chapter, or by any contract market or registered futures association in connection with an application for membership or participation therein or to become associated with a member thereof, which statement was false or misleading with respect to any material fact, or knowingly to omit any material fact required to be stated therein or necessary to make the statements therein not misleading.

(4) Any person willfully to falsify, conceal, or cover up by any trick, scheme, or artifice a material fact, make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry to a contract market, board of trade, or futures association designated or registered under this chapter acting in furtherance of its official duties under this chapter.

(5) Any person willfully to violate any other provision of this chapter, or any rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter, but no person shall be subject to imprisonment under this paragraph for the violation of any rule or regulation if such person proves that he had no knowledge of such rule or regulation.

**(b) Suspension of convicted felons**

Any person convicted of a felony under this section shall be suspended from registration under this chapter and shall be denied registration or reregistration for five years or such longer period as the Commission may determine, and barred from using, or participating in any manner in, any market regulated by the Commission for five years or such longer period as the Commission shall determine, on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof.

**(c) Transactions by Commissioners and Commission employees prohibited**

It shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution, for any Commissioner of the Commission or any employee or agent thereof, to participate, directly or indirectly, in any transaction in commodity futures or any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission deter-

mines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract, or for any such person to participate, directly or indirectly, in any investment transaction in an actual commodity if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission. The foregoing prohibitions shall not apply to any transaction or class of transactions that the Commission, by rule or regulation, has determined would not be contrary to the public interest or otherwise inconsistent with the purposes of this subsection.

**(d) Use of information by Commissioners and Commission employees prohibited**

It shall be a felony punishable by a fine of not more than \$500,000 or imprisonment for not more than five years, or both, together with the costs of prosecution—(1) for any Commissioner of the Commission or any employee or agent thereof who, by virtue of his employment or position, acquires information which may affect or tend to affect the price of any commodity futures or commodity and which information has not been made public to impart such information with intent to assist another person, directly or indirectly, to participate in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract; and (2) for any person to acquire such information from any Commissioner of the Commission or any employee or agent thereof and to use such information in any transaction in commodity futures, any transaction in an actual commodity, or in any transaction of the character of or which is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty", or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract.

**(e) Redesignated (d)**

**(f) Insider trading prohibited**

It shall be a felony for any person—

(1) who is an employee, member of the governing board, or member of any committee of a board of trade, contract market, or registered futures association, in violation of a regulation issued by the Commission, willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of, or willfully and knowingly to disclose for any purpose inconsistent with the performance of such person's official duties as an employee or member, any material nonpublic information obtained through special access related to the performance of such duties.<sup>2</sup>

(2) willfully and knowingly to trade for such person's own account, or for or on behalf of any other account, in contracts for future delivery or options thereon on the basis of any material nonpublic information that such person knows was obtained in violation of paragraph (1) from an employee, member of the governing board, or member of any committee of a board of trade, contract market, or registered futures association.

Such felony shall be punishable by a fine of not more than \$500,000, plus the amount of any profits realized from such trading or disclosure made in violation of this subsection, or imprisonment for not more than five years, or both, together with the costs of prosecution.

(Sept. 21, 1922, ch. 369, § 9, 42 Stat. 1003; June 15, 1936, ch. 545, §§ 2, 11, 49 Stat. 1491, 1501; Feb. 19, 1968, Pub. L. 90-258, § 25, 82 Stat. 33; Oct. 23, 1974, Pub. L. 93-463, title II, § 212(d), title IV, §§ 401, 409, 88 Stat. 1404, 1412, 1414; Sept. 30, 1978, Pub. L. 95-405, § 19, 92 Stat. 875; Jan. 11, 1983, Pub. L. 97-444, title II, § 227, 96 Stat. 2316; Nov. 10, 1986, Pub. L. 99-641, title I, §§ 105, 110(3), (4), 100 Stat. 3558, 3561; Oct. 28, 1992, Pub. L. 102-546, title II, §§ 212(a), 214(a), 106 Stat. 3608, 3610.)

#### AMENDMENTS

1992—Subsec. (a). Pub. L. 102-546, § 212(a)(1)(A), (C), added subsec. (a) and struck out former subsec. (a) which related to penalty for embezzlement and larcenous actions.

Subsec. (b). Pub. L. 102-546, § 212(a)(1)(A), (C), added subsec. (b) and struck out former subsec. (b) which related to penalty for price manipulation, cornering, and fraudulent information.

Subsec. (c). Pub. L. 102-546, § 212(a)(1)(A), (B), (2), redesignated subsec. (d) as (c), substituted "\$500,000" for "\$100,000", and struck out former subsec. (c) which related to penalty for misdemeanors.

Subsecs. (d) to (f). Pub. L. 102-546, §§ 212(a)(1)(B), (3), 214(a), redesignated subsec. (e) as (d), substituted "\$500,000" for "\$100,000", and added subsec. (f).

1986—Subsec. (c). Pub. L. 99-641, § 110(3), substituted "6k." for "6k."

Subsec. (d). Pub. L. 99-641, § 110(4), substituted "advance guaranty" for "advance guarantee".

Pub. L. 99-641, § 105, inserted "if nonpublic information is used in the investment transaction, if the investment transaction is prohibited by rule or regulation of the Commission, or if the investment transaction is effected by means of any instrument regulated by the Commission" after "actual commodity", and substituted provisions which related to foregoing prohibitions not being applicable to transactions determined by Commission not contrary to public interest

or inconsistent with this subsection for provisions which read as follows: "Such prohibition against any investment transaction in an actual commodity shall not apply to (1) a transaction in which such person buys an agricultural commodity or livestock for use in such person's own farming or ranching operations or sells an agricultural commodity which such person has produced in connection with such person's own farming or ranching operations nor to any transaction in which such person sells livestock owned by such person for at least three months, (2) a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, or (3) a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit, or a similar financial instrument if no nonpublic information is used by such person in such transaction. With respect to such excepted transactions, the Commission shall require any Commissioner of the Commission or any employee or agent thereof who participates in any such transaction to notify the Commission thereof in accordance with such regulations as the Commission shall prescribe and the Commission shall make such information available to the public."

1983—Subsec. (a). Pub. L. 97-444, § 227(1), expanded applicability to any person registered or required to be registered under this chapter and inserted provision suspending persons convicted under this subsec. from registration and denying reregistration for five years or longer as determined by the Commission, unless such suspension or denial is not required to protect the public interest.

Subsec. (b). Pub. L. 97-444, § 227(2), inserted "A person convicted of a felony under this subsection shall be suspended from any registration under this chapter, denied registration or reregistration for five years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for five years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof."

Subsec. (c). Pub. L. 97-444, § 227(3), inserted "A person convicted under this subsection of knowingly violating the provisions of section 6a of this title shall be suspended from any registration under this chapter, denied registration or reregistration for a period of two years or such longer period as the Commission shall determine, and barred from using or participating in any manner in any market regulated by the Commission for two years or such longer period as the Commission shall determine on such terms and conditions as the Commission may prescribe, unless the Commission determines that the imposition of such suspension, denial of registration or reregistration, or market bar is not required to protect the public interest. The Commission may upon petition later review such disqualification and market bar and for good cause shown reduce the period thereof."

Subsec. (d). Pub. L. 97-444, § 227(4), in amending subsec. (d) generally, added to range of felonious conduct, participation in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is

<sup>2</sup> So in original. The period probably should be "; or".

marketed or managed in substantially the same manner as such a standardized contract, and added to non-applicability of prohibition against any investment transaction in an actual commodity, a transaction entered into by the trustee of a trust established by such person over which such person exercises no control if such transaction is entered into solely to hedge against adverse price changes in connection with such farming or ranching operations or is a transaction for the lease of oil or gas or other mineral rights or interests owned by such person, or a transaction in which such person buys or sells, directly or indirectly (except by means of an instrument regulated by the Commission), a United States Government security, a certificate of deposit, or a similar financial instrument if no nonpublic information is used by such person in such transaction.

Subsec. (e). Pub. L. 97-444, §227(5), inserted after words "decline guaranty" each place they appear the following: "or in any transaction for the delivery of any commodity under a standardized contract commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract, or under any contract, account, arrangement, scheme, or device that the Commission determines serves the same function or functions as such a standardized contract, or is marketed or managed in substantially the same manner as such a standardized contract".

1978—Subsec. (a). Pub. L. 95-405, §19(1), substituted "\$500,000" for "\$100,000" and inserted provision relating to a fine of not more than \$100,000 plus costs of prosecution for a violation by a person who is an individual.

Subsec. (b). Pub. L. 95-405, §19(2), substituted "\$500,000" for "\$100,000" and inserted provisions making felonies the violation of sections 6, 6b, 6c(b) to (e), 6h, 6o(1) and 23 of this title, knowingly making any false or misleading statement of material fact, or omitting such fact in any application or report, and setting the fine for such felonies at not more than \$100,000 for a person who is an individual.

Subsec. (c). Pub. L. 95-405, §19(3), inserted references to subsecs. (d) and (e) of this section and substituted "sections 6a, 6c(a), 6d, 6e, 6i, 6k, 6m, 6o(2), or 12b of this title" for "sections 6 to 6e, 6h, 6i, 6k, 6m, 6o or 12b of this title".

Subsecs. (d), (e). Pub. L. 95-405, §19(4), (5), substituted "\$100,000" for "\$10,000".

1974—Subsecs. (a), (b). Pub. L. 93-463, §212(d)(1), (2), substituted "\$100,000" for "\$10,000".

Subsec. (c). Pub. L. 93-463, §§212(d)(3), 409, substituted "\$100,000" for "\$10,000" and inserted reference to sections 6k, 6m, and 6o of this title.

Subsecs. (d), (e). Pub. L. 93-463, §401, added subsecs. (d) and (e).

1968—Subsec. (a). Pub. L. 90-258 added subsec. (a).

Subsec. (b). Pub. L. 90-258 incorporated existing offenses in provisions designated as subsec. (b), changed classification thereof from misdemeanors to felonies, and increased term of imprisonment from not more than one year to not more than five years.

Subsec. (c). Pub. L. 90-258 incorporated existing offenses in provisions designated as subsec. (c), and included penalty for violation of section 12b of this title.

1936—Act June 15, 1936, amended section generally and provided that price manipulations of commodities in interstate commerce was a violation.

#### EFFECTIVE DATE OF 1983 AMENDMENT

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

#### EFFECTIVE DATE OF 1978 AMENDMENT

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

#### EFFECTIVE DATE OF 1974 AMENDMENT

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

#### EFFECTIVE DATE OF 1968 AMENDMENT

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

#### EFFECTIVE DATE OF 1936 AMENDMENT

Amendment by act June 15, 1936, effective 90 days after June 15, 1936, see section 13 of that act, set out as a note under section 1 of this title.

#### REGULATIONS

Section 214(b) of Pub. L. 102-546 provided that: "The Commodity Futures Trading Commission shall issue regulations to implement the amendment made by subsection (a) [amending this section] not later than three hundred and sixty days after the date of enactment of this Act [Oct. 28, 1992]."

#### PENALTIES STUDY AND GUIDELINES

Section 225 of Pub. L. 102-546 provided that:

"(a) STUDY.—The Commodity Futures Trading Commission shall study the penalties the Commission imposes against persons found to have violated the Commodity Exchange Act (7 U.S.C. 1 et seq.) and the penalties imposed by contract markets and registered futures associations against persons found to have violated their respective rules established under such Act.

"(b) REPORT.—Not later than two years after the date of enactment of this Act [Oct. 28, 1992], the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that describes the results of the study conducted under subsection (a). The report shall—

"(1) include an analysis of whether systematic differences exist among penalties imposed by various contract markets and registered futures associations for similar offenses, and, if so, the causes of such differences;

"(2) propose industry-wide guidelines or rules to make penalty levels among contract markets and registered futures associations consistent, including, if appropriate, minimum penalties or penalty ranges for various offenses; and

"(3) propose guidelines or rules to make Commission penalty levels consistent, including, if appropriate, minimum penalties or penalty ranges for various offenses."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6a, 13b of this title.

### § 13-1. Violations, prohibition against dealings in onion futures; punishment

(a) No contract for the sale of onions for future delivery shall be made on or subject to the rules of any board of trade in the United States. The terms used in this section shall have the same meaning as when used in this chapter.

(b) Any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than \$5,000.

(Pub. L. 85-839, §1, Aug. 28, 1958, 72 Stat. 1013.)

#### CODIFICATION

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

#### EFFECTIVE DATE

Section 2 of Pub. L. 85-839 provided that: "This Act [enacting this section] shall take effect thirty days after its enactment [Aug. 28, 1958]."

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1a of this title.