

Public Law 111–190  
111th Congress

An Act

To amend the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 to extend the operation of such Act, and for other purposes.

June 9, 2010  
[H.R. 5330]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. DELAY OF SUNSET.**

Section 211(a) of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended—

(1) in subsection (a)—

(A) by inserting “of this subtitle” after “214”; and

(B) by striking “6 years” and inserting “16 years”;

and

(2) by amending subsection (b) to read as follows:

“(b) EXCEPTIONS.—With respect to—

“(1) a person who receives a marker on or before the date on which the provisions of section 211 through 214 of this subtitle shall cease to have effect that later results in the execution of an antitrust leniency agreement; or

“(2) an applicant who has entered into an antitrust leniency agreement on or before the date on which the provisions of sections 211 through 214 of this subtitle shall cease to have effect,

the provisions of sections 211 through 214 of this subtitle shall continue in effect.”.

**SEC. 2. DEFINITIONS.**

Section 212 of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5) the following:

“(6) MARKER.—The term ‘marker’ means an assurance given by the Antitrust Division to a candidate for corporate leniency that no other company will be considered for leniency, for some finite period of time, while the candidate is given an opportunity to perfect its leniency application.”.

**SEC. 3. TIMELINESS; COOPERATION AFTER TERMINATION OF STAY OR PROTECTIVE ORDER.**

(a) TIMELINESS.—Section 213(c) of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended to read as follows:

“(c) **TIMELINESS.**—The court shall consider, in making the determination concerning satisfactory cooperation described in subsection (b), the timeliness of the applicant’s or cooperating individual’s cooperation with the claimant.”.

(b) **COOPERATION AFTER TERMINATION OF STAY OR PROTECTIVE ORDER.**—Section 213 of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended by adding at the end the following—

- (1) by redesignating subsection (d) as subsection (e); and
- (2) by inserting after subsection (c) the following:

“(d) **COOPERATION AFTER EXPIRATION OF STAY OR PROTECTIVE ORDER.**—If the Antitrust Division does obtain a stay or protective order in a civil action based on conduct covered by an antitrust leniency agreement, once the stay or protective order, or a portion thereof, expires or is terminated, the antitrust leniency applicant and cooperating individuals shall provide without unreasonable delay any cooperation described in paragraphs (1) and (2) of subsection (b) that was prohibited by the expired or terminated stay or protective order, or the expired or terminated portion thereof, in order for the cooperation to be deemed satisfactory under such paragraphs.”.

#### **SEC. 4. TECHNICAL CORRECTIONS.**

Section 214 of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 (Public Law 108–237; 15 U.S.C. 1 note) is amended—

- (1) in paragraph (1) by inserting “of this subtitle” after “213(b)”; and
- (2) in paragraph (3)—
  - (A) by inserting “of this subtitle” after “213(a)” the 1st place it appears; and
  - (B) by striking “title” and inserting “subtitle”.

#### **SEC. 5. GAO REPORT.**

Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit, to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, a report on the effectiveness of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004, both in criminal investigation and enforcement by the Department of Justice, and in private civil actions. Such report should include study of, inter alia—

- (1) the appropriateness of the addition of qui tam proceedings to the antitrust leniency program; and
- (2) the appropriateness of creating anti-retaliatory protection for employees who report illegal anticompetitive conduct.

15 USC 1 note.

#### **SEC. 6. EFFECTIVE DATE OF AMENDMENTS.**

The amendments made by section 1 shall take effect immediately before June 22, 2010.

#### **SEC. 7. BUDGETARY EFFECTS.**

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the

Congressional Record by the Chairman of the House Budget Committee, provided that such statement has been submitted prior to the vote on passage.

Approved June 9, 2010.

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LEGISLATIVE HISTORY—H.R. 5330:

CONGRESSIONAL RECORD, Vol. 156 (2010):

May 24, considered and passed House.

May 27, considered and passed Senate.