

place, either directly or through its payment processor.

(4) Online marketplace

The term “online marketplace” means any person or entity that operates a consumer-directed electronically based or accessed platform that—

(A) includes features that allow for, facilitate, or enable third party sellers to engage in the sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States;

(B) is used by one or more third party sellers for such purposes; and

(C) has a contractual or similar relationship with consumers governing their use of the platform to purchase consumer products.

(5) Seller

The term “seller” means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace’s platform.

(6) Third party seller

(A) In general

The term “third party seller” means any seller, independent of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through such online marketplace’s platform.

(B) Exclusions

The term “third party seller” does not include, with respect to an online marketplace—

(i) a seller who operates the online marketplace’s platform; or

(ii) a business entity that has—

(I) made available to the general public the entity’s name, business address, and working contact information;

(II) an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products; and

(III) provided to the online marketplace identifying information, as described in subsection (a), that has been verified in accordance with that subsection.

(7) Verify

The term “verify” means to confirm information provided to an online marketplace pursuant to this section, which may include the use of one or more methods that enable the online marketplace to reliably determine that any information and documents provided are valid, corresponding to the seller or an individual acting on the seller’s behalf, not misappropriated, and not falsified.

(g) Relationship to State laws

No State or political subdivision of a State, or territory of the United States, may establish or continue in effect any law, regulation, rule, requirement, or standard that conflicts with the requirements of this section.

(h) Effective date

This section shall take effect 180 days after December 29, 2022.

(Pub. L. 117-328, div. BB, title III, §301, Dec. 29, 2022, 136 Stat. 5555.)

Editorial Notes

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsec. (c)(2), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

CODIFICATION

Section was enacted as part of the Consolidated Appropriations Act, 2023, and not as part of the Federal Trade Commission Act which comprises this chapter.

§ 46. Additional powers of Commission

The Commission shall also have power—

(a) Investigation of persons, partnerships, or corporations

To gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any person, partnership, or corporation engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

(b) Reports of persons, partnerships, and corporations

To require, by general or special orders, persons, partnerships, and corporations, engaged in or whose business affects commerce, excepting banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce, or any class of them, or any of them, respectively, to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions, furnishing to the Commission such information as it may require as to the organization, business, conduct, practices, management, and relation to other corporations, partnerships, and individuals of the respective persons, partnerships, and corporations filing such reports or answers in writing. Such reports and answers shall be made under oath, or otherwise, as the Commission may prescribe, and shall be filed with the Commission within such reasonable period as the Commission may prescribe, unless additional time be granted in any case by the Commission.

(c) Investigation of compliance with antitrust decrees

Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and re-

strain any violation of the antitrust Acts, to make investigation, upon its own initiative, of the manner in which the decree has been or is being carried out, and upon the application of the Attorney General it shall be its duty to make such investigation. It shall transmit to the Attorney General a report embodying its findings and recommendations as a result of any such investigation, and the report shall be made public in the discretion of the Commission.

(d) Investigations of violations of antitrust statutes

Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.

(e) Readjustment of business of corporations violating antitrust statutes

Upon the application of the Attorney General to investigate and make recommendations for the readjustment of the business of any corporation alleged to be violating the antitrust Acts in order that the corporation may thereafter maintain its organization, management, and conduct of business in accordance with law.

(f) Publication of information; reports

To make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use: *Provided*, That the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information (1) to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes, and (2) to any officer or employee of any foreign law enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 57b-2(b) of this title.

(g) Classification of corporations; regulations

From time to time classify corporations and (except as provided in section 57a(a)(2) of this title) to make rules and regulations for the purpose of carrying out the provisions of this subchapter.

(h) Investigations of foreign trade conditions; reports

To investigate, from time to time, trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants, or traders, or other conditions, may affect the foreign trade of the United States, and to report to Congress thereon, with such recommendations as it deems advisable.

(i) Investigations of foreign antitrust law violations

With respect to the International Antitrust Enforcement Assistance Act of 1994 [15 U.S.C. 6201 et seq.], to conduct investigations of possible violations of foreign antitrust laws (as defined in section 12 of such Act [15 U.S.C. 6211]).

(j) Investigative assistance for foreign law enforcement agencies

(1) In general

Upon a written request from a foreign law enforcement agency to provide assistance in accordance with this subsection, if the requesting agency states that it is investigating, or engaging in enforcement proceedings against, possible violations of laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211(5))), to provide the assistance described in paragraph (2) without requiring that the conduct identified in the request constitute a violation of the laws of the United States.

(2) Type of assistance

In providing assistance to a foreign law enforcement agency under this subsection, the Commission may—

(A) conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by this subchapter; and

(B) when the request is from an agency acting to investigate or pursue the enforcement of civil laws, or when the Attorney General refers a request to the Commission from an agency acting to investigate or pursue the enforcement of criminal laws, seek and accept appointment by a United States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of title 28.

(3) Criteria for determination

In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including—

(A) whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission;

(B) whether compliance with the request would prejudice the public interest of the United States; and

(C) whether the requesting agency's investigation or enforcement proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.

(4) International agreements

If a foreign law enforcement agency has set forth a legal basis for requiring execution of an international agreement as a condition for

reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, with prior approval and ongoing oversight of the Secretary of State, and with final approval of the agreement by the Secretary of State, may negotiate and conclude an international agreement, in the name of either the United States or the Commission, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such an international agreement to—

(A) provide assistance using the powers set forth in this subsection;

(B) disclose materials and information in accordance with subsection (f) and section 57b–2(b) of this title; and

(C) engage in further cooperation, and protect materials and information received from disclosure, as authorized by this subchapter.

(5) Additional authority

The authority provided by this subsection is in addition to, and not in lieu of, any other authority vested in the Commission or any other officer of the United States.

(6) Limitation

The authority granted by this subsection shall not authorize the Commission to take any action or exercise any power with respect to a bank, a savings and loan institution described in section 57a(f)(3) of this title, a Federal credit union described in section 57a(f)(4) of this title, or a common carrier subject to the Act to regulate commerce, except in accordance with the undesignated proviso following the last designated subsection of this section.

(7) Assistance to certain countries

The Commission may not provide investigative assistance under this subsection to a foreign law enforcement agency from a foreign state that the Secretary of State has determined, in accordance with section 4605(j)¹ of title 50, has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 4605(j)(4)¹ of title 50.

(k) Referral of evidence for criminal proceedings

(1) In general

Whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, to transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate statutes. Nothing in this paragraph affects any other authority of the Commission to disclose information.

(2) International information

The Commission shall endeavor to ensure, with respect to memoranda of understanding and international agreements it may conclude, that material it has obtained from for-

ign law enforcement agencies acting to investigate or pursue the enforcement of foreign criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

(l) Expenditures for cooperative arrangements

To expend appropriated funds for—

(1) operating expenses and other costs of bilateral and multilateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates; and

(2) expenses for consultations and meetings hosted by the Commission with foreign government agency officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes, such expenses to include necessary administrative and logistic expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including—

(A) such incidental expenses as meals taken in the course of such attendance;

(B) any travel and transportation to or from such meetings; and

(C) any other related lodging or subsistence.

Provided, That the exception of “banks, savings and loan institutions described in section 57a(f)(3) of this title, Federal credit unions described in section 57a(f)(4) of this title, and common carriers subject to the Act to regulate commerce” from the Commission's powers defined in subsections (a), (b), and (j) of this section, shall not be construed to limit the Commission's authority to gather and compile information, to investigate, or to require reports or answers from, any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations, or industry which is not engaged or is engaged only incidentally in banking, in business as a savings and loan institution, in business as a Federal credit union, or in business as a common carrier subject to the Act to regulate commerce.

The Commission shall establish a plan designed to substantially reduce burdens imposed upon small businesses as a result of requirements established by the Commission under clause (b) relating to the filing of quarterly financial reports. Such plan shall (1) be established after consultation with small businesses and persons who use the information contained in such quarterly financial reports; (2) provide for a reduction of the number of small businesses required to file such quarterly financial reports; and (3) make revisions in the forms used for such quarterly financial reports for the purpose of reducing the complexity of such forms. The Commission, not later than December 31, 1980, shall submit such plan to the Committee on Commerce, Science, and Transportation of

¹ See References in Text note below.

the Senate and to the Committee on Energy and Commerce of the House of Representatives. Such plan shall take effect not later than October 31, 1981.

No officer or employee of the Commission or any Commissioner may publish or disclose information to the public, or to any Federal agency, whereby any line-of-business data furnished by a particular establishment or individual can be identified. No one other than designated sworn officers and employees of the Commission may examine the line-of-business reports from individual firms, and information provided in the line-of-business program administered by the Commission shall be used only for statistical purposes. Information for carrying out specific law enforcement responsibilities of the Commission shall be obtained under practices and procedures in effect on May 28, 1980, or as changed by law.

Nothing in this section (other than the provisions of clause (c) and clause (d)) shall apply to the business of insurance, except that the Commission shall have authority to conduct studies and prepare reports relating to the business of insurance. The Commission may exercise such authority only upon receiving a request which is agreed to by a majority of the members of the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Energy and Commerce of the House of Representatives. The authority to conduct any such study shall expire at the end of the Congress during which the request for such study was made.

(Sept. 26, 1914, ch. 311, § 6, 38 Stat. 721; Pub. L. 93-153, title IV, § 408(e), Nov. 16, 1973, 87 Stat. 592; Pub. L. 93-637, title II, §§ 201(b), 202(b), 203(a), Jan. 4, 1975, 88 Stat. 2193, 2198; Pub. L. 96-37, § 1(b), July 23, 1979, 93 Stat. 95; Pub. L. 96-252, §§ 3-5(a), May 28, 1980, 94 Stat. 374, 375; Pub. L. 100-86, title VII, § 715(a), (b), Aug. 10, 1987, 101 Stat. 655; Pub. L. 103-437, § 5(a), Nov. 2, 1994, 108 Stat. 4582; Pub. L. 103-438, § 3(e)(2)(A), Nov. 2, 1994, 108 Stat. 4598; Pub. L. 109-455, §§ 4(a), (b), (d), 13, Dec. 22, 2006, 120 Stat. 3372, 3373, 3375, 3382; Pub. L. 112-203, § 1, Dec. 4, 2012, 126 Stat. 1484.)

AMENDMENT OF SECTION

For repeal of amendment by section 13 of Pub. L. 109-455, see Termination Date of 2006 Amendment note below.

Editorial Notes

REFERENCES IN TEXT

The Act to regulate commerce, referred to in subsecs. (a), (b), (j)(6), and the proviso following subsec. (l), is defined in section 44 of this title.

The International Antitrust Enforcement Assistance Act of 1994, referred to in subsec. (i), is Pub. L. 103-438, Nov. 2, 1994, 108 Stat. 4597, which is classified principally to chapter 88 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

Section 4605(j) of title 50, referred to in subsec. (j)(7), was repealed by Pub. L. 115-232, div. A, title XVII, § 1766(a), Aug. 13, 2018, 132 Stat. 2232. For provisions similar to those of former section 4605(j) of title 50, see section 4813(c) of title 50, as enacted by Pub. L. 115-232.

AMENDMENTS

2012—Pub. L. 112-203, § 1, amended Pub. L. 109-455, § 13. See 2006 Amendment notes below.

2006—Pub. L. 109-455, § 4(d), which substituted “subsections (a), (b), and (j)” for “clauses (a) and (b)” in proviso following subsec. (l), was repealed by Pub. L. 109-455, § 13, as amended by Pub. L. 112-203, § 1. See Termination Date of 2006 Amendment note below.

Subsec. (f). Pub. L. 109-455, § 4(a), which inserted “(1)” after “disclose such information”, substituted “purposes, and” for “purposes.”, and added par. (2) providing for conditional disclosure to officers and employees of foreign law enforcement, was repealed by Pub. L. 109-455, § 13, as amended by Pub. L. 112-203, § 1. See Termination Date of 2006 Amendment note below.

Subsecs. (j) to (l). Pub. L. 109-455, § 4(b), which added subsecs. (j) to (l) relating to investigative assistance for foreign law enforcement agencies, referral of evidence for criminal proceedings, and expenditures for cooperative arrangements, respectively, was repealed by Pub. L. 109-455, § 13, as amended by Pub. L. 112-203, § 1. See Termination Date of 2006 Amendment note below.

1994—Pub. L. 103-437, in first and third undesignated pars. following proviso after subsec. (h), substituted “Committee on Energy and Commerce” for “Committee on Interstate and Foreign Commerce”.

Subsec. (i). Pub. L. 103-438 added subsec. (i).

1987—Pub. L. 100-86, § 715(b), in proviso following subsec. (h), inserted reference to Federal credit unions described in section 57a(f)(4) of this title and reference to in business as a Federal credit union.

Subsecs. (a), (b). Pub. L. 100-86, § 715(a)(1), (2), inserted reference to Federal credit unions described in section 57a(f)(4) of this title.

1980—Pub. L. 96-252, §§ 3(b)-5(a), inserted three undesignated paragraphs following proviso after subsec. (h) requiring the Commission to establish a plan to reduce burdens imposed upon small businesses by the quarterly financial reporting requirements under subsec. (b) of this section, prohibiting Commissioners and officers and employees of the Commission from publishing or disclosing information whereby line-of-business data furnished by particular establishments or individuals can be identified, and, with certain exceptions, making this section inapplicable to the business of insurance.

Subsec. (f). Pub. L. 96-252, § 3(a), substituted “as are” for “, except trade secrets and names of customers, as it shall deem expedient” and inserted proviso restricting Commission’s authority to make public trade secrets or commercial or financial information which is obtained from any person and which is privileged or confidential.

1979—Pub. L. 96-37, § 1(b)(3), in proviso following subsec. (h), inserted references to savings and loan institutions and to persons, partnerships, corporations, groups of persons, partnerships, or corporations or industries that are not engaged or are engaged only incidentally in business as savings and loan institutions.

Subsecs. (a), (b). Pub. L. 96-37, § 1(b)(1), (2), inserted reference to savings and loan institutions described in section 57a(f)(3) of this title.

1975—Pub. L. 93-637, § 203(a)(3), in proviso following subsec. (h), substituted “any person, partnership, or corporation to the extent that such action is necessary to the investigation of any person, partnership, or corporation, group of persons, partnerships, or corporations,” for “any such corporation to the extent that such action is necessary to the investigation of any corporation, group of corporations,”.

Subsec. (a). Pub. L. 93-637, §§ 201(b), 203(a)(1), substituted “in or whose business affects commerce” for “in commerce”, “person, partnership, or corporation” for “corporation”, and “persons, partnerships, and corporations” for “corporations and to individuals, associations, and partnerships”.

Subsec. (b). Pub. L. 93-637, §§ 201(b), 203(a)(2), substituted “in or whose business affects commerce” for “in commerce”, “special orders, persons, partnerships, and corporations, engaged in or whose business affects

commerce, excepting” for “special orders, corporations engaged in or whose business affects commerce, excepting”, and “respective persons, partnerships, and corporations” for “respective corporations”.

Subsec. (g). Pub. L. 93-637, §202(b), inserted “(except as provided in section 57a(a)(2) of this title)” before “to make rules and regulations”.

1973—Pub. L. 93-153 inserted proviso following subsec. (h) that the Commission’s investigatory powers to gather and compile information, investigate, and require reports or answers is not curtailed as regards banks and common carriers when the investigation in question is an investigation of a corporation, group of corporations, or industry not engaged or engaged only incidentally in banking or in business as a common carrier subject to the Act to regulate commerce notwithstanding provisions excepting banks and common carriers subject to the Act from the exercise of the Commission’s power to investigate and require reports from corporations.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

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. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

TERMINATION DATE OF 2006 AMENDMENT

Amendment by section 4(a), (b), (d) of Pub. L. 109-455 repealed effective Sept. 30, 2027, and provisions amended by Pub. L. 109-455 to be amended to read as if Pub. L. 109-455 had not been enacted, see section 13 of Pub. L. 109-455, set out as a note under section 44 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-252 effective May 28, 1980, see section 23 of Pub. L. 96-252, set out as a note under section 45 of this title.

APPLICABILITY OF 1975 AMENDMENT TO SUBSECTION (g) OF THIS SECTION

For applicability to rules promulgated or proposed under subsec. (g) of this section prior to Jan. 4, 1975, of amendment made to said subsec. (g) by section 202(b) of Act Jan. 4, 1975, see “Applicability” provisions of section 202(c) of Act Jan. 4, 1975, set out as a note under section 57a of this title.

STUDY AND EVALUATION OF EFFECTIVENESS OF STATE POLICIES AND PROGRAMS RELATING TO REGULATION OF CERTAIN HEALTH INSURANCE POLICIES

Pub. L. 96-252, §5(b), May 28, 1980, 94 Stat. 376, provided that: “The amendment made in subsection (a) [adding undesignated paragraph authorizing studies and reports relating to the business of insurance] shall not be construed to prohibit the Federal Trade Commission from participating with the Secretary of Health and Human Services in a comprehensive study and evaluation of the comparative effectiveness of various State policies and programs relating to the regulation of health insurance policies available for purchase by individuals who are eligible for benefits under the program of health insurance benefits established in title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.]”

Executive Documents

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

EX. ORD. NO. 10544. INSPECTION OF INCOME TAX RETURNS BY FEDERAL TRADE COMMISSION

Ex. Ord. No. 10544, July 12, 1954, 19 F.R. 4289, provided:

By virtue of the authority vested in me by section 55(a) of the Internal Revenue Code (53 Stat. 29; 54 Stat. 1008; 55 Stat. 722) and in the interest of the internal management of the Government, it is hereby ordered that corporation income tax returns made for the year 1953 and subsequent years shall be open to inspection by the Federal Trade Commission as an aid in executing the powers conferred upon such Commission by the Federal Trade Commission Act of September 26, 1914, 38 Stat. 717, [this subchapter], such inspection to be in accordance and upon compliance with the rules and regulations prescribed by the Secretary of the Treasury in the Treasury decision relating to the inspection of returns by the Federal Trade Commission, approved by me this date [T.D. 6080, 19 F.R. 4308].

This Executive Order shall be effective upon its filing for publication in the Federal Register.

DWIGHT D. EISENHOWER.

§ 46a. Concurrent resolution essential to authorize investigations

After June 16, 1933, no new investigations shall be initiated by the Commission as the result of a legislative resolution, except the same be a concurrent resolution of the two Houses of Congress.

(June 16, 1933, ch. 101, §1, 48 Stat. 291.)

Editorial Notes

CODIFICATION

Section was not enacted as part of the Federal Trade Commission Act which comprises this subchapter.

Executive Documents

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Trade Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 8 of 1950, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out under section 41 of this title.

§ 47. Reference of suits under antitrust statutes to Commission

In any suit in equity brought by or under the direction of the Attorney General as provided in the antitrust Acts, the court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the Commission, as a master in chancery, to ascertain and report an appropriate form of decree therein. The Commission shall proceed upon such notice to the parties and under such rules of procedure as the court may prescribe, and upon the coming in of such report such exceptions may be filed and such proceedings had in relation thereto as upon the report of a master in other equity causes, but the court may adopt or reject such report, in whole or in part, and enter such decree as the nature of the case may in its judgment require.