

section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission by rule, regulation, or order consistent with the purposes of this chapter" for "No order issued under paragraph (1) of this section shall apply to transactions or positions which are shown to be bona fide hedging transactions or positions as such terms shall be defined by the Commission within one hundred and eighty days after the effective date of the Commodity Futures Trading Commission Act of 1974 by order consistent with the purposes of this chapter" and inserted "Such terms may be defined to permit producers, purchasers, sellers, middlemen, and users of a commodity or a product derived therefrom to hedge their legitimate anticipated business needs for that period of time into the future for which an appropriate futures contract is open and available on an exchange. To determine the adequacy of this chapter and the powers of the Commission acting thereunder to prevent unwarranted price pressures by large hedgers, the Commission shall monitor and analyze the trading activities of the largest hedgers, as determined by the Commission, operating in the cattle, hog, or pork belly markets and shall report its findings and recommendations to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture in its annual reports for at least two years following January 11, 1983."

Par. (4). Pub. L. 97-444, §205(5), substituted "a futures commission merchant, an introducing broker, or a floor broker" for "a futures commission merchant or as floor broker".

Par. (5). Pub. L. 97-444, §205(6), added par. (5).

1975—Par. (3). Pub. L. 94-16 substituted "one hundred and eighty days" for "ninety days".

1974—Par. (1). Pub. L. 93-463, §403, inserted "or 'arbitrage'" after "or 'straddles'", inserted definition of "arbitrage", and authorized Commission to define "international arbitrage".

Par. (3). Pub. L. 93-463, §404, directed Commission to define "bona fide hedging transactions or positions" within 90 days after the effective date of the Commodity Futures Trading Commission Act of 1974 and struck out provisions which enumerated the factors to be taken into account in determining whether a hedging transaction or position was a bona fide transaction or position.

1968—Par. (1). Pub. L. 90-258, §2, substituted in second sentence "amounts of trading" for "amount of trading", inserted "which may be done or positions which may be held by any person" before "under contracts of sale", and struck out "which may be done" after "rules of any contract market", inserted third sentence providing for inclusion of controlled positions and trading in determining whether prescribed position or trading limits have been exceeded and for application of such position and trading limits to activities of two or more persons acting pursuant to agreement or understanding as if the activities of a single person, and included in fourth, formerly third, sentence references to position limits and to positions, substituted "normally" for "commonly", and struck out "trading" from "from fixing trading limits" and "from trading limits".

Par. (2)(B). Pub. L. 90-258, §3, substituted prohibition against holding of net long or net short positions in excess of any position limit fixed by the Commission for former prohibition of purchases or sales which result in net long or net short positions in excess of trading limits fixed by the Commission and provided that the position limit shall not apply to a position acquired in good faith prior to the effective date of the order.

Par. (3). Pub. L. 90-258, §4, included references to positions, made hedging applicable to short and long positions, substituted "contract market" for "board of trade", and required the activities to be those of the same person to constitute hedging.

1956—Par. (3)(C). Act July 24, 1956, added subpar. (C).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-203, title VII, §737(d), July 21, 2010, 124 Stat. 1725, provided that: "This section [amending this section] and the amendments made by this section shall become effective on the date of the enactment of this section [July 21, 2010]."

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

Amendment by section 13203(g) of Pub. L. 110-246 effective June 18, 2008, see section 13204(a) of Pub. L. 110-246, set out as a note under section 2 of this title.

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 1974 AMENDMENT

Pub. L. 93-463, title IV, §404, Oct. 23, 1974, 88 Stat. 1413, provided that the amendment of par. (3) which struck out provisions that enumerated the factors to be taken into account in determining whether a hedging transaction or position was a bona fide transaction or position, was effective immediately upon the enactment of Pub. L. 93-463, which was approved Oct. 23, 1974.

Amendment by Pub. L. 93-463 of par. (1) and that part of par. (3) directing the Commission to define "bona fide hedging transactions or positions" effective so as to allow implementation of all changes effected by this amendment to be carried out after Oct. 23, 1974, and before as well as after the 180th day thereafter, 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 1956 AMENDMENT

Act July 24, 1956, ch. 690, §2, 70 Stat. 630, provided that: "This Act [amending this section] shall take effect sixty days after the date of its enactment [July 24, 1956]."

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

REGULATIONS DEFINING BONA FIDE HEDGING TRANSACTIONS AND POSITIONS

Pub. L. 93-463, title IV, §404, Oct. 23, 1974, 88 Stat. 1413, provided in part: "That notwithstanding any other provision of law, the Secretary of Agriculture, immediately upon the enactment of the Commodity Futures Trading Commission Act of 1974 [which was approved on Oct. 23, 1974], is authorized and directed to promulgate regulations defining bona fide hedging transactions and positions: *And provided further*, That until the Secretary issues such regulations defining bona fide hedging transactions and positions and such regulations are in full force and effect, such terms shall continue to be defined as set forth in the Commodity Exchange Act [par. (3) of this section] prior to its amendment by the Commodity Futures Trading Commission Act of 1974 [Pub. L. 93-463]."

§ 6b. Contracts designed to defraud or mislead

(a) Unlawful actions

It shall be unlawful—

(1) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce or for future delivery that is made, or to be made, on or subject to the rules of a designated contract market, for or on behalf of any other person; or

(2) for any person, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery, or swap, that is made, or to be made, for or on behalf of, or with, any other person, other than on or subject to the rules of a designated contract market—

(A) to cheat or defraud or attempt to cheat or defraud the other person;

(B) willfully to make or cause to be made to the other person any false report or statement or willfully to enter or cause to be entered for the other person any false record;

(C) willfully to deceive or attempt to deceive the other person by any means whatsoever in regard to any order or contract or the disposition or execution of any order or contract, or in regard to any act of agency performed, with respect to any order or contract for or, in the case of paragraph (2), with the other person; or

(D)(i) to bucket an order if the order is either represented by the person as an order to be executed, or is required to be executed, on or subject to the rules of a designated contract market; or

(ii) to fill an order by offset against the order or orders of any other person, or willfully and knowingly and without the prior consent of the other person to become the buyer in respect to any selling order of the other person, or become the seller in respect to any buying order of the other person, if the order is either represented by the person as an order to be executed, or is required to be executed, on or subject to the rules of a designated contract market unless the order is executed in accordance with the rules of the designated contract market.

(b) Clarification

Subsection (a)(2) of this section shall not obligate any person, in or in connection with a transaction in a contract of sale of a commodity for future delivery, or swap, with another person, to disclose to the other person nonpublic information that may be material to the market price, rate, or level of the commodity or transaction, except as necessary to make any statement made to the other person in or in connection with the transaction not misleading in any material respect.

(c) Buying and selling orders for commodity

Nothing in this section or in any other section of this chapter shall be construed to prevent a futures commission merchant or floor broker who shall have in hand, simultaneously, buying and selling orders at the market for different principals for a like quantity of a commodity for future delivery in the same month executing such buying and selling orders at the market price: *Provided*, That any such execution shall take place on the floor of the exchange where such orders are to be executed at public outcry

across the ring and shall be duly reported, recorded, and cleared in the same manner as other orders executed on such exchange: *And provided further*, That such transactions shall be made in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

(d) Inapplicability to transactions on foreign exchanges

Nothing in this section shall apply to any activity that occurs on a board of trade, exchange, or market, or clearinghouse for such board of trade, exchange, or market, located outside the United States, or territories or possessions of the United States, involving any contract of sale of a commodity for future delivery that is made, or to be made, on or subject to the rules of such board of trade, exchange, or market.

(e) Contracts of sale on group or index of securities

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any registered entity, in or in connection with any order to make, or the making of, any contract of sale of any commodity for future delivery (or option on such a contract), or any swap, on a group or index of securities (or any interest therein or based on the value thereof)—

(1) to employ any device, scheme, or artifice to defraud;

(2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(Sept. 21, 1922, ch. 369, §4b, as added June 15, 1936, ch. 545, §5, 49 Stat. 1493; amended Pub. L. 90-258, §5, Feb. 19, 1968, 82 Stat. 27; Pub. L. 93-463, title IV, §405, Oct. 23, 1974, 88 Stat. 1413; Pub. L. 99-641, title I, §101, Nov. 10, 1986, 100 Stat. 3557; Pub. L. 102-546, title IV, §402(3), Oct. 28, 1992, 106 Stat. 3624; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(5)], Dec. 21, 2000, 114 Stat. 2763, 2763A-407; Pub. L. 110-234, title XIII, §13102, May 22, 2008, 122 Stat. 1432; Pub. L. 110-246, §4(a), title XIII, §13102, June 18, 2008, 122 Stat. 1664, 2194; Pub. L. 111-203, title VII, §741(b)(1), July 21, 2010, 124 Stat. 1730.)

Editorial Notes

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2010—Subsec. (a)(2). Pub. L. 111-203, §741(b)(1)(A), substituted “or swap,” for “or other agreement, contract, or transaction subject to paragraphs (1) and (2) of section 7a(g) of this title.”.

Subsec. (b). Pub. L. 111-203, §741(b)(1)(B), substituted “or swap,” for “or other agreement, contract or transaction subject to paragraphs (1) and (2) of section 7a(g) of this title.”.

Subsec. (e). Pub. L. 111-203, § 741(b)(1)(C), added subsec. (e).

2008—Pub. L. 110-246, § 13102, inserted section catchline, added subsecs. (a) and (b), redesignated former subsecs. (b) and (c) as (c) and (d), respectively, and struck out former subsec. (a) which related to contracts designed to defraud or mislead and bucketing orders.

2000—Subsec. (a)(1). Pub. L. 106-554 substituted “registered entity” for “contract market” in two places.

1992—Pub. L. 102-546 designated first par. as subsec. (a), redesignated cls. (a) to (c) as subpars. (A) to (C), respectively, and subpars. (A) to (D) as cls. (i) to (iv), respectively, and designated second and third undesignated pars. as subsecs. (b) and (c), respectively.

1986—Pub. L. 99-641 struck out “on or subject to the rules of any contract market,” after “to be made” in cl. (2) of first par. and added concluding paragraph that this section not apply to activity on board of trade, exchange, market, or clearinghouse located outside United States involving contract of sale of commodity for future delivery.

1974—Pub. L. 93-463 substituted “a commodity” for “cotton” in provisions following subpar. (D) and inserted requirement that execution of buying and selling orders for commodities held simultaneously by the same merchant or broker be carried out in accordance with such rules and regulations as the Commission may promulgate regarding the manner of the execution of such transactions.

1968—Pub. L. 90-258 relocated cl. (1) designation in first par. to follow “unlawful” rather than to precede “any contract of sale”, provided in such cl. (1) for orders to make or making of contracts of sale “made, or to be made on or subject to the rules of any contract market, for or on behalf of any other person” and in cl. (2) “for any person, in or in connection with any order to make, or the making of,” any contract of sale of any commodity for future delivery for or on behalf of any “other” person; and inserted “other” before “person” in subpar. (A) and in subpars. (B) and (C) where appearing for first time, respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle A (§§ 711-754) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle A, see section 754 of Pub. L. 111-203, set out as a note under section 1a of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

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

EFFECTIVE DATE OF 1968 AMENDMENT

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

EFFECTIVE DATE

For effective date of section, see section 13 of act June 15, 1936, set out as an Effective Date of 1936 Amendment note under section 1 of this title.

§ 6b-1. Enforcement authority

(a) Commodity Futures Trading Commission

Except as provided in subsections (b), (c), and (d), the Commission shall have exclusive authority to enforce the provisions of subtitle A of the Wall Street Transparency and Accountability Act of 2010 with respect to any person.

(b) Prudential regulators

The prudential regulators shall have exclusive authority to enforce the provisions of section 6s(e) of this title with respect to swap dealers or major swap participants for which they are the prudential regulator.

(c) Referrals

(1) Prudential regulators

If the prudential regulator for a swap dealer or major swap participant has cause to believe that the swap dealer or major swap participant, or any affiliate or division of the swap dealer or major swap participant, may have engaged in conduct that constitutes a violation of the nonprudential requirements of this chapter (including section 6s of this title or rules adopted by the Commission under that section), the prudential regulator may promptly notify the Commission in a written report that includes—

(A) a request that the Commission initiate an enforcement proceeding under this chapter; and

(B) an explanation of the facts and circumstances that led to the preparation of the written report.

(2) Commission

If the Commission has cause to believe that a swap dealer or major swap participant that has a prudential regulator may have engaged in conduct that constitutes a violation of any prudential requirement of section 6s of this title or rules adopted by the Commission under that section, the Commission may notify the prudential regulator of the conduct in a written report that includes—

(A) a request that the prudential regulator initiate an enforcement proceeding under this chapter or any other Federal law (including regulations); and

(B) an explanation of the concerns of the Commission, and a description of the facts and circumstances, that led to the preparation of the written report.

(d) Backstop enforcement authority

(1) Initiation of enforcement proceeding by prudential regulator

If the Commission does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the Commission receives a written report under subsection (c)(1), the prudential regulator may initiate an enforcement proceeding.

(2) Initiation of enforcement proceeding by Commission

If the prudential regulator does not initiate an enforcement proceeding before the end of the 90-day period beginning on the date on which the prudential regulator receives a writ-