

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(m) 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 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

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.

§ 9. Prohibition regarding manipulation and false information

(1) Prohibition against manipulation

It shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission shall promulgate by not later than 1 year after July 21, 2010, provided no rule or regulation promulgated by the Commission shall require any person to disclose to another person nonpublic information that may be material to the market price, rate, or level of the commodity 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.

(A) Special provision for manipulation by false reporting

Unlawful manipulation for purposes of this paragraph shall include, but not be limited to, delivering, or causing to be delivered for transmission through the mails or interstate commerce, by any means of communication whatsoever, a false or misleading or inaccurate report concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, knowing, or acting in reckless disregard of the fact that such report is false, misleading or inaccurate.

(B) Effect on other law

Nothing in this paragraph shall affect, or be construed to affect, the applicability of section 13(a)(2) of this title.

(C) Good faith mistakes

Mistakenly transmitting, in good faith, false or misleading or inaccurate information to a price reporting service would not be sufficient to violate paragraph (1)(A).

(2) Prohibition regarding false information

It shall be unlawful for any person to make any false or misleading statement of a material fact to the Commission, including in any registration application or any report filed with the Commission under this chapter, or any other information relating to a swap, or a contract of sale of a commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, or to omit to state in any such statement any material fact that is necessary to make any statement of a material fact made not misleading in any material respect, if the person knew, or reasonably should have known, the statement to be false or misleading.

(3) Other manipulation

In addition to the prohibition in paragraph (1), it shall be unlawful for any person, directly or indirectly, to manipulate or attempt to manipulate the price of any swap, or of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.

(4) Enforcement

(A) Authority of Commission

If the Commission has reason to believe that any person (other than a registered entity) is violating or has violated this section, or any other provision of this chapter (including any rule, regulation, or order of the Commission promulgated in accordance with this section or any other provision of this chapter), the Commission may serve upon the person a complaint.

(B) Contents of complaint

A complaint under subparagraph (A) shall—

- (i) contain a description of the charges against the person that is the subject of the complaint; and
- (ii) have attached or contain a notice of hearing that specifies the date and location of the hearing regarding the complaint.

(C) Hearing

A hearing described in subparagraph (B)(ii)—

- (i) shall be held not later than 3 days after service of the complaint described in subparagraph (A);
- (ii) shall require the person to show cause regarding why—

- (I) an order should not be made—

- (aa) to prohibit the person from trading on, or subject to the rules of, any registered entity; and

- (bb) to direct all registered entities to refuse all privileges to the person until further notice of the Commission; and

- (II) the registration of the person, if registered with the Commission in any capac-

ity, should not be suspended or revoked; and

(iii) may be held before—

- (I) the Commission; or
- (II) an administrative law judge designated by the Commission, under which the administrative law judge shall ensure that all evidence is recorded in written form and submitted to the Commission.

(5) Subpoena

For the purpose of securing effective enforcement of the provisions of this chapter, for the purpose of any investigation or proceeding under this chapter, and for the purpose of any action taken under section 16(f) of this title, any member of the Commission or any Administrative Law Judge or other officer designated by the Commission (except as provided in paragraph (7)) may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, or other records that the Commission deems relevant or material to the inquiry.

(6) Witnesses

The attendance of witnesses and the production of any such records may be required from any place in the United States, any State, or any foreign country or jurisdiction at any designated place of hearing.

(7) Service

A subpoena issued under this section¹ may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service of process in a foreign country, except that a subpoena to be served on a person who is not to be found within the territorial jurisdiction of any court of the United States may be issued only on the prior approval of the Commission.

(8) Refusal to obey

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction in which the investigation or proceeding is conducted, or where such person resides or transacts business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Commission or member or Administrative Law Judge or other officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question.

(9) Failure to obey

Any failure to obey such order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person is an inhabitant or transacts business or wherever such person may be found.

¹ See References in Text note below.

(10) Evidence

On the receipt of evidence under paragraph (4)(C)(iii), the Commission may—

(A) prohibit the person that is the subject of the hearing from trading on, or subject to the rules of, any registered entity and require all registered entities to refuse the person all privileges on the registered entities for such period as the Commission may require in the order;

(B) if the person is registered with the Commission in any capacity, suspend, for a period not to exceed 180 days, or revoke, the registration of the person;

(C) assess such person—

(i) a civil penalty of not more than an amount equal to the greater of—

(I) \$140,000; or

(II) triple the monetary gain to such person for each such violation; or

(ii) in any case of manipulation or attempted manipulation in violation of this section or section 13(a)(2) of this title, a civil penalty of not more than an amount equal to the greater of—

(I) \$1,000,000; or

(II) triple the monetary gain to the person for each such violation; and

(D) require restitution to customers of damages proximately caused by violations of the person.

(11) Orders

(A) Notice

The Commission shall provide to a person described in paragraph (10) and the appropriate governing board of the registered entity notice of the order described in paragraph (10) by—

(i) registered mail;

(ii) certified mail; or

(iii) personal delivery.

(B) Review

(i) In general

A person described in paragraph (10) may obtain a review of the order or such other equitable relief as determined to be appropriate by a court described in clause (ii).

(ii) Petition

To obtain a review or other relief under clause (i), a person may, not later than 15 days after notice is given to the person under clause (i), file a written petition to set aside the order with the United States Court of Appeals—

(I) for the circuit in which the petitioner carries out the business of the petitioner; or

(II) in the case of an order denying registration, the circuit in which the principal place of business of the petitioner is located, as listed on the application for registration of the petitioner.

(C) Procedure

(i) Duty of clerk of appropriate court

The clerk of the appropriate court under subparagraph (B)(ii) shall transmit to the

Commission a copy of a petition filed under subparagraph (B)(ii).

(ii) Duty of Commission

In accordance with section 2112 of title 28, the Commission shall file in the appropriate court described in subparagraph (B)(ii) the record theretofore made.

(iii) Jurisdiction of appropriate court

Upon the filing of a petition under subparagraph (B)(ii), the appropriate court described in subparagraph (B)(ii) may affirm, set aside, or modify the order of the Commission.

(Sept. 21, 1922, ch. 369, §6(c), formerly §6(b), 42 Stat. 1002; June 15, 1936, ch. 545, §8, 49 Stat. 1498; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; June 16, 1955, ch. 151, 69 Stat. 160; Pub. L. 85-791, §7(b), Aug. 28, 1958, 72 Stat. 944; Pub. L. 86-507, §1(2), June 11, 1960, 74 Stat. 200; Pub. L. 90-258, §16, Feb. 19, 1968, 82 Stat. 30; Pub. L. 91-452, title II, §202, Oct. 15, 1970, 84 Stat. 928; Pub. L. 93-463, title I, §103(a), (b), (d), (e), title II, §§204(b), 205(b), 212(a)(1), (2), title IV, §408, Oct. 23, 1974, 88 Stat. 1392, 1397, 1400, 1403, 1414; Pub. L. 95-405, §13(3), Sept. 30, 1978, 92 Stat. 871; Pub. L. 97-444, title II, §219, Jan. 11, 1983, 96 Stat. 2308; Pub. L. 99-641, title I, §103, Nov. 10, 1986, 100 Stat. 3557; renumbered §6(c) and amended Pub. L. 102-546, title II, §§209(a)(1), 212(b), 223, title III, §301, title IV, §402(1)(C), (6), (7), (9)(B), Oct. 28, 1992, 106 Stat. 3606, 3609, 3617, 3622, 3624, 3625; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(C)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409; Pub. L. 110-234, title XIII, §13103(a), May 22, 2008, 122 Stat. 1433; Pub. L. 110-246, §4(a), title XIII, §13103(a), June 18, 2008, 122 Stat. 1664, 2195; Pub. L. 111-203, title VII, §§741(b)(3), 753(a), July 21, 2010, 124 Stat. 1731, 1750.)

Editorial Notes

REFERENCES IN TEXT

This section, referred to in par. (7), means section 6 of act Sept. 21, 1922, ch. 369, 42 Stat. 1001. For classification of section 6 to the Code, see Codification note below.

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.

Section is comprised of subsec. (c) of section 6 of act Sept. 21, 1922. Prior to amendment by Pub. L. 111-203, a further provision of subsec. (c) was contained in section 15 of this title and, prior to its incorporation into the Code, contained a provision as to finality of judgments and review by the Supreme Court which is covered by section 1254 of Title 28, Judiciary and Judicial Procedure. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsecs. (d), (e), (f), and (g) of section 6 are classified to sections 13b, 9a, 9b, and 9c of this title, respectively.

AMENDMENTS

2010—Pub. L. 111-203, §753(a), amended section generally. Prior to amendment, section related to exclusion of persons from privilege of “registered entities”, procedure for exclusion, review by court of appeals, and enforcement powers of Commission.

Pub. L. 111-203, §741(b)(3), in first sentence, inserted “or of any swap,” before “or has willfully made”.

2008—Pub. L. 110-246, §13103(a), in cl. (3) of third sentence inserted “(A)” after “assess such person” and added subcl. (B).

2000—Pub. L. 106-554 substituted “registered entity” for “contract market” wherever appearing, “registered entities” for “contract markets” wherever appearing, and “privileges” for “trading privileges” in two places.

1992—Pub. L. 102-546, §402(9)(B), which directed amendment of first sentence by striking “the Secretary of Agriculture or”, could not be executed because of amendment by Pub. L. 93-463, §103(a). See 1974 Amendment note below.

Pub. L. 102-546, §§209(a)(1), 212(b), 223, 402(1)(C), (6), substituted, in first sentence, “Commission thereunder” for “commission thereunder”, in sentence beginning “Upon evidence received”, inserted “(1)”, substituted “(2) if” for “and, if”, “suspend” for “may suspend”, “(3)” for “and may”, “the higher of \$100,000 or triple the monetary gain to such person” for “\$100,000”, and inserted before period “and (4) require restitution to customers of damages proximately caused by violations of such persons”, and in sentence beginning “After the issuance”, substituted “offending person” for “offending person.”.

1983—Pub. L. 97-444 struck out “as futures commission merchant or any person associated therewith as described in section 6k of this title, commodity trading advisor, commodity pool operator, or as floor broker hereunder” after “such person, if registered” and also after “such person is registered” and inserted “, or in the case of an order denying registration, the circuit in which the petitioner’s principal place of business listed on petitioner’s application for registration is located,” after “court of appeals of the circuit in which the petitioner is doing business”.

1974—Pub. L. 93-463, §§103(e), 204(b), 205(b), 212(a)(1), (2), 408, substituted “it” for “he”, inserted “or any person associated therewith as described in section 6k of this title,” after “futures commission merchant” wherever appearing, inserted “commodity trading advisor, commodity pool operator” before “or as floor broker” wherever appearing, inserted provision for the assessment of civil penalties of not more than \$100,000 for each violation, set a limit of fifteen days after the issuance of an order within which period the person against whom the order was issued must file with the court of appeals his petition that the order be set aside, and substituted “an Administrative Law Judge” and “Administrative Law Judge” for “a referee” and “referee”, respectively.

Pub. L. 93-463, §103(a), provided for substitution of “Commission” for “Secretary of Agriculture” except where such words would be stricken by section 103(b), which directed striking the words “the Secretary of Agriculture or” where they appeared in the phrase “the Secretary of Agriculture or the Commission”. Section 103(a) was executed wherever the term “Secretary of Agriculture” appeared in this section including in the phrase “the Secretary of Agriculture or the commission” in the first sentence. Because the word “commission” was not capitalized in that phrase in the first sentence, section 103(b) did not apply to that phrase and therefore section 103(a) was executed, resulting in the substitution of “the Commission or the commission” for “the Secretary of Agriculture or the commission”.

1968—Pub. L. 90-258 amended first sentence generally, providing for denial of trading privileges to persons other than contract markets and suspension or revocation of registration of futures commission merchants and floor brokers, who are manipulating or have attempted to manipulate prices, for willful, material, misstatements in, or omissions from, reports or registration statements, and for violations of orders of Secretary of Agriculture or commission, and authorizing the Secretary to prohibit such persons from trading on or subject to rules of any contract market.

1960—Pub. L. 86-507 inserted “or by certified mail” after “registered mail”.

1958—Pub. L. 85-791 substituted “transmitted by the clerk of the court to the Secretary of Agriculture and

thereupon the Secretary of Agriculture shall file in the court the record theretofore made, as provided in section 2112 of Title 28” for “served upon the Secretary of Agriculture by delivering such copy to him and thereupon the Secretary of Agriculture shall forthwith certify and file in the court a transcript of the record theretofore made, including evidence received” in seventh sentence, and substituted “petition” for “transcript” in eighth sentence.

1936—Act June 15, 1936, among other changes, amended section by inserting provisions relating to the service of complaints and penalties for violations of this chapter.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted “court of appeals” for “circuit court of appeals” wherever appearing in this section.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 741(b)(3) of 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.

Pub. L. 111-203, title VII, §753(d), July 21, 2010, 124 Stat. 1754, provided that:

“(1) The amendments made by this section [amending this section and sections 13b and 25 of this title] shall take effect on the date on which the final rule promulgated by the Commodity Futures Trading Commission [see 76 F.R. 41398, effective Aug. 15, 2011] pursuant to this Act [see Tables for classification] takes effect.

“(2) Paragraph (1) shall not preclude the Commission from undertaking prior to the effective date any rule-making necessary to implement the amendments contained in this section.”

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 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

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 act June 15, 1936, set out as a note under section 1 of this title.

§ 9a. Assessment of money penalties

(1) In determining the amount of the money penalty assessed under section 9 of this title, the Commission shall consider the appropriateness of such penalty to the gravity of the violation.

(2) Unless the person against whom a money penalty is assessed under section 9 of this title

shows to the satisfaction of the Commission within fifteen days from the expiration of the period allowed for payment of such penalty that either an appeal as authorized by section 9 of this title has been taken or payment of the full amount of the penalty then due has been made, at the end of such fifteen-day period and until such person shows to the satisfaction of the Commission that payment of such amount with interest thereon to date of payment has been made—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

(3) If a person against whom a money penalty is assessed under section 9 of this title takes an appeal and if the Commission prevails or the appeal is dismissed, unless such person shows to the satisfaction of the Commission that payment of the full amount of the penalty then due has been made by the end of thirty days from the date of entry of judgment on the appeal—

(A) such person shall be prohibited automatically from the privileges of all registered entities; and

(B) if such person is registered with the Commission, such registration shall be suspended automatically.

If the person against whom the money penalty is assessed fails to pay such penalty after the lapse of the period allowed for appeal or after the affirmation of such penalty, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(4) Any designated clearing organization that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h) of this title.

(5) Any swap dealer or major swap participant that knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) of this title shall be liable for a civil money penalty in twice the amount otherwise available for a violation of section 2(h) of this title.

(Sept. 21, 1922, ch. 369, §6(e), formerly §6(d), as added Pub. L. 93-463, title II, §212(a)(3), Oct. 23, 1974, 88 Stat. 1403; renumbered §6(e) and amended Pub. L. 102-546, title II, §209(a)(1), (5), Oct. 28, 1992, 106 Stat. 3606; Pub. L. 106-554, §1(a)(5) [title I, §123(a)(12)(E)], Dec. 21, 2000, 114 Stat. 2763, 2763A-409; Pub. L. 111-203, title VII, §741(b)(11), July 21, 2010, 124 Stat. 1732.)

Editorial Notes

CODIFICATION

Section is comprised of subsec. (e) of section 6 of act Sept. 21, 1922. Subsecs. (a) and (b) of section 6 are classified to section 8 of this title. Subsec. (c) of section 6 is classified to section 9 of this title. Subsecs. (d), (f), and (g) of section 6 are classified to sections 13b, 9b, and 9c of this title, respectively.