



FEDERAL TRADE COMMISSION ACT



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December 8, 2010

FEDERAL TRADE COMMISSION ACT

[Chapter 311, 38 Stat. 717, September 26, 1914]

[As amended through Public Law 111–203, Enacted July 21, 2010]

CHAP. 311.—AN ACT TO CREATE A FEDERAL TRADE COMMISSION, TO DEFINE ITS POWERS AND DUTIES, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [15 U.S.C. 41] That a commission is hereby created and established, to be known as the Federal Trade Commission (hereinafter referred to as the commission), which shall be composed of five commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. Not more than three of the commissioners shall be members of the same political party. The first commissioners appointed shall continue in office for terms of three, four, five, six, and seven years, respectively, from the date of the taking effect of this Act, the term of each to be designated by the President, but their successors shall be appointed for terms of seven years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the commissioner whom he shall succeed: *Provided, however,* That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified..¹ The commission shall choose a chairman from its own membership. No commissioner shall engage in any other business, vocation, or employment. Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. A vacancy in the commission shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

The commission shall have an official seal, which shall be judicially noticed.

SEC. 2. [15 U.S.C. 42] That each commissioner shall receive a salary of \$10,000 a year, payable in the same manner as the salaries of the judges of the courts of the United States. The commission shall appoint a secretary, who shall receive a salary of \$5,000 a year, payable in like manner, and it shall have authority to employ and fix the compensation of such attorneys, special experts, examiners, clerks, and other employees as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress.

With the exception of the secretary, a clerk to each commissioner, the attorneys, and such special experts and examiners as the commission may from time to time find necessary for the conduct of its work, all employees of the commission shall be a part

¹ Double period in third sentence of first section so in law.

of the classified civil service, and shall enter the service under such rules and regulations as may be prescribed by the commission and by the Civil Service Commission.

All of the expenses of the commission, including all necessary expenses for transportation incurred by the commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the commission.

Until otherwise provided by law, the commission may rent suitable offices for its use.

The Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the commission.

SEC. 3. [15 U.S.C. 43] That upon the organization of the commission and election of its chairman, the Bureau of Corporations and the offices of Commissioner and Deputy Commissioner of Corporations shall cease to exist; and all pending investigations and proceedings of the Bureau of Corporations shall be continued by the commission.

All clerks and employees of the said bureau shall be transferred to and become clerks and employees of the commission at their present grades and salaries. All records, papers, and property of the said bureau shall become records, papers, and property of the commission, and all unexpended funds and appropriations for the use and maintenance of the said bureau, including any allotment already made to it by the Secretary of Commerce from the contingent appropriation for the Department of Commerce for the fiscal year nineteen hundred and fifteen, or from the departmental printing fund for the fiscal year nineteen hundred and fifteen, shall become funds and appropriations available to be expended by the commission in the exercise of the powers, authority, and duties conferred on it by this Act.

The principal office of the commission shall be in the city of Washington, but it may meet and exercise all its powers at any other place. The commission may, by one or more of its members, or by such examiners as it may designate, prosecute any inquiry necessary to its duties in any part of the United States.

SEC. 4. [15 U.S.C. 44] The words defined in this section shall have the following meaning when found in this Act, to wit:

“Commerce” means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

“Corporation” shall be deemed to include any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, which is organized to carry on business for its own profit or that of its members, and has shares of capital or capital stock or certificates of interest, and any company, trust, so-called Massachusetts trust, or association, incorporated or unincorporated, without shares of capital or capital stock or certificates of interest, except partnerships, which is organized to carry on business for its own profit or that of its members.

“Documentary evidence” includes all documents, papers, correspondence, books of account, and financial and corporate records.

“Acts to regulate commerce” means the Act entitled “An Act to regulate commerce,” approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto¹ and the Communications Act of 1934 and all Acts amendatory thereof and supplementary thereto.

“Antitrust Acts” means the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July 2, 1890; also sections 73 to 76, inclusive, of an Act entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” approved August 27, 1894; also the Act entitled “An Act to amend sections 73 and 76 of the Act of August 27, 1894, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February 12, 1913; and also the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,” approved October 15, 1914.

“Banks”² means the types of banks and other financial institutions referred to in section 18(f)(2).

“Foreign law enforcement agency” means—³

(1) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

(2) any multinational organization, to the extent that it is acting on behalf of an entity described in paragraph (1).

SEC. 5. [15 U.S.C. 45] (a)(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

(2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 18(f)(3), Federal credit unions described in section 18(f)(4), common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in or

¹The reference to “‘An Act to regulate commerce,’ approved February 14, 1887, and all Acts amendatory thereof and supplementary thereto” should be to “subtitle IV of title 49”. Public Law 95-473, 92 Stat. 1337, October 17, 1978, codified title 49 of the United States Code. Section 3(b) of that Act, 92 Stat. at 1466, provides as follows:

“(b) A reference to a law replaced by sections 1 and 2 of this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.”

²Indentation so in law.

³The last undesignated subsection in section 4 was added by section 2 of Public Law 109-455 (120 Stat. 3372). Section 13 of such Public Law (120 Stat. 3382) provides as follows:

SEC. 13. SUNSET.

This Act, and the amendments made by this Act, shall cease to have effect on the date that is 7 years after the date of enactment of this Act [December 22, 2006].

affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

(3) This subsection shall not apply to unfair methods of competition involving commerce with foreign nations (other than import commerce) unless—

(A) such methods of competition have a direct, substantial, and reasonably foreseeable effect—

(i) on commerce which is not commerce with foreign nations, or on import commerce with foreign nations; or

(ii) on export commerce with foreign nations, of a person engaged in such commerce in the United States; and

(B) such effect gives rise to a claim under the provisions of this subsection, other than this paragraph.

If this subsection applies to such methods of competition only because of the operation of subparagraph (A)(ii), this subsection shall apply to such conduct only for injury to export business in the United States.

(4)(A)¹ For purposes of subsection (a), the term “unfair or deceptive acts or practices” includes such acts or practices involving foreign commerce that—

(i) cause or are likely to cause reasonably foreseeable injury within the United States; or

(ii) involve material conduct occurring within the United States.

(B) All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and practices described in this paragraph, including restitution to domestic or foreign victims.

(b) Whenever the Commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in or affecting commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may make application, and upon good cause shown may be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person,

¹Margin so in law. In addition, paragraph (4) was added by section 3 of Public Law 109-455 (120 Stat. 3372). For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, or, if a petition for review has been filed within such time then until the record in the proceeding has been filed in a court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require, except that (1) the said person, partnership, or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate circuit court of appeals of the United States, in the manner provided in subsection (c) of this section; and (2) in the case of an order, the Commission shall reopen any such order to consider whether such order (including any affirmative relief provision contained in such order) should be altered, modified, or set aside, in whole or in part, if the person, partnership, or corporation involved files a request with the Commission which makes a satisfactory showing that changed conditions of law or fact require such order to be altered, modified, or set aside, in whole or in part. The Commission shall determine whether to alter, modify, or set aside any order of the Commission in response to a request made by a person, partnership, or corporation under paragraph (2)¹ not later than 120 days after the date of the filing of such request.

(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the circuit court of appeals of the United States, within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon such filing of the petition the court shall have jurisdiction of the proceeding and of the question determined therein concurrently with the Commission until the filing of the record and shall have power to make and enter a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is affirmed

¹ So in law. Reference in subsection (b) probably should be to "clause (2)".

and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pendente lite. The findings of the Commission as to the facts, if supported by evidence, shall be conclusive. To the extent that the order of the Commission is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the Commission. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 240 of the Judicial Code.

(d) Upon the filing of the record with it the jurisdiction of the court of appeals of the United States to affirm, enforce, modify, or set aside orders of the Commission shall be exclusive.

(e) No order of the Commission or judgment of court to enforce the same shall in anywise relieve or absolve any person, partnership, or corporation from any liability under the Antitrust Acts.

(f) Complaints, orders, and other processes of the Commission under this section may be served by anyone duly authorized by the Commission, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the residence or the principal office or place of business of such person, partnership, or corporation; or (c) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post office receipt for said complaint, order, or other process mailed by registered mail or certified mail as aforesaid shall be proof of the service of the same.

(g) An order of the Commission to cease and desist shall become final—

(1) Upon the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time; but the Commission may thereafter modify or set aside its order to the extent provided in the last sentence of subsection (b).

(2) Except as to any order provision subject to paragraph (4), upon the sixtieth day after such order is served, if a peti-

tion for review has been duly filed; except that any such order may be stayed, in whole or in part and subject to such conditions as may be appropriate, by—

(A) the Commission;

(B) an appropriate court of appeals of the United States, if (i) a petition for review of such order is pending in such court, and (ii) an application for such a stay was previously submitted to the Commission and the Commission, within the 30-day period beginning on the date the application was received by the Commission, either denied the application or did not grant or deny the application; or

(C) the Supreme Court, if an applicable petition for certiorari is pending.

(3) For purposes of subsection (m)(1)(B) and of section 19(a)(2), if a petition for review of the order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(4) In the case of an order provision requiring a person, partnership, or corporation to divest itself of stock, other share capital, or assets, if a petition for review of such order of the Commission has been filed—

(A) upon the expiration of the time allowed for filing a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals and no petition for certiorari has been duly filed;

(B) upon the denial of a petition for certiorari, if the order of the Commission has been affirmed or the petition for review has been dismissed by the court of appeals; or

(C) upon the expiration of 30 days from the date of issuance of a mandate of the Supreme Court directing that the order of the Commission be affirmed or the petition for review be dismissed.

(h) If the Supreme Court directs that the order of the Commission be modified or set aside, the order of the Commission rendered in accordance with the mandate of the Supreme Court shall become final upon the expiration of thirty days from the time it was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected to accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(i) If the order of the Commission is modified or set aside by the circuit court of appeals, and if (1) the time allowed for filing

a petition for certiorari has expired and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered in accordance with the mandate of the circuit court of appeals shall become final on the expiration of thirty days from the time such order of the Commission was rendered, unless within such thirty days either party has instituted proceedings to have such order corrected so that it will accord with the mandate, in which event the order of the Commission shall become final when so corrected.

(j) If the Supreme Court orders a rehearing; or if the case is remanded by the circuit court of appeals to the Commission for a rehearing, and if (1) the time allowed for filing a petition for certiorari has expired, and no such petition has been duly filed, or (2) the petition for certiorari has been denied, or (3) the decision of the court has been affirmed by the Supreme Court, then the order of the Commission rendered upon such rehearing shall become final in the same manner as though no prior order of the Commission had been rendered.

(k) As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance thereof, means the final mandate.

(l) Any person, partnership, or corporation who violates an order of the Commission after it has become final, and while such order is in effect, shall forfeit and pay to the United States a civil penalty of not more than \$10,000 for each violation, which shall accrue to the United States and may be recovered in a civil action brought by the Attorney General of the United States. Each separate violation of such an order shall be a separate offense, except that in the case of a violation through continuing failure to obey or neglect to obey a final order of the Commission, each day of continuance of such failure or neglect shall be deemed a separate offense. In such actions, the United States district courts are empowered to grant mandatory injunctions and such other and further equitable relief as they deem appropriate in the enforcement of such final orders of the Commission.

(m)(1)(A) The Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person, partnership, or corporation which violates any rule under this Act respecting unfair or deceptive acts or practices (other than an interpretive rule or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of subsection (a)(1)) with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive and is prohibited by such rule. In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(B) If the Commission determines in a proceeding under subsection (b) that any act or practice is unfair or deceptive, and issues a final cease and desist order, other than a consent order, with respect to such act or practice, then the Commission may commence a civil action to obtain a civil penalty in a district court of

the United States against any person, partnership, or corporation which engages in such act or practice—

(1) after such cease and desist order becomes final (whether or not such person, partnership, or corporation was subject to such cease and desist order), and

(2) with actual knowledge that such act or practice is unfair or deceptive and is unlawful under subsection (a)(1) of this section.

In such action, such person, partnership, or corporation shall be liable for a civil penalty of not more than \$10,000 for each violation.

(C)(1) In the case of a violation through continuing failure to comply with a rule or with section 5(a)(1), each day of continuance of such failure shall be treated as a separate violation, for purposes of subparagraphs (A) and (B). In determining the amount of such a civil penalty, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(2) If the cease and desist order establishing that the act or practice is unfair or deceptive was not issued against the defendant in a civil penalty action under paragraph (1)(B) the issues of fact in such action against such defendant shall be tried de novo. Upon request of any party to such an action against such defendant, the court shall also review the determination of law made by the Commission in the proceeding under subsection (b) that the act or practice which was the subject of such proceeding constituted an unfair or deceptive act or practice in violation of subsection (a).

(3) The Commission may compromise or settle any action for a civil penalty if such compromise or settlement is accompanied by a public statement of its reasons and is approved by the court.

(n) The Commission shall have no authority under this section or section 18 to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.

SEC. 6. [15 U.S.C. 46] That the commission shall also have power—

(a) 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 18(f)(3), Federal credit unions described in section 18(f)(4), and common carriers subject to the Act to regulate commerce, and its relation to other persons, partnerships, and corporations.

(b) 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 18(f)(3), Federal credit unions described in section 18(f)(4), 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) Whenever a final decree has been entered against any defendant corporation in any suit brought by the United States to prevent and restrain 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) 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) 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)¹ 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 Fed-

¹Subsection (f) was amended by section 4(a) of Public Law 109-455 (120 Stat. 3372) as follows:

SEC. 4. POWERS OF THE COMMISSION.

(a) PUBLICATION OF INFORMATION; REPORTS.—Section 6(f) of the Federal Trade Commission Act (15 U.S.C. 46(f)) is amended—

(1) by inserting “(1)” after “such information” the first place it appears; and

(2) by striking “purposes.” and inserting “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 21(b).”.

For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

eral 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 21(b).

(g) From time to time to classify corporations and (except as provided in section 18(a)(2) of this Act) to make rules and regulations for the purpose of carrying out the provisions of this Act.

(h) 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) With respect to the International Antitrust Enforcement Assistance Act of 1994, to conduct investigations of possible violations of foreign antitrust laws (as defined in section 12 of such Act).

(j)¹ 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 Act; 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

¹Subsections (j)–(l) were added by section 4(b) of Public Law 109–455 (120 Stat. 3373). For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

law enforcement agency pursuant to section 1782 of title 28, United States Code.

(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 21(b); and

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

(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 18(f)(3) (15 U.S.C. 57a(f)(3)), a Federal credit union described in section 18(f)(4) (15 U.S.C. 57a(f)(4)), or a common carrier subject to the Act to regulate commerce, except in accordance with the undesignated proviso following the last designated subsection of section 6 (15 U.S.C. 46).

(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 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is re-

scinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

(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 foreign 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 18(f)(3), Federal credit unions described in section 18(f)(4), and common carriers subject to the Act to regulate commerce” from the Commission's powers defined in subsections (a), (b), and (j)¹ 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 nec-

¹The proviso following subsection (l) was amended by section 4(d) of Public Law 109-455 (120 Stat. 3373) by striking “clauses (a) and (b)” in the proviso following subsection (l) (as added by subsection (b) of this section) and inserting “subsections (a), (b), and (j)”. For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

essary 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 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 the date of the enactment of the Federal Trade Commission Improvements Act of 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.

SEC. 7. [15 U.S.C. 47] That 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.

SEC. 8. [15 U.S.C. 48] That the several departments and bureaus of the Government when directed by the President shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any corporation subject to any of the provisions of this Act, and shall detail from time to time such officials and employees to the commission as he may direct.

SEC. 9. [15 U.S.C. 49] That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person, issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any stage of such proceeding or investigation. Such depositions may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the

persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

SEC. 10. [15 U.S.C. 50] That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce any documentary evidence, if in his power to do so, in obedience to an order of a district court of the United States directing compliance with the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept by any persons, partnership, or corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such persons, partnership, or corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such persons, partnership, or corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any persons, partnership, or corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the case of a corporation or partnership in the district where the corporation or partnership has its principal office or in any district in which it shall do business, and in the case of any person in the district where such person resides or has his principal place of business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

SEC. 11. [15 U.S.C. 51] Nothing contained in this Act shall be construed to prevent or interfere with the enforcement of the provisions of the antitrust Acts or the Acts to regulate commerce, nor shall anything contained in the Act be construed to alter, modify, or repeal the said antitrust Acts or the Acts to regulate commerce or any part or parts thereof.

SEC. 12. [15 U.S.C. 52] (a) It shall be unlawful for any person, partnership, or corporation to disseminate, or cause to be disseminated, any false advertisement—

(1) By United States mails, or in or having an effect upon commerce, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly the purchase of food, drugs, devices, services, or cosmetics; or

(2) By any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in or having an effect upon commerce, of food, drugs, devices, services, or cosmetics.

(b) The dissemination or the causing to be disseminated of any false advertisement with the provisions of subsection (a) of this section shall be an unfair or deceptive act or practice in or affecting commerce within the meaning of section 5.

SEC. 13. [15 U.S.C. 53] (a) Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is engaged in, or is about to engage in, the dissemination or the causing of the dissemination of any advertisement in violation of section 12, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission under section 5, and until such complaint is dismissed by the Commission or set aside by the court on review, or the order of the Commission to cease and desist made thereon has become final within the meaning of section 5, would be to the interest of the public,

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States or in the United States court of any Territory, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing a temporary injunction or restraining order shall be granted without bond. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.

(b) Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and

(2) that the enjoining thereof pending the issuance of a complaint by the Commission and until such complaint is dismissed by the Commission or set aside by the court on review, or until the order of the Commission made thereon has become final, would be in the interest of the public—

the Commission by any of its attorneys designated by it for such purpose may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission's likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond: *Provided, however,* That if a complaint is not filed within such period (not exceeding 20 days) as may be specified by the court after issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect: *Provided further,* That in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction. Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code. In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought. In any suit under this section, process may be served on any person, partnership, or corporation wherever it may be found.

(c) Any process of the Commission under this section may be served by any person duly authorized by the Commission—

(1) by delivering a copy of such process to the person to be served, to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served;

(2) by leaving a copy of such process at the residence or the principal office or place of business of such person, partnership, or corporation; or

(3) by mailing a copy of such process by registered mail or certified mail addressed to such person, partnership, or corporation at his, or her, or its residence, principal office, or principal place or business.

The verified return by the person serving such process setting forth the manner of such service shall be proof of the same.

(d) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals—

(1) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and

(2) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for

the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction.

SEC. 14. [15 U.S.C. 54] (a) Any person, partnership, or corporation who violates any provision of section 12(a) shall, if the use of the commodity advertised may be injurious to health because of results from such use under the conditions prescribed in the advertisement thereof, or under such conditions as are customary or usual, or if such violation is with intent to defraud or mislead, be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than six months, or by both such fine and imprisonment; except that if the conviction is for a violation committed after a first conviction of such person, partnership, or corporation, for any violation of such section, punishment shall be by a fine of not more than \$10,000 or by imprisonment for not more than one year, or by both such fine and imprisonment: *Provided*, That for the purposes of this section meats and meat food products duly inspected, marked, and labeled in accordance with rules and regulations issued under the Meat Inspection Act approved March 4, 1907, as amended, shall be conclusively presumed not injurious to health at the time the same leave official "establishments."

(b) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of advertising, except the manufacturer, packer, distributor, or seller of the commodity to which the false advertisement relates, shall be liable under this section by reason of the dissemination by him of any false advertisement, unless he has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the United States, who caused him to disseminate such advertisement. No advertising agency shall be liable under this section by reason of the causing by it of the dissemination of any false advertisement, unless it has refused, on the request of the Commission, to furnish the Commission the name and post-office address of the manufacturer, packer, distributor, or seller, residing in the United States, who caused it to cause the dissemination of such advertisement.

SEC. 15. [15 U.S.C. 55] For the purposes of sections 12, 13, and 14—

(a)(1) The term "false advertisement" means an advertisement, other than labeling, which is misleading in a material respect; and in determining whether any advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual. No advertisement of a drug shall be deemed to be false if it is disseminated only to members of the medical profession, contains no false representation

of a material fact, and includes, or is accompanied in each instance by truthful disclosure of, the formula showing quantitatively each ingredient of such drug.

(2) In the case of oleomargarine or margarine an advertisement shall be deemed misleading in a material respect if in such advertisement representations are made or suggested by statement, word, grade designation, design, device, symbol, sound, or any combination thereof, that such oleomargarine or margarine is a dairy product, except that nothing contained herein shall prevent a truthful, accurate, and full statement in any such advertisement of all the ingredients contained in such oleomargarine or margarine.

(b) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article.

(c) The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homoeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories.

(d) The term "device" (except when used in subsection (a) of this section) means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is—

(1) recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them,

(2) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or

(3) intended to affect the structure or any function of the body of man or other animals, and

which does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(e) The term "cosmetic" means (1) articles to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof intended for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap.

(f) For the purposes of this section and section 407 of the Federal Food, Drug, and Cosmetic Act, as amended, the term "oleomargarine" or "margarine" includes—

(1) all substances, mixtures, and compounds known as oleomargarine or margarine;

(2) all substances, mixtures, and compounds which have a consistence similar to that of butter and which contain any edible oils or fats other than milk fat if made in imitation or semblance of butter.

SEC. 16. [15 U.S.C. 56] (a)(1) Except as otherwise provided in paragraph (2) or (3), if—

(A) before commencing, defending, or intervening in, any civil action involving this Act (including an action to collect a civil penalty) which the Commission, or the Attorney General on behalf of the Commission, is authorized to commence, defend, or intervene in, the Commission gives written notification and undertakes to consult with the Attorney General with respect to such action; and

(B) the Attorney General fails within 45 days after receipt of such notification to commence, defend, or intervene in, such action;

the Commission may commence, defend, or intervene in, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose.

(2) Except as otherwise provided in paragraph (3), in any civil action—

(A) under section 13 of this Act (relating to injunctive relief);

(B) under section 19 of this Act (relating to consumer redress);

(C) to obtain judicial review of a rule prescribed by the Commission, or a cease and desist order issued under section 5 of this Act;

(D) under the second paragraph of section 9 of this Act (relating to enforcement of a subpoena) and under the fourth paragraph of such section (relating to compliance with section 6 of this Act); or

(E)¹ under section 21A of this Act;

the Commission shall have exclusive authority to commence or defend, and supervise the litigation of, such action and any appeal of such action in its own name by any of its attorneys designated by it for such purpose, unless the Commission authorizes the Attorney General to do so. The Commission shall inform the Attorney General of the exercise of such authority and such exercise shall not preclude the Attorney General from intervening on behalf of the United States in such action and any appeal of such action as may be otherwise provided by law.

(3)(A) If the Commission makes a written request to the Attorney General, within the 10-day period which begins on the date of the entry of the judgment in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), to represent itself through any of its attorneys designated by it for such purpose before the Supreme Court in such action, it may do so, if—

(i) the Attorney General concurs with such request; or

(ii) the Attorney General, within the 60-day period which begins on the date of the entry of such judgment—

(a) refuses to appeal or file a petition for writ of certiorari with respect to such civil action, in which case he

¹Margin so in law. In addition, Subparagraphs (C)–(D) were amended by section 7(b) of Public Law 109–455 (120 Stat. 3379). For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

shall give written notification to the Commission of the reasons for such refusal within such 60-day period; or

(b) the Attorney General fails to take any action with respect to the Commission's request.

(B) In any case where the Attorney General represents the Commission before the Supreme Court in any civil action in which the Commission represented itself pursuant to paragraph (1) or (2), the Attorney General may not agree to any settlement, compromise, or dismissal of such action, or confess error in the Supreme Court with respect to such action, unless the Commission concurs.

(C) For purposes of this paragraph (with respect to representation before the Supreme Court), the term "Attorney General" includes the Solicitor General.

(4) If, prior to the expiration of the 45-day period specified in paragraph (1) of this section or a 60-day period specified in paragraph (3), any right of the Commission to commence, defend, or intervene in, any such action or appeal may be extinguished due to any procedural requirement of any court with respect to the time in which any pleadings, notice of appeal, or other acts pertaining to such action or appeal may be taken, the Attorney General shall have one-half of the time required to comply with any such procedural requirement of the court (including any extension of such time granted by the court) for the purpose of commencing, defending, or intervening in the civil action pursuant to paragraph (1) or for the purpose of refusing to appeal or file a petition for writ of certiorari and the written notification or failing to take any action pursuant to paragraph 3(A)(ii).

(5) The provisions of this subsection shall apply notwithstanding chapter 31 of title 28, United States Code, or any other provision of law.

(b) Whenever the Commission has reason to believe that any person, partnership, or corporation is liable for a criminal penalty under this Act, the Commission shall certify the facts to the Attorney General, whose duty it shall be to cause appropriate criminal proceedings to be brought.

(c)¹ FOREIGN LITIGATION.—

(1) COMMISSION ATTORNEYS.—With the concurrence of the Attorney General, the Commission may designate Commission attorneys to assist the Attorney General in connection with litigation in foreign courts on particular matters in which the Commission has an interest.

(2) REIMBURSEMENT FOR FOREIGN COUNSEL.—The Commission is authorized to expend appropriated funds, upon agreement with the Attorney General, to reimburse the Attorney General for the retention of foreign counsel for litigation in foreign courts and for expenses related to litigation in foreign courts in which the Commission has an interest.

(3) LIMITATION ON USE OF FUNDS.—Nothing in this subsection authorizes the payment of claims or judgments from

¹Subsection (c) was added by section 5 of Public Law 109-455 (120 Stat. 3375). For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

any source other than the permanent and indefinite appropriation authorized by section 1304 of title 31, United States Code.

(4) OTHER AUTHORITY.—The authority provided by this subsection is in addition to any other authority of the Commission or the Attorney General.

SEC. 17. [15 U.S.C. 57] If any provision of this Act, or the application thereof to any person, partnership, corporation, or circumstance, is held invalid, the remainder of the Act and the application of such provision to any other person, partnership, corporation, or circumstance, shall not be affected thereby.

SEC. 18. [15 U.S.C. 57a] (a)(1) Except as provided in subsection (h), the Commission may prescribe—

(A) interpretive rules and general statements of policy with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1) of this Act), and

(B) rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of such section 5(a)(1)), except that the Commission shall not develop or promulgate any trade rule or regulation with regard to the regulation of the development and utilization of the standards and certification activities pursuant to this section. Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts or practices.

(2) The Commission shall have no authority under this Act, other than its authority under this section, to prescribe any rule with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1)). The preceding sentence shall not affect any authority of the Commission to prescribe rules (including interpretive rules), and general statements of policy, with respect to unfair methods of competition in or affecting commerce.

(b)(1) When prescribing a rule under subsection (a)(1)(B) of this section, the Commission shall proceed in accordance with section 553 of title 5, United States Code (without regard to any reference in such section to sections 556 and 557 of such title), and shall also (A) publish a notice of proposed rulemaking stating with particularity the text of the rule, including any alternatives, which the Commission proposes to promulgate, and the reason for the proposed rule; (B) allow interested persons to submit written data, views, and arguments, and make all such submissions publicly available; (C) provide an opportunity for an informal hearing in accordance with subsection (c); and (D) promulgate, if appropriate, a final rule based on the matter in the rule-making record (as defined in subsection (e)(1)(B)), together with a statement of basis and purpose.

(2)(A) Prior to the publication of any notice of proposed rulemaking pursuant to paragraph (1)(A), the Commission shall publish an advance notice of proposed rulemaking in the Federal Register. Such advance notice shall—

(i) contain a brief description of the area of inquiry under consideration, the objectives which the Commission seeks to

achieve, and possible regulatory alternatives under consideration by the Commission; and

(ii) invite the response of interested parties with respect to such proposed rulemaking, including any suggestions or alternative methods for achieving such objectives.

(B) The Commission shall submit such advance notice of proposed rulemaking to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives. The Commission may use such additional mechanisms as the Commission considers useful to obtain suggestions regarding the content of the area of inquiry before the publication of a general notice of proposed rulemaking under paragraph (1)(A).

(C) The Commission shall, 30 days before the publication of a notice of proposed rulemaking pursuant to paragraph (1)(A), submit such notice to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Energy and Commerce of the House of Representatives.

(3) The Commission shall issue a notice of proposed rulemaking pursuant to paragraph (1)(A) only where it has reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent. The Commission shall make a determination that unfair or deceptive acts or practices are prevalent under this paragraph only if—

(A) it has issued cease and desist orders regarding such acts or practices, or

(B) any other information available to the Commission indicates a widespread pattern of unfair or deceptive acts or practices.

(c) The Commission shall conduct any informal hearings required by subsection (b)(1)(c) of this section in accordance with the following procedure:

(1)(A) The Commission shall provide for the conduct of proceedings under this subsection by hearing officers who shall perform their functions in accordance with the requirements of this subsection.

(B) The officer who presides over the rulemaking proceedings shall be responsible to a chief presiding officer who shall not be responsible to any other officer or employee of the Commission. The officer who presides over the rulemaking proceeding shall make a recommended decision based upon the findings and conclusions of such officer as to all relevant and material evidence, except that such recommended decision may be made by another officer if the officer who presided over the proceeding is no longer available to the Commission.

(C) Except as required for the disposition of ex parte matters as authorized by law, no presiding officer shall consult any person or party with respect to any fact in issue unless such officer gives notice and opportunity for all parties to participate.

(2) Subject to paragraph (3) of this subsection, an interested person is entitled—

(A) to present his position orally or by documentary submissions (or both), and

(B) if the Commission determines that there are disputed issues of material fact it is necessary to resolve, to present such rebuttal submissions and to conduct (or have conducted under paragraph (3)(B)) such cross-examination of persons as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to such issues.

(3) The Commission may prescribe such rules and make such rulings concerning proceedings in such hearings as may tend to avoid unnecessary costs or delay. Such rules or rulings may include (A) imposition of reasonable time limits on each interested person's oral presentations, and (B) requirements that any cross-examination to which a person may be entitled under paragraph (2) be conducted by the Commission on behalf of that person in such manner as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to disputed issues of material fact.

(4)(A) Except as provided in subparagraph (B), if a group of persons each of whom under paragraphs (2) and (3) would be entitled to conduct (or have conducted) cross-examination and who are determined by the Commission to have the same or similar interests in the proceeding cannot agree upon a single representative of such interests for purposes of cross-examination, the Commission may make rules and rulings (i) limiting the representation of such interest, for such purposes, and (ii) governing the manner in which such cross-examination shall be limited.

(B) When any person who is a member of a group with respect to which the Commission has made a determination under subparagraph (A) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of subparagraph (A) the opportunity to conduct (or have conducted) cross-examination as to issues affecting his particular interests if (i) he satisfies the Commission that he has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (ii) the Commission determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(5) A verbatim transcript shall be taken of any oral presentation, and cross-examination, in an informal hearing to which this subsection applies. Such transcript shall be available to the public.

(d)(1) The Commission's statement of basis and purpose to accompany a rule promulgated under subsection (a)(1)(B) shall include (A) a statement as to the prevalence of the acts or practices treated by the rule; (B) a statement as to the manner and context in which such acts or practices are unfair or deceptive; and (C) a statement as to the economic effect of the rule, taking into account the effect on small business and consumers.

(2)(A) The term "Commission" as used in this subsection and subsections (b) and (c) includes any person authorized to act in behalf of the Commission in any part of the rulemaking proceeding.

(B) A substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under

such subsection. An exemption under subsection (g) shall not be treated as an amendment or repeal of a rule.

(3) When any rule under subsection (a)(1)(B) takes effect a subsequent violation thereof shall constitute an unfair or deceptive act or practice in violation of section 5(a)(1) of this Act, unless the Commission otherwise expressly provides in such rule.

(e)(1)(A) Not later than 60 days after a rule is promulgated under subsection (a)(1)(B) by the Commission, any interested person (including a consumer or consumer organization) may file a petition, in the United States Court of Appeals for the District of Columbia circuit or for the circuit in which such person resides or has his principal place of business, for judicial review of such rule. Copies of the petition shall be forthwith transmitted by the clerk of the court to the Commission or other officer designated by it for that purpose. The provisions of section 2112 of title 28, United States Code, shall apply to the filing of the rulemaking record of proceedings on which the Commission based its rule and to the transfer of proceedings in the courts of appeals.

(B) For purposes of this section, the term “rulemaking record” means the rule, its statement of basis and purpose, the transcript required by subsection (c)(5), any written submissions, and any other information which the Commission considers relevant to such rule.

(2) If the petitioner or the Commission applies to the court for leave to make additional oral submissions or written presentations and shows to the satisfaction of the court that such submissions and presentations would be material and that there were reasonable grounds for the submissions and failure to make such submissions and presentations in the proceeding before the Commission, the court may order the Commission to provide additional opportunity to make such submissions and presentations. The Commission may modify or set aside its rule or make a new rule by reason of the additional submissions and presentations and shall file such modified or new rule, and the rule’s statement of basis of purpose, with the return of such submissions and presentations. The court shall thereafter review such new or modified rule.

(3) Upon the filing of the petition under paragraph (1) of this subsection, the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief, including interim relief, as provided in such chapter. The court shall hold unlawful and set aside the rule on any ground specified in subparagraphs (A), (B), (C), or (D) of section 706(2) of title 5, United States Code (taking due account of the rule of prejudicial error), or if—

(A) the court finds that the Commission’s action is not supported by substantial evidence in the rulemaking record (as defined in paragraph (1)(B) of this subsection) taken as a whole, or

(B) the court finds that—

(i) a Commission determination under subsection (c) that the petitioner is not entitled to conduct cross-examination or make rebuttal submissions, or

(ii) a Commission rule or ruling under subsection (c) limiting the petitioner's cross-examination or rebuttal submissions,

has precluded disclosure of disputed material facts which was necessary for fair determination by the Commission of the rule-making proceeding taken as a whole.

The term "evidence," as used in this paragraph, means any matter in the rulemaking record.

(4) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(5)(A) Remedies under the preceding paragraphs of this subsection are in addition to and not in lieu of any other remedies provided by law.

(B) The United States Courts of Appeals shall have exclusive jurisdiction of any action to obtain judicial review (other than in an enforcement proceeding) of a rule prescribed under subsection (a)(1)(B), if any district court of the United States would have had jurisdiction of such action but for this subparagraph. Any such action shall be brought in the United States Court of Appeals for the District of Columbia circuit, or for any circuit which includes a judicial district in which the action could have been brought but for this subparagraph.

(C) A determination, rule, or ruling of the Commission described in paragraph (3)(B) (i) or (ii) may be reviewed only in a proceeding under this subsection and only in accordance with paragraph (3)(B). Section 706(2)(E) of title 5, United States Code, shall not apply to any rule promulgated under subsection (a)(1)(B). The contents and adequacy of any statement required by subsection (b)(1)(D) shall not be subject to judicial review in any respect.

(f)(1) In order to prevent unfair or deceptive acts or practices in or affecting commerce (including acts or practices which are unfair or deceptive to consumers) by banks or savings and loan institutions described in paragraph (3), each agency specified in paragraph (2) or (3) of this subsection shall establish a separate division of consumer affairs which shall receive and take appropriate action upon complaints with respect to such acts or practices by banks or savings and loan institutions described in paragraph (3), subject to its jurisdiction. The Board of Governors of the Federal Reserve System (with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3)) and the National Credit Union Administration Board (with respect to Federal credit unions described in paragraph (4)) shall prescribe regulations to carry out the purposes of this section, including regulations defining with specificity such unfair or deceptive acts or practices, and containing requirements prescribed for the purpose of preventing such acts or practices. Whenever the Commission prescribes a rule under subsection (a)(1)(B) of this section, then within 60 days after such rule takes effect each such Board shall promulgate substantially similar regulations prohibiting acts or practices of banks or savings and loan institutions described in paragraph (3), or Federal credit unions described in paragraph (4), as the case may be, which are substantially similar

to those prohibited by rules of the Commission and which impose substantially similar requirements, unless (A) any such Board finds that such acts or practices of banks or savings and loan institutions described in paragraph (3), or Federal credit unions described in paragraph (4), as the case may be, are not unfair or deceptive, or (B) the Board of Governors of the Federal Reserve System finds that implementation of similar regulations with respect to banks, savings and loan institutions or Federal credit unions would seriously conflict with essential monetary and payments systems policies of such Board, and publishes any such finding and the reasons therefor, in the Federal Register.

(2)¹ ENFORCEMENT.—Compliance with regulations prescribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks and Federal branches and Federal agencies of foreign banks, by the division of consumer affairs established by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act, by the division of consumer affairs established by the Board of Governors of the Federal Reserve System; and

(C) banks insured by the Federal Deposit Insurance Corporation (other banks referred to in subparagraph (A) or (B)) and insured State branches of foreign banks, by the division of consumer affairs established by the Board of Directors of the Federal Deposit Insurance Corporation.

(3) Compliance with regulations prescribed under this subsection shall be enforced under section 8 of the Federal Deposit Insurance Act with respect to savings associations as defined in section 3 of the Federal Deposit Insurance Act.

(4) Compliance with regulations prescribed under this subsection shall be enforced with respect to Federal credit unions under sections 120 and 206 of the Federal Credit Union Act (12 U.S.C. 1766 and 1786).

(5) For the purpose of the exercise by any agency referred to in paragraph (2) of its powers under any Act referred to in that paragraph, a violation of any regulation prescribed under this subsection shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraph (2), each of the agencies referred to in that paragraph may exercise, for the purpose of enforcing compliance with any regulation prescribed under this subsection, any other authority conferred on it by law.

(6) The authority of the Board of Governors of the Federal Reserve System to issue regulations under this subsection does not impair the authority of any other agency designated in this sub-

¹ Indentation of paragraph (2) so in law.

section to make rules respecting its own procedures in enforcing compliance with regulations prescribed under this subsection.

(7) Each agency exercising authority under this subsection shall transmit to the Congress not later than March 15 of each year a detailed report on its activities under this paragraph during the preceding calendar year.

The² terms used in this paragraph that are not defined in the Federal Trade Commission Act or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

[**Note:** Section 1092 of Public Law 111–203 provides for amendments to subsection (f) of section 18. Section 1100H of such Public Law provides that the amendments are subject to a designated transfer date. See section 1062 of such Public Law for effective date (July 21, 2011) and a possible extension of such date. Upon such date, subsection (f) reads as follows:]

(f) *DEFINITIONS OF BANKS, SAVINGS AND LOAN INSTITUTIONS, AND FEDERAL CREDIT UNIONS.*—

(1) *[Repealed.]*

(2) *DEFINITION.*—*For purposes of this Act, the term “bank” means—*

(A) *national banks and Federal branches and Federal agencies of foreign banks;*

(B) *member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and*

(C) *banks insured by the Federal Deposit Insurance Corporation (other than banks referred to in subparagraph (A) or (B)) and insured State branches of foreign banks.*

(3) *For purposes of this Act, the term “savings and loan institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act.*

(4) *For purposes of this Act, the term “Federal credit union” has the same meaning as in sections 120 and 206 of the Federal Credit Union Act (12 U.S.C. 1766 and 1786).*

The² terms used in this paragraph that are not defined in the Federal Trade Commission Act or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

²Indentation so in law.

²Indentation so in law.

(g)(1) Any person to whom a rule under subsection (a)(1)(B) of this section applies may petition the Commission for an exemption from such rule.

(2) If, on its own motion or on the basis of a petition under paragraph (1), the Commission finds that the application of a rule prescribed under subsection (a)(1)(B) to any person or class or¹ persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or part of such rule. Section 553 of title 5, United States Code, shall apply to action under this paragraph.

(3) Neither the pendency of a proceeding under this subsection respecting an exemption from a rule, nor the pendency of judicial proceedings to review the Commission's action or failure to act under this subsection, shall stay the applicability of such rule under subsection (a)(1)(B).

(h) The Commission shall not have any authority to promulgate any rule in the children's advertising proceeding pending on the date of the enactment of the Federal Trade Commission Improvements Act of 1980 or in any substantially similar proceeding on the basis of a determination by the Commission that such advertising constitutes an unfair act or practice in or affecting commerce.

(i)(1) For purposes of this subsection, the term "outside party" means any person other than (A) a Commissioner; (B) an officer or employee of the Commission; or (C) any person who has entered into a contract or any other agreement or arrangement with the Commission to provide any goods or services (including consulting services) to the Commission.

(2) Not later than 60 days after the date of the enactment of the Federal Trade Commission Improvements Act of 1980, the Commission shall publish a proposed rule, and not later than 180 days after such date of enactment the Commission shall promulgate a final rule, which shall authorize the Commission or any Commissioner to meet with any outside party concerning any rule-making proceeding of the Commission. Such rule shall provide that—

(A) notice of any such meeting shall be included in any weekly calendar prepared by the Commission; and

(B) a verbatim record or a summary of any such meeting, or of any communication relating to any such meeting, shall be kept, made available to the public, and included in the rule-making record.

(j) Not later than 60 days after the date of the enactment of the Federal Trade Commission Improvements Act of 1980, the Commission shall publish a proposed rule, and not later than 180 days after such date of enactment the Commission shall promulgate a final rule, which shall prohibit any officer, employee, or agent of the Commission with any investigative responsibility or other responsibility relating to any rulemaking proceeding within any operating bureau of the Commission, from communicating or causing to be communicated to any Commissioner or to the personal staff of any Commissioner any fact which is relevant to the

¹ So in law. Probably should be "of".

merits of such proceeding and which is not on the rulemaking record of such proceeding, unless such communication is made available to the public and is included in the rulemaking record. The provisions of this subsection shall not apply to any communication to the extent such communication is required for the disposition of ex parte matters as authorized by law.

SEC. 19. [15 U.S.C. 57b] (a)(1) If any person, partnership, or corporation violates any rule under this Act respecting unfair or deceptive acts or practices (other than an interpretive rule, or a rule violation of which the Commission has provided is not an unfair or deceptive act or practice in violation of section 5(a)), then the Commission may commence a civil action against such person, partnership, or corporation for relief under subsection (b) in a United States district court or in any court of competent jurisdiction of a State.

(2) If any person, partnership, or corporation engages in any unfair or deceptive act or practice (within the meaning of section 5(a)(1)) with respect to which the Commission has issued a final cease and desist order which is applicable to such person, partnership, or corporation, then the Commission may commence a civil action against such person, partnership, or corporation in a United States district court or in any court of competent jurisdiction of a State. If the Commission satisfies the court that the act or practice to which the cease and desist order relates is one which a reasonable man would have known under the circumstances was dishonest or fraudulent, the court may grant relief under subsection (b).

(b) The court in an action under subsection (a) shall have jurisdiction to grant such relief as the court finds necessary to redress injury to consumers or other persons, partnerships, and corporations resulting from the rule violation or the unfair or deceptive act or practice, as the case may be. Such relief may include, but shall not be limited to, rescission or reformation of contracts, the refund of money or return of property, the payment of damages, and public notification respecting the rule violation or the unfair or deceptive act or practice, as the case may be; except that nothing in this subsection is intended to authorize the imposition of any exemplary or punitive damages.

(c)(1) If (A) a cease and desist order issued under section 5(b) has become final under section 5(g) with respect to any person's partnership's, or corporation's rule violation or unfair or deceptive act or practice, and (B) an action under this section is brought with respect to such person's, partnership's, or corporation's rule violation or act or practice, then the findings of the Commission as to the material facts in the proceeding under section 5(b) with respect to such person's, partnership's, or corporation's rule violation or act or practice, shall be conclusive unless (i) the terms of such cease and desist order expressly provide that the Commission's findings shall not be conclusive, or (ii) the order became final by reason of section 5(g)(1), in which case such finding shall be conclusive if supported by evidence.

(2) The court shall cause notice of an action under this section to be given in a manner which is reasonably calculated, under all of the circumstances, to apprise the persons, partnerships, and cor-

porations allegedly injured by the defendant's rule violation or act or practice of the pendency of such action. Such notice may, in the discretion of the court, be given by publication.

(d) No action may be brought by the Commission under this section more than 3 years after the rule violation to which an action under subsection (a)(1) relates, or the unfair or deceptive act or practice to which an action under subsection (a)(2) relates: except that if a cease and desist order with respect to any person's, partnership's, or corporation's rule violation or unfair or deceptive act or practice has become final and such order was issued in a proceeding under section 5(b) which was commenced not later than 3 years after the rule violation or act or practice occurred, a civil action may be commenced under this section against such person, partnership, or corporation at any time before the expiration of one year after such order becomes final.

(e) Remedies provided in this section are in addition to, and not in lieu of, any other remedy or right of action provided by State or Federal law. Nothing in this section shall be construed to affect any authority of the Commission under any other provision of law.

SEC. 20. [15 U.S.C. 57b-1] (a) For purposes of this section:

(1) The terms "civil investigative demand" and "demand" mean any demand issued by the Commission under subsection (c)(1).

(2) The term "Commission investigation" means any inquiry conducted by a Commission investigator for the purpose of ascertaining whether any person is or has been engaged in any unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1)) or in any antitrust violations.

(3) The term "Commission investigator" means any attorney or investigator employed by the Commission who is charged with the duty of enforcing or carrying into effect any provisions relating to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1)) or any provisions relating to antitrust violations.

(4) The term "custodian" means the custodian or any deputy custodian designated under section 21(b)(2)(A).

(5) The term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document.

(6) The term "person" means any natural person, partnership, corporation, association, or other legal entity, including any person acting under color or authority of State law.

(7) The term "violation" means any act or omission constituting an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 5(a)(1)) or any antitrust violation.

(8) The term "antitrust violation" means—

(A) any unfair method of competition (within the meaning of section 5(a)(1));

(B) any violation of the Clayton Act or of any other Federal statute that prohibits, or makes available to the Commission a civil remedy with respect to, any restraint

upon or monopolization of interstate or foreign trade or commerce;

(C) with respect to the International Antitrust Enforcement Assistance Act of 1994, any violation of any of the foreign antitrust laws (as defined in section 12 of such Act) with respect to which a request is made under section 3 of such Act; or

(D) any activity in preparation for a merger, acquisition, joint venture, or similar transaction, which if consummated, may result in any such unfair method of competition or in any such violation.

(b) For the purpose of investigations performed pursuant to this section with respect to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1)), all actions of the Commission taken under section 6 and section 9 shall be conducted pursuant to subsection (c).

(c)(1) Whenever the Commission has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 5(a)(1)), or to antitrust violations, the Commission may, before the institution of any proceedings under this Act, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to submit such tangible things, to file written reports or answers to questions, to give oral testimony concerning documentary material or other information, or to furnish any combination of such material, answers, or testimony.

(2) Each civil investigative demand shall state the nature of the conduct constituting the alleged violation which is under investigation and the provision of law applicable to such violation.

(3) Each civil investigative demand for the production of documentary material shall—

(A) describe each class of documentary material to be produced under the demand with such definiteness and certainty as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available.

(4) Each civil investigative demand for the submission of tangible things shall—

(A) describe each class of tangible things to be submitted under the demand with such definiteness and certainty as to permit such things to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the things so demanded may be assembled and submitted; and

(C) identify the custodian to whom such things shall be submitted.

(5) Each civil investigative demand for written reports or answers to questions shall—

(A) propound with definiteness and certainty the reports to be produced or the questions to be answered;

(B) prescribe a date or dates at which time written reports or answers to questions shall be submitted; and

(C) identify the custodian to whom such reports or answers shall be submitted.

(6) Each civil investigative demand for the giving of oral testimony shall—

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify a Commission investigator who shall conduct the investigation and the custodian to whom the transcript of such investigation shall be submitted.

(7)(A) Any civil investigative demand may be served by any Commission investigator at any place within the territorial jurisdiction of any court of the United States.

(B) Any such demand or any enforcement petition filed under this section may be served upon any person who is not 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 in a foreign nation.

(C) To the extent that the courts of the United States have authority to assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such district court would have if such person were personally within the jurisdiction of such district court.

(8) Service of any civil investigative demand or any enforcement petition filed under this section may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering a duly executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of such partnership, corporation, association, or other legal entity, or to any agent of such partnership, corporation, association, or other legal entity authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or other legal entity;

(B) delivering a duly executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or other legal entity to be served; or

(C) depositing a duly executed copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or other legal entity at its principal office or place of business.

(9) Service of any civil investigative demand or of any enforcement petition filed under this section may be made upon any natural person by—

(A) delivering a duly executed copy of such demand or petition to the person to be served; or

(B) depositing a duly executed copy in the United States mails by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(10) A verified return by the individual serving any civil investigative demand or any enforcement petition filed under this section setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand or enforcement petition.

(11) The production of documentary material in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(12) The submission of tangible things in response to a civil investigative demand shall be made under a sworn certificate, in such form as the demand designates, by the person to whom the demand is directed or, if not a natural person, by any person having knowledge of the facts and circumstances relating to such production, to the effect that all of the tangible things required by the demand and in the possession, custody, or control of the person to whom the demand is directed have been submitted to the custodian.

(13) Each reporting requirement or question in a civil investigative demand shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer, and it shall be submitted under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by any person responsible for answering each reporting requirement or question, to the effect that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted.

(14)(A) Any Commission investigator before whom oral testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by any individual acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically and transcribed. After the testimony is fully transcribed, the Commission investigator before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(B) Any Commission investigator before whom oral testimony is to be taken shall exclude from the place where the testimony is to be taken all other persons except the person giving the testimony, his attorney, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(C) The oral testimony of any person taken pursuant to a civil investigative demand shall be taken in the judicial district of the

United States in which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the Commission investigator before whom the oral testimony of such person is to be taken and such person.

(D)(i) Any person compelled to appear under a civil investigative demand for oral testimony pursuant to this section may be accompanied, represented, and advised by an attorney. The attorney may advise such person, in confidence, either upon the request of such person or upon the initiative of the attorney, with respect to any question asked of such person.

(ii) Such person or attorney may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not himself or through his attorney otherwise interrupt the oral examination. If such person refuses to answer any question, the Commission may petition the district court of the United States pursuant to this section for an order compelling such person to answer such question.

(iii) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of section 6004 of title 18, United States Code.

(E)(i) After the testimony of any witness is fully transcribed, the Commission investigator shall afford the witness (who may be accompanied by an attorney) a reasonable opportunity to examine the transcript. The transcript shall be read to or by the witness, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the Commission investigator with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign.

(ii) If the transcript is not signed by the witness during the 30-day period following the date upon which the witness is first afforded a reasonable opportunity to examine it, the Commission investigator shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with any reasons given for the failure to sign.

(F) The Commission investigator shall certify on the transcript that the witness was duly sworn by him and that the transcript is a true record of the testimony given by the witness, and the Commission investigator shall promptly deliver the transcript or send it by registered or certified mail to the custodian.

(G) The Commission investigator shall furnish a copy of the transcript (upon payment of reasonable charges for the transcript) to the witness only, except that the Commission may for good cause limit such witness to inspection of the official transcript of his testimony.

(H) Any witness appearing for the taking of oral testimony pursuant to a civil investigative demand shall be entitled to the same fees and mileage which are paid to witnesses in the district courts of the United States.

(d) Materials received as a result of a civil investigative demand shall be subject to the procedures established in section 21.

(e) Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section. All process of any court to which application may be made as provided in this subsection may be served in any judicial district.

(f)(1) Not later than 20 days after the service of any civil investigative demand upon any person under subsection (c), or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any Commission investigator named in the demand, such person may file with the Commission a petition for an order by the Commission modifying or setting aside the demand.

(2) The time permitted for compliance with the demand in whole or in part, as deemed proper and ordered by the Commission, shall not run during the pendency of such petition at the Commission, except that such person shall comply with any portions of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of the demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(g) At any time during which any custodian is in custody or control of any documentary material, tangible things, reports, answers to questions, or transcripts of oral testimony given by any person in compliance with any civil investigative demand, such person may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court requiring the performance by such custodian of any duty imposed upon him by this section or section 21.

(h) Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order so entered shall be subject to appeal pursuant to section 1291 of title 28, United States Code. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of such court.

(i) Notwithstanding any other provision of law, the Commission shall have no authority to issue a subpoena or make a demand for information, under authority of this Act or any other provision of law, unless such subpoena or demand for information is signed by a Commissioner acting pursuant to a Commission resolution. The Commission shall not delegate the power conferred by this section to sign subpoenas or demands for information to any other person.

(j) The provisions of this section shall not—

(1) apply to any proceeding under section 5(b), any proceeding under section 11(b) of the Clayton Act (15 U.S.C. 21(b)), or any adjudicative proceeding under any other provision of law; or

(2) apply to or affect the jurisdiction, duties, or powers of any agency of the Federal Government, other than the Commission.

SEC. 21. [15 U.S.C. 57b–2] (a) For purposes of this section:

(1) The term “material” means documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony.

(2) The term “Federal agency” has the meaning given it in section 552(e)¹ of title 5, United States Code.

(b)(1) With respect to any document, tangible thing, or transcript of oral testimony received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, the procedures established in paragraph (2) through paragraph (7) shall apply.

(2)(A) The Commission shall designate a duly authorized agent to serve as custodian of documentary material, tangible things, or written reports or answers to questions, and transcripts of oral testimony, and such additional duly authorized agents as the Commission shall determine from time to time to be necessary to serve as deputies to the custodian.

(B) Any person upon whom any demand for the production of documentary material has been duly served shall make such material available for inspection and copying or reproduction to the custodian designated in such demand at the principal place of business of such person (or at such other place as such custodian and such person thereafter may agree and prescribe in writing or as the court may direct pursuant to section 20(h)) on the return date specified in such demand (or on such later date as such custodian may prescribe in writing). Such person may upon written agreement between such person and the custodian substitute copies for originals of all or any part of such material.

(3)(A) The custodian to whom any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony are delivered shall take physical possession of such material, reports or answers, and transcripts, and shall be responsible for the use made of such material, reports or

¹So in law. The reference in section 21(a)(2) to section 552(e) of title 5, United States Code, probably should be to section 552(f). Section 1802(b) of Public Law 99–570, 100 Stat. 3207–49, October 27, 1986, redesignated subsection (e) of section 552 of that title as subsection (f).

answers, and transcripts, and for the return of material, pursuant to the requirements of this section.

(B) The custodian may prepare such copies of the documentary material, written reports or answers to questions, and transcripts of oral testimony, and may make tangible things available,² as may be required for official use by any duly authorized officer or employee of the Commission under regulations which shall be promulgated by the Commission. Notwithstanding subparagraph (C), such material, things, and transcripts may be used by any such officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this section, while in the possession of the custodian, no documentary material, tangible things, reports or answers to questions, and transcripts of oral testimony shall be available for examination by any individual other than a duly authorized officer or employee of the Commission without the consent of the person who produced the material, things, or transcripts. Nothing in this section is intended to prevent disclosure to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Commission shall prescribe—

(i) documentary material, tangible things, or written reports shall be available for examination by the person who produced the material, or by any duly authorized representative of such person; and

(ii) answers to questions in writing and transcripts of oral testimony shall be available for examination by the person who produced the testimony or by his attorney.

(4) Whenever the Commission has instituted a proceeding against a person, partnership, or corporation, the custodian may deliver to any officer or employee of the Commission documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony for official use in connection with such proceeding. Upon the completion of the proceeding, the officer or employee shall return to the custodian any such material so delivered which has not been received into the record of the proceeding.

(5) If any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony have been produced in the course of any investigation by any person pursuant to compulsory process and—

(A) any proceeding arising out of the investigation has been completed; or

(B) no proceeding in which the material may be used has been commenced within a reasonable time after completion of

²Section 8(4)(B) of Public Law 103-312, 108 Stat. 1694, August 26, 1994, amended paragraph (3)(B) by inserting “, and may make tangible things available,” immediately after “oral testimony”. The term “oral testimony” appears twice; the amendment was executed the first place such term appears.

the examination and analysis of all such material and other information assembled in the course of the investigation; then the custodian shall, upon written request of the person who produced the material, return to the person any such material which has not been received into the record of any such proceeding (other than copies of such material made by the custodian pursuant to paragraph (3)(B)).

(6) The custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony may deliver to any officers or employees of appropriate Federal law enforcement agencies, in response to a written request, copies of such material for use in connection with an investigation or proceeding under the jurisdiction of any such agency. The custodian of any tangible things may make such things available for inspection to such persons on the same basis. Such materials shall not be made available to any such agency until the custodian receives certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. Such documentary material, results of inspections of tangible things, written reports or answers to questions, and transcripts of oral testimony may be used by any officer or employee of such agency only in such manner and subject to such conditions as apply to the Commission under this section. The custodian may make such materials available to any State law enforcement agency upon the prior certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. The custodian may¹ make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—

(A) the foreign law enforcement agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

(i) foreign laws prohibiting fraudulent or deceptive commercial practices, or other practices substantially similar to practices prohibited by any law administered by the Commission;

(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

(iii) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the

¹The last sentence of paragraph (6) was added by section 6(a) of Public Law 109-455 (120 Stat. 3376). For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

United States and the foreign law enforcement agency's government;

(C) the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)) or, in the case of a Federal credit union, the National Credit Union Administration, has given its prior approval if the materials to be provided under subparagraph (B) are requested by the foreign law enforcement agency for the purpose of investigating, or engaging in enforcement proceedings based on, possible violations of law by a bank, a savings and loan institution described in section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)), or a Federal credit union described in section 18(f)(4) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(4)); and

(D) the foreign law enforcement agency is not from a foreign state that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

Nothing in the preceding sentence authorizes the disclosure of material obtained in connection with the administration of the Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211)) to any officer or employee of a foreign law enforcement agency.

(7) In the event of the death, disability, or separation from service in the Commission of the custodian of any documentary material, tangible things, written reports or answers to questions, and transcripts of oral testimony produced under any demand issued under this Act, or the official relief of the custodian from responsibility for the custody and control of such material, the Commission promptly shall—

(A) designate under paragraph (2)(A) another duly authorized agent to serve as custodian of such material; and

(B) transmit in writing to the person who produced the material or testimony notice as to the identity and address of the successor so designated.

Any successor designated under paragraph (2)(A) as a result of the requirements of this paragraph shall have (with regard to the material involved) all duties and responsibilities imposed by this section upon his predecessor in office with regard to such material, except that he shall not be held responsible for any default or dereliction which occurred before his designation.

(c)(1) All information reported to or otherwise obtained by the Commission which is not subject to the requirements of subsection (b) shall be considered confidential when so marked by the person supplying the information and shall not be disclosed, except in accordance with the procedures established in paragraph (2) and paragraph (3).

(2) If the Commission determines that a document marked confidential by the person supplying it may be disclosed because it is not a trade secret or commercial or financial information which is

obtained from any person and which is privileged or confidential, within the meaning of section 6(f), then the Commission shall notify such person in writing that the Commission intends to disclose the document at a date not less than 10 days after the date of receipt of notification.

(3) Any person receiving such notification may, if he believes disclosure of the document would cause disclosure of a trade secret, or commercial or financial information which is obtained from any person and which is privileged or confidential, within the meaning of section 6(f), before the date set for release of the document, bring an action in the district court of the United States for the district within which the documents are located or in the United States District Court for the District of Columbia to restrain disclosure of the document. Any person receiving such notification may file with the appropriate district court or court of appeals of the United States, as appropriate, an application for a stay of disclosure. The documents shall not be disclosed until the court has ruled on the application for a stay.

(d)(1) The provisions of subsection (c) shall not be construed to prohibit—

(A) the disclosure of information to either House of the Congress or to any committee or subcommittee of the Congress, except that the Commission immediately shall notify the owner or provider of any such information of a request for information designated as confidential by the owner or provider;

(B) the disclosure of the results of any investigation or study carried out or prepared by the Commission, except that no information shall be identified nor shall information be disclosed in such a manner as to disclose a trade secret of any person supplying the trade secret, or to disclose any commercial or financial information which is obtained from any person and which is privileged or confidential;

(C) the disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party; or

(D) the disclosure to a Federal agency of disaggregated information obtained in accordance with section 3512 of title 44, United States Code, except that the recipient agency shall use such disaggregated information for economic, statistical, or policymaking purposes only, and shall not disclose such information in an individually identifiable form.

(2) Any disclosure of relevant and material information in Commission adjudicative proceedings or in judicial proceedings to which the Commission is a party shall be governed by the rules of the Commission for adjudicative proceedings or by court rules or orders, except that the rules of the Commission shall not be amended in a manner inconsistent with the purposes of this section.

(e) Nothing in this section shall supersede any statutory provision which expressly prohibits or limits particular disclosures by the Commission, or which authorizes disclosures to any other Federal agency.

(f)¹ EXEMPTION FROM PUBLIC DISCLOSURE.—

(1) IN GENERAL.—Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is provided voluntarily in place of such compulsory process shall not be required to be disclosed under section 552 of title 5, United States Code, or any other provision of law, except as provided in paragraph (2)(B) of this section.

(2) MATERIAL OBTAINED FROM A FOREIGN SOURCE.—

(A) IN GENERAL.—Except as provided in subparagraph (B) of this paragraph, the Commission shall not be required to disclose under section 552 of title 5, United States Code, or any other provision of law—

(i) any material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

(ii) any material reflecting a consumer complaint obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

(iii) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.

(B) SAVINGS PROVISION.—Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.

SEC. 21A. [15 U.S.C. 57b-2a] CONFIDENTIALITY AND DELAYED NOTICE OF COMPULSORY PROCESS FOR CERTAIN THIRD PARTIES.¹

(a) APPLICATION WITH OTHER LAWS.—The Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States Code, shall apply with respect to the Commission, except as otherwise provided in this section.

(b) PROCEDURES FOR DELAY OF NOTIFICATION OR PROHIBITION OF DISCLOSURE.—The procedures for delay of notification or prohibition of disclosure under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and chapter 121 of title 18, United States

¹Subsection (f) was amended to read by section 6(b) of Public Law 109-455 (120 Stat. 3377). For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

¹Section 21A was added by section 7(a) of Public Law 109-455 (120 Stat. 3377). For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

Code, including procedures for extensions of such delays or prohibitions, shall be available to the Commission, provided that, notwithstanding any provision therein—

(1) a court may issue an order delaying notification or prohibiting disclosure (including extending such an order) in accordance with the procedures of section 1109 of the Right to Financial Privacy Act (12 U.S.C. 3409) (if notification would otherwise be required under that Act), or section 2705 of title 18, United States Code, (if notification would otherwise be required under chapter 121 of that title), if the presiding judge or magistrate judge finds that there is reason to believe that such notification or disclosure may cause an adverse result as defined in subsection (g) of this section; and

(2) if notification would otherwise be required under chapter 121 of title 18, United States Code, the Commission may delay notification (including extending such a delay) upon the execution of a written certification in accordance with the procedures of section 2705 of that title if the Commission finds that there is reason to believe that notification may cause an adverse result as defined in subsection (g) of this section.

(c) EX PARTE APPLICATION BY COMMISSION.—

(1) IN GENERAL.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the Commission may apply ex parte to a presiding judge or magistrate judge for an order prohibiting the recipient of compulsory process issued by the Commission from disclosing to any other person the existence of the process, notwithstanding any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia. The presiding judge or magistrate judge may enter such an order granting the requested prohibition of disclosure for a period not to exceed 60 days if there is reason to believe that disclosure may cause an adverse result as defined in subsection (g). The presiding judge or magistrate judge may grant extensions of this order of up to 30 days each in accordance with this subsection, except that in no event shall the prohibition continue in force for more than a total of 9 months.

(2) APPLICATION.—This subsection shall apply only in connection with compulsory process issued by the Commission where the recipient of such process is not a subject of the investigation or proceeding at the time such process is issued.

(3) LIMITATION.—No order issued under this subsection shall prohibit any recipient from disclosing to a Federal agency that the recipient has received compulsory process from the Commission.

(d) NO LIABILITY FOR FAILURE TO NOTIFY.—If neither notification nor delayed notification by the Commission is required under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) or chapter 121 of title 18, United States Code, the recipient of compulsory process issued by the Commission under this Act shall not be liable under any law or regulation of the United States, or under the con-

stitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, or under any contract or other legally enforceable agreement, for failure to provide notice to any person that such process has been issued or that the recipient has provided information in response to such process. The preceding sentence does not exempt any recipient from liability for—

- (1) the underlying conduct reported;
- (2) a failure to comply with the record retention requirements under section 1104(c) of the Right to Financial Privacy Act (12 U.S.C. 3404), where applicable; or
- (3) any failure to comply with any obligation the recipient may have to disclose to a Federal agency that the recipient has received compulsory process from the Commission or intends to provide or has provided information to the Commission in response to such process.

(e) VENUE AND PROCEDURE.—

(1) IN GENERAL.—All judicial proceedings initiated by the Commission under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), chapter 121 of title 18, United States Code, or this section may be brought in the United States District Court for the District of Columbia or any other appropriate United States District Court. All ex parte applications by the Commission under this section related to a single investigation may be brought in a single proceeding.

(2) IN CAMERA PROCEEDINGS.—Upon application by the Commission, all judicial proceedings pursuant to this section shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

(f) SECTION NOT TO APPLY TO ANTITRUST INVESTIGATIONS OR PROCEEDINGS.—This section shall not apply to an investigation or proceeding related to the administration of Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211)).

(g) ADVERSE RESULT DEFINED.—For purposes of this section the term “adverse result” means—

- (1) endangering the life or physical safety of an individual;
- (2) flight from prosecution;
- (3) the destruction of, or tampering with, evidence;
- (4) the intimidation of potential witnesses; or
- (5) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices, including, but not limited to, by—

(A) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;

(B) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial

practices, or to trace the source or disposition of funds related to such practices; or

(C) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission.

SEC. 21B. [15 U.S.C. 57b-2b] PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.¹

(a) IN GENERAL.—

(1) NO LIABILITY FOR PROVIDING CERTAIN MATERIAL.—An entity described in paragraphs (2) or (3) of subsection (d) that voluntarily provides material to the Commission that such entity reasonably believes is relevant to—

(A) a possible unfair or deceptive act or practice, as defined in section 5(a) of this Act; or

(B) assets subject to recovery by the Commission, including assets located in foreign jurisdictions; shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or of intention to so provide material.

(2) LIMITATIONS.—Nothing in this subsection shall be construed to exempt any such entity from liability—

(A) for the underlying conduct reported; or

(B) to any Federal agency for providing such material or for any failure to comply with any obligation the entity may have to notify a Federal agency prior to providing such material to the Commission.

(b) CERTAIN FINANCIAL INSTITUTIONS.—An entity described in paragraph (1) of subsection (d) shall, in accordance with section 5318(g)(3) of title 31, United States Code, be exempt from liability for making a voluntary disclosure to the Commission of any possible violation of law or regulation, including—

(1) a disclosure regarding assets, including assets located in foreign jurisdictions—

(A) related to possibly fraudulent or deceptive commercial practices;

(B) related to persons involved in such practices; or

(C) otherwise subject to recovery by the Commission;

or

(2) a disclosure regarding suspicious chargeback rates related to possibly fraudulent or deceptive commercial practices.

(c) CONSUMER COMPLAINTS.—Any entity described in subsection (d) that voluntarily provides consumer complaints sent to it, or information contained therein, to the Commission shall not be liable to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material or

¹Section 21B was added by section 8 of Public Law 109-455 (120 Stat. 3380). For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

of intention to so provide material. This subsection shall not provide any exemption from liability for the underlying conduct.

(d) APPLICATION.—This section applies to the following entities, whether foreign or domestic:

(1) A financial institution as defined in section 5312 of title 31, United States Code.

(2) To the extent not included in paragraph (1), a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments.

(3) A courier service, a commercial mail receiving agency, an industry membership organization, a payment system provider, a consumer reporting agency, a domain name registrar or registry acting as such, and a provider of alternative dispute resolution services.

(4) An Internet service provider or provider of telephone services.

SEC. 22. [15 U.S.C. 57b–3] (a) For purposes of this section:

(1) The term “rule” means any rule promulgated by the Commission under section 6 or section 18, except that such term does not include interpretive rules, rules involving Commission management or personnel, general statements of policy, or rules relating to Commission organization, procedure, or practice. Such term does not include any amendment to a rule unless the Commission—

(A) estimates that such amendment will have an annual effect on the national economy of \$100,000,000 or more;

(B) estimates that such amendment will cause a substantial change in the cost or price of goods or services which are used extensively by particular industries, which are supplied extensively in particular geographic regions, or which are acquired in significant quantities by the Federal Government, or by State or local governments; or

(C) otherwise determines that such amendment will have a significant impact upon persons subject to regulation under such amendment and upon consumers.

(2) The term “rulemaking” means any Commission process for formulating or amending a rule.

(b)(1) In any case in which the Commission publishes notice of a proposed rulemaking, the Commission shall issue a preliminary regulatory analysis relating to the proposed rule involved. Each preliminary regulatory analysis shall contain—

(A) a concise statement of the need for, and the objectives of, the proposed rule;

(B) a description of any reasonable alternatives to the proposed rule which may accomplish the stated objective of the rule in a manner consistent with applicable law; and

(C) for the proposed rule, and for each of the alternatives described in the analysis, a preliminary analysis of the projected benefits and any adverse economic effects and any other effects, and of the effectiveness of the proposed rule and each

alternative in meeting the stated objectives of the proposed rule.

(2) In any case in which the Commission promulgates a final rule, the Commission shall issue a final regulatory analysis relating to the final rule. Each final regulatory analysis shall contain—

(A) a concise statement of the need for, and the objectives of, the final rule;

(B) a description of any alternatives to the final rule which were considered by the Commission;

(C) an analysis of the projected benefits and any adverse economic effects and any other effects of the final rule;

(D) an explanation of the reasons for the determination of the Commission that the final rule will attain its objectives in a manner consistent with applicable law and the reasons the particular alternative was chosen; and

(E) a summary of any significant issues raised by the comments submitted during the public comment period in response to the preliminary regulatory analysis, and a summary of the assessment by the Commission of such issues.

(3)(A) In order to avoid duplication or waste, the Commission is authorized to—

(i) consider a series of closely related rules as one rule for purposes of this subsection; and

(ii) whenever appropriate, incorporate any data or analysis contained in a regulatory analysis issued under this subsection in the statement of basis and purpose to accompany any rule promulgated under section 18(a)(1)(B), and incorporate by reference in any preliminary or final regulatory analysis information contained in a notice of proposed rulemaking or a statement of basis and purpose.

(B) The Commission shall include, in each notice of proposed rulemaking and in each publication of a final rule, a statement of the manner in which the public may obtain copies of the preliminary and final regulatory analyses. The Commission may charge a reasonable fee for the copying and mailing of regulatory analyses. The regulatory analyses shall be furnished without charge or at a reduced charge if the Commission determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public.

(4) The Commission is authorized to delay the completion of any of the requirements established in this subsection by publishing in the Federal Register, not later than the date of publication of the final rule involved, a finding that the final rule is being promulgated in response to an emergency which makes timely compliance with the provisions of this subsection impracticable. Such publication shall include a statement of the reasons for such finding.

(5) The requirements of this subsection shall not be construed to alter in any manner the substantive standards applicable to any action by the Commission, or the procedural standards otherwise applicable to such action.

(c)(1) The contents and adequacy of any regulatory analysis prepared or issued by the Commission under this section, including the adequacy of any procedure involved in such preparation or

issuance, shall not be subject to any judicial review in any court, except that a court, upon review of a rule pursuant to section 18(e), may set aside such rule if the Commission has failed entirely to prepare a regulatory analysis.

(2) Except as specified in paragraph (1), no Commission action may be invalidated, remanded, or otherwise affected by any court on account of any failure to comply with the requirements of this section.

(3) The provisions of this subsection do not alter the substantive or procedural standards otherwise applicable to judicial review of any action by the Commission.

(d)(1) The Commission shall publish at least semiannually a regulatory agenda. Each regulatory agenda shall contain a list of rules which the Commission intends to propose or promulgate during the 12-month period following the publication of the agenda. On the first Monday in October of each year, the Commission shall publish in the Federal Register a schedule showing the dates during the current fiscal year on which the semiannual regulatory agenda of the Commission will be published.

(2) For each rule listed in a regulatory agenda, the Commission shall—

- (A) describe the rule;
 - (B) state the objectives of and the legal basis for the rule;
- and

(C) specify any dates established or anticipated by the Commission for taking action, including dates for advance notice of proposed rulemaking, notices of proposed rulemaking, and final action by the Commission.

(3) Each regulatory agenda shall state the name, office address, and office telephone number of the Commission officer or employee responsible for responding to any inquiry relating to each rule listed.

(4) The Commission shall not propose or promulgate a rule which was not listed on a regulatory agenda unless the Commission publishes with the rule an explanation of the reasons the rule was omitted from such agenda.

SEC. 23. [15 U.S.C. 57b-4] (a) For purposes of this section, the term “Board of Governors” means the Board of Governors of the Federal Reserve System.

(b) Notwithstanding any other provision of law, if—

(1) any person, partnership, or corporation engages in any conduct or practice which allegedly constitutes a violation of any Federal law with respect to which the Board of Governors of the Federal Reserve System has rulemaking authority; and

(2) such person, partnership, or corporation engaged in such conduct or practice in good faith reliance upon, and in conformity with, any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors under such Federal law;

then such good faith reliance shall constitute a defense in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Commission under this Act or in any administrative or judicial proceeding commenced against such person, partnership, or corporation by the Attorney General of the

United States, upon request made by the Commission, under any provision of law.

(c) The provisions of subsection (b) shall apply regardless of whether any rule, regulation, statement of interpretation, or statement of approval prescribed or issued by the Board of Governors is amended, rescinded, or held to be invalid by judicial authority or any other authority after a person, partnership, or corporation has engaged in any conduct or practice in good faith reliance upon, and in conformity with, such rule, regulation, statement of interpretation, or statement of approval.

(d) If, in any case in which—

(1) the Board of Governors has rulemaking authority with respect to any Federal law; and

(2) the Commission is authorized to enforce the requirements of such Federal law;

any person, partnership, or corporation submits a request to the Board of Governors for the issuance of any statement of interpretation or statement of approval relating to any conduct or practice of such person, partnership, or corporation which may be subject to the requirements of such Federal law, then the Board of Governors shall dispose of such request as soon as practicable after the receipt of such request.

SEC. 24. [15 U.S.C. 57b-5] (a) The Commission shall not have any authority to conduct any study, investigation, or prosecution of any agricultural cooperative for any conduct which, because of the provisions of the Act entitled “An Act to authorize association of producers of agricultural products”, approved February 18, 1922 (7 U.S.C. 291 et seq., commonly known as the Capper-Volstead Act), is not a violation of any of the antitrust Acts or this Act.

(b) The Commission shall not have any authority to conduct any study or investigation of any agricultural marketing orders.

SEC. 25. [15 U.S.C. 57c] There are authorized to be appropriated to carry out the functions, powers, and duties of the Commission not to exceed \$92,700,000 for fiscal year 1994; not to exceed \$99,000,000 for fiscal year 1995; not to exceed \$102,000,000 for fiscal year 1996; not to exceed \$107,000,000 for fiscal year 1997; and not to exceed \$111,000,000 for fiscal year 1998.

SEC. 25A. [15 U.S.C. 57c-1] STAFF EXCHANGES.¹

(a) **IN GENERAL.**—The Commission may—

(1) retain or employ officers or employees of foreign government agencies on a temporary basis as employees of the Commission pursuant to section 2 of this Act or section 3101 or section 3109 of title 5, United States Code; and

(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

(b) **RECIPROCITY AND REIMBURSEMENT.**—The staff arrangements described in subsection (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applica-

¹Section 25A was added by section 9 of Public Law 109-455 (120 Stat. 3381). For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

ble, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

(c) **STANDARDS OF CONDUCT.**—A person appointed under subsection (a)(1) shall be subject to the provisions of law relating to ethics, conflicts of interest, corruption, and any other criminal or civil statute or regulation governing the standards of conduct for Federal employees that are applicable to the type of appointment.

SEC. 26. [15 U.S.C. 57c-2] REIMBURSEMENT OF EXPENSES.¹

The Commission may accept payment or reimbursement, in cash or in kind, from a domestic or foreign law enforcement agency, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, or employees in carrying out any activity pursuant to a statute administered by the Commission without regard to any other provision of law. Any such payments or reimbursements shall be considered a reimbursement to the appropriated funds of the Commission.²

SEC. 28. [15 U.S.C. 58] This Act may be cited as the “Federal Trade Commission Act”.³

¹Section 26 was added by section 11(2) of Public Law 109-455 (120 Stat. 3381). For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.

²So in law. There is no section 27.

³Section 28 was redesignated from section 26 by section 11(1) of Public Law 109-455 (120 Stat. 3381). For the effective date of a sunset provision, see section 13 of such Public Law (120 Stat. 3382) set out in a footnote at the end of section 4 of this Act.