

§ 4016. Protection conferred by certificate of review

(a) Protection from civil or criminal antitrust actions

Except as provided in subsection (b) of this section, no criminal or civil action may be brought under the antitrust laws against a person to whom a certificate of review is issued which is based on conduct which is specified in, and complies with the terms of, a certificate issued under section 4013 of this title which certificate was in effect when the conduct occurred.

(b) Special restraint of trade civil actions; time limitations; certificate governed conduct presumed in compliance; award of costs to successful defendant; suit by Attorney General

(1) Any person who has been injured as a result of conduct engaged in under a certificate of review may bring a civil action for injunctive relief, actual damages, the loss of interest on actual damages, and the cost of suit (including a reasonable attorney's fee) for the failure to comply with the standards of section 4013(a) of this title. Any action commenced under this subchapter shall proceed as if it were an action commenced under section 15 or section 26 of this title, except that the standards of section 4013(a) of this title and the remedies provided in this paragraph shall be the exclusive standards and remedies applicable to such action.

(2) Any action brought under paragraph (1) shall be filed within two years of the date the plaintiff has notice of the failure to comply with the standards of section 4013(a) of this title but in any event within four years after the cause of action accrues.

(3) In any action brought under paragraph (1), there shall be a presumption that conduct which is specified in and complies with a certificate of review does comply with the standards of section 4013(a) of this title.

(4) In any action brought under paragraph (1), if the court finds that the conduct does comply with the standards of section 4013(a) of this title, the court shall award to the person against whom the claim is brought the cost of suit attributable to defending against the claim (including a reasonable attorney's fee).

(5) The Attorney General may file suit pursuant to section 25 of this title to enjoin conduct threatening clear and irreparable harm to the national interest.

(Pub. L. 97-290, title III, §306, Oct. 8, 1982, 96 Stat. 1243.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97-290, set out as a note under section 4011 of this title.

§ 4017. Guidelines

(a) Issuance; content

To promote greater certainty regarding the application of the antitrust laws to export trade, the Secretary, with the concurrence of the Attorney General, may issue guidelines—

(1) describing specific types of conduct with respect to which the Secretary, with the concurrence of the Attorney General, has made or

would make, determinations under sections 4013 and 4014 of this title, and

(2) summarizing the factual and legal bases in support of the determinations.

(b) Administrative rulemaking requirements not applicable

Section 553 of title 5 shall not apply to the issuance of guidelines under subsection (a) of this section.

(Pub. L. 97-290, title III, §307, Oct. 8, 1982, 96 Stat. 1244.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97-290, set out as a note under section 4011 of this title.

§ 4018. Annual reports

Every person to whom a certificate of review is issued shall submit to the Secretary an annual report, in such form and at such time as the Secretary may require, that updates where necessary the information required by section 4012(a) of this title.

(Pub. L. 97-290, title III, §308, Oct. 8, 1982, 96 Stat. 1244.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97-290, set out as a note under section 4011 of this title.

§ 4019. Disclosure of information

(a) Exemption

Information submitted by any person in connection with the issuance, amendment, or revocation of a certificate of review shall be exempt from disclosure under section 552 of title 5.

(b) Protection of potentially harmful confidential information; exceptions: Congress; judicial or administrative proceedings; consent; necessity for determination; Federal law; regulations

(1) Except as provided in paragraph (2), no officer or employee of the United States shall disclose commercial or financial information submitted in connection with the issuance, amendment, or revocation of a certificate of review if the information is privileged or confidential and if disclosure of the information would cause harm to the person who submitted the information.

(2) Paragraph (1) shall not apply with respect to information disclosed—

(A) upon a request made by the Congress or any committee of the Congress,

(B) in a judicial or administrative proceeding, subject to appropriate protective orders,

(C) with the consent of the person who submitted the information,

(D) in the course of making a determination with respect to the issuance, amendment, or revocation of a certificate of review, if the Secretary deems disclosure of the information to be necessary in connection with making the determination,

(E) in accordance with any requirement imposed by a statute of the United States, or

(F) in accordance with any rule or regulation promulgated under section 4020 of this title permitting the disclosure of the information to an agency of the United States or of a State on the condition that the agency will disclose the information only under the circumstances specified in subparagraphs (A) through (E).

(Pub. L. 97-290, title III, §309, Oct. 8, 1982, 96 Stat. 1244.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97-290, set out as a note under section 4011 of this title.

§ 4020. Rules and regulations

The Secretary, with the concurrence of the Attorney General, shall promulgate such rules and regulations as are necessary to carry out the purposes of this chapter.

(Pub. L. 97-290, title III, §310, Oct. 8, 1982, 96 Stat. 1245.)

REFERENCES IN TEXT

This chapter, referred to in text, was in original "this Act", meaning Pub. L. 97-290, Oct. 8, 1982, 96 Stat. 1233, which enacted this chapter and section 6a of this title and section 635a-4 of Title 12, Banks and Banking, amended section 45 of this title and sections 372 and 1843 of Title 12, and enacted provisions set out as notes under sections 1, 4001, and 4011 of this title and sections 1841 and 1843 of Title 12. For complete classification of this Act to the Code, see Tables.

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97-290, set out as a note under section 4011 of this title.

§ 4021. Definitions

As used in this subchapter—

(1) the term "export trade" means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation,

(2) the term "service" means intangible economic output, including, but not limited to—

(A) business, repair, and amusement services,

(B) management, legal, engineering, architectural, and other professional services, and

(C) financial, insurance, transportation, informational and any other data-based services, and communication services,

(3) the term "export trade activities" means activities or agreements in the course of export trade,

(4) the term "methods of operation" means any method by which a person conducts or proposes to conduct export trade,

(5) the term "person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or

combination, by contract or other arrangement, between or among such persons,

(6) the term "antitrust laws" means the antitrust laws, as such term is defined in section 12 of this title, and section 45 of this title (to the extent that section 45 of this title prohibits unfair methods of competition), and any State antitrust or unfair competition law,

(7) the term "Secretary" means the Secretary of Commerce or his designee, and

(8) the term "Attorney General" means the Attorney General of the United States or his designee.

(Pub. L. 97-290, title III, §311, Oct. 8, 1982, 96 Stat. 1245.)

EFFECTIVE DATE

Section effective Oct. 8, 1982, see section 312 of Pub. L. 97-290, set out as a note under section 4011 of this title.

SUBCHAPTER III—EXPORT PROMOTION PROGRAMS

§ 4051. Requirement of prior authorization

(a) General rule

Notwithstanding any other provision of law, money appropriated to the Department of Commerce for expenses to carry out any export promotion program may be obligated or expended only if—

(1) the appropriation thereof has been previously authorized by law enacted on or after July 12, 1985; or

(2) the amount of all such obligations and expenditures does not exceed an amount previously prescribed by law enacted on or after such date.

(b) Exception for later legislation authorizing obligations or expenditures

To the extent that legislation enacted after the making of an appropriation to carry out any export promotion program authorizes the obligation or expenditure thereof, the limitation contained in subsection (a) of this section shall have no effect.

(c) Provisions must be specifically superseded

The provisions of this section shall not be superseded except by a provision of law enacted after July 12, 1985, which specifically repeals, modifies, or supersedes the provisions of this section.

(d) "Export promotion program" defined

For purposes of this subchapter, the term "export promotion program" means any activity of the Department of Commerce designed to stimulate or assist United States businesses in marketing their goods and services abroad competitively with businesses from other countries, including, but not limited to—

(1) trade development (except for the trade adjustment assistance program) and dissemination of foreign marketing opportunities and other marketing information to United States producers of goods and services, including the expansion of foreign markets for United States textiles and apparel and any other United States products;