

amending section 6808 of Title 26, Internal Revenue Code, and repealing sections 7233 and 7263, subchapter D of chapter 39, and subchapter E of chapter 76 of Title 26] shall take effect on the 90th day after the date of enactment of this Act [Oct. 4, 1976].”

§ 16. Commission operations

(a) Cooperation with other agencies

The Commission may cooperate with any Department or agency of the Government, any State, territory, district, or possession, or department, agency, or political subdivision thereof, any foreign futures authority, any department or agency of a foreign government or political subdivision thereof, or any person.

(b) Employment of investigators, experts, Administrative Law Judges, consultants, clerks, and other personnel; contracts

(1) The Commission shall have the authority to employ such investigators, special experts, Administrative Law Judges, 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.

(2) The Commission may employ experts and consultants in accordance with section 3109 of title 5, and compensate such persons at rates not in excess of the maximum daily rate prescribed for GS-18 under section 5332 of title 5.

(3) The Commission shall also have authority to make and enter into contracts with respect to all matters which in the judgment of the Commission are necessary and appropriate to effectuate the purposes and provisions of this chapter, including, but not limited to, the rental of necessary space at the seat of Government and elsewhere.

(4) The Commission may request (in accordance with the procedures set forth in subchapter II of chapter 31 of title 5) and the Office of Personnel Management shall authorize pursuant to the request, eight positions in the Senior Executive Service in addition to the number of such positions authorized for the Commission on October 28, 1992.

(c) Expenses

All of the expenses of the Commissioners, including all necessary expenses for transportation incurred by them while on official business of the Commission, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as are necessary to carry out this chapter for each of the fiscal years 2008 through 2013.

(e) Relation to other law, departments, or agencies

(1) Nothing in this chapter shall supersede or preempt—

(A) criminal prosecution under any Federal criminal statute;

(B) the application of any Federal or State statute (except as provided in paragraph (2)), including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest—

(i) that is not conducted on or subject to the rules of a registered entity or exempt board of trade;

(ii) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions; or

(iii) that is not subject to regulation by the Commission under section 6c or 23 of this title; or

(C) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this chapter who shall fail or refuse to obtain such registration or designation.

(2) This chapter shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of—

(A) an electronic trading facility excluded under section 2(e)¹ of this title; and

(B) an agreement, contract, or transaction that is excluded from this chapter under section 2(c) or 2(f) of this title or sections 27 to 27f of this title, or exempted under section 6(c) of this title (regardless of whether any such agreement, contract, or transaction is otherwise subject to this chapter).

(f) Investigative assistance to foreign futures authorities

(1) On request from a foreign futures authority, the Commission may, in its discretion, provide assistance in accordance with this section if the requesting authority states that the requesting authority is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws, rules or regulations relating to futures or options matters that the requesting authority administers or enforces. The Commission may conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of the laws of the United States.

(2) In deciding whether to provide assistance under this subsection, the Commission shall consider whether—

(A) the requesting authority has agreed to provide reciprocal assistance to the Commission in futures and options matters; and

(B) compliance with the request would prejudice the public interest of the United States.

(3) Notwithstanding any other provision of law, the Commission may accept payment and reimbursement, in cash or in kind, from a foreign futures authority, or made on behalf of such authority, for necessary expenses incurred by the Commission, its members, and employees in carrying out any investigation, or in providing any other assistance to a foreign futures au-

¹ See References in Text note below.

thority, pursuant to this section. Any payment or reimbursement accepted shall be considered a reimbursement to the appropriated funds of the Commission.

(g) Computerized futures trading

Consistent with its responsibilities under section 22 of this title, the Commission is directed to facilitate the development and operation of computerized trading as an adjunct to the open outcry auction system. The Commission is further directed to cooperate with the Office of the United States Trade Representative, the Department of the Treasury, the Department of Commerce, and the Department of State in order to remove any trade barriers that may be imposed by a foreign nation on the international use of electronic trading systems.

(h) Regulation of swaps as insurance under State law

A swap—

- (1) shall not be considered to be insurance; and
- (2) may not be regulated as an insurance contract under the law of any State.

(Sept. 21, 1922, ch. 369, § 12, 42 Stat. 1003; Pub. L. 93-463, title I, § 101(b), Oct. 23, 1974, 88 Stat. 1391; Pub. L. 95-405, § 20, Sept. 30, 1978, 92 Stat. 875; Pub. L. 97-444, title II, §§ 228, 229, Jan. 11, 1983, 96 Stat. 2318; Pub. L. 99-641, title I, § 106, Nov. 10, 1986, 100 Stat. 3558; Pub. L. 102-546, title II, §§ 216, 220(a), title III, §§ 302, 303, title IV, § 401, title V, § 502(c), Oct. 28, 1992, 106 Stat. 3611, 3614, 3622, 3624, 3631; Pub. L. 104-9, § 2, Apr. 21, 1995, 109 Stat. 154; Pub. L. 106-554, § 1(a)(5) [title I, §§ 116, 117], Dec. 21, 2000, 114 Stat. 2763, 2763A-402; Pub. L. 110-234, title XIII, § 13104, May 22, 2008, 122 Stat. 1434; Pub. L. 110-246, § 4(a), title XIII, § 13104, June 18, 2008, 122 Stat. 1664, 2196; Pub. L. 111-203, title VII, §§ 722(b), 749(f), July 21, 2010, 124 Stat. 1673, 1747.)

REFERENCES IN TEXT

Section 2(e) of this title relating to the exclusion of electronic trading facilities, referred to in subsec. (e)(2)(A), was struck out by Pub. L. 111-203, title VII, § 723(a)(1)(A), July 21, 2010, 124 Stat. 1675.

CODIFICATION

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

AMENDMENTS

2010—Subsec. (e)(2)(B). Pub. L. 111-203, § 749(f), substituted “section 2(c) or 2(f) of this title” for “section 2(c), 2(d), 2(f), or 2(g) of this title” and struck out “2(h) or” before “6(c)”.

Subsec. (h). Pub. L. 111-203, § 722(b), added subsec. (h).

2008—Subsec. (d). Pub. L. 110-246, § 13104, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “There are authorized to be appropriated such sums as are necessary to carry out this chapter for each of fiscal years 1995 through 2005.”

2000—Subsec. (d). Pub. L. 106-554, § 1(a)(5) [title I, § 116], substituted “2005” for “2000”.

Subsec. (e). Pub. L. 106-554, § 1(a)(5) [title I, § 117], added subsec. (e) and struck out former subsec. (e) which provided that this chapter did not supersede or preempt criminal prosecutions under Federal criminal statutes or the application of any Federal or State statute to certain specified transactions and persons.

1995—Subsec. (d). Pub. L. 104-9 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “There are authorized to be appropriated to carry out this chapter—

“(1) \$53,000,000 for fiscal year 1993; and

“(2) \$60,000,000 for fiscal year 1994.”

1992—Subsec. (a). Pub. L. 102-546, § 302, inserted “any foreign futures authority, any department or agency of a foreign government or political subdivision thereof,” after “thereof.”

Subsec. (b). Pub. L. 102-546, § 216, designated first through third sentences as pars. (1) to (3), respectively, and added par. (4).

Subsec. (d). Pub. L. 102-546, § 401, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “There are authorized to be appropriated to carry out this chapter such sums as may be necessary for each of the fiscal years during the period beginning October 1, 1986, and ending September 30, 1989.”

Subsec. (e)(2)(A). Pub. L. 102-546, § 502(c), inserted “or, in the case of any State or local law that prohibits or regulates gaming or the operation of ‘bucket shops’ (other than antifraud provisions of general applicability), that is not a transaction or class of transactions that has received or is covered by the terms of any exemption previously granted by the Commission under subsection (c) of section 6 of this title,” after “market.”

Subsec. (f). Pub. L. 102-546, § 303, added subsec. (f).

Subsec. (g). Pub. L. 102-546, § 220(a), added subsec. (g).

1986—Subsec. (d). Pub. L. 99-641 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “There are authorized to be appropriated to carry out the provisions of this chapter such sums as may be required for each of the fiscal years during the period beginning October 1, 1982, and ending September 30, 1986.”

1983—Subsec. (d). Pub. L. 97-444, § 228, substituted appropriation authorization for fiscal years during period beginning Oct. 1, 1982, and ending Sept. 30, 1986, for prior authorization for fiscal years during period beginning Oct. 1, 1978, and ending Sept. 30, 1982.

Subsec. (e). Pub. L. 97-444, § 229, added subsec. (e).

1978—Subsec. (d). Pub. L. 95-405 substituted “for each of the fiscal years during the period beginning October 1, 1978, and ending September 30, 1982” for “for the fiscal year ending June 30, 1975, for the fiscal year ending June 30, 1976, for the fiscal year ending June 30, 1977, and for the fiscal year ending June 30, 1978”.

1974—Pub. L. 93-463 designated existing unlettered provisions as subsecs. (a) to (d), substituted “Commission” for “Secretary of Agriculture”, inserted provisions authorizing the expenditure of funds for expenses upon the presentation of itemized vouchers therefor approved by the Commission, substituted provisions authorizing appropriations specifically for fiscal years ending June 30, 1975, 1976, 1977, and 1978, for provisions making a general authorization of appropriations without a fiscal year limitation, and inserted authorization to enter into contracts and compensate experts and consultants in accordance with section 3109 of title 5 at rates not in excess of the maximum daily rate prescribed for GS-18 under section 5332 of title 5.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE OF 2008 AMENDMENT

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

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-405 effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

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

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 16a. Service fees and National Futures Association study**(a) Development and implementation of plan for user fees; report to and approval by Congressional committees**

Notwithstanding any other provision of law, the Commodity Futures Trading Commission may develop and implement a plan to charge and collect reasonable fees to cover the estimated cost of regulating transactions under the jurisdiction of the Commission. However, prior to implementing such a plan, the Commission shall report its intention to do so to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. The Commission shall include in its report the feasibility and desirability of collecting such fees. Any plan developed under this section shall not be implemented until approved by the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry. Fees collected under any plan approved under this section shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) National Futures Association regulatory experience; report; contents

The Commodity Futures Trading Commission shall submit to Congress a report containing the results of a study of the regulatory experience of the National Futures Association for the period beginning January 1, 1983 and ending September 30, 1985. The report shall be submitted not later than January 1, 1986. The report shall include (but not to be limited to) the following—

(1) the extent to which the National Futures Association has fully implemented the program provided in the rules approved by the Commission under section 17(p) and (q) of the Commodity Exchange Act [7 U.S.C. 21(p), (q)] and the effectiveness of the operation of such program;

(2) the actual and projected cost savings to the Federal Government, if any, resulting from operations of the National Futures Association;

(3) the actual and projected costs which the Commission and the public would have in-

curred if the Association had not undertaken self-regulatory responsibility for certain areas under the Commission's jurisdiction;

(4) problem areas, if any, encountered by the Association;

(5) the nature of the working relationship between the Association and the Commission;

(6) an assessment of the actual and projected efficiencies the Commission has achieved or expects to be achieved as a result of the continuing regulatory activities of the Association; and

(7) the immediate and projected capabilities of the Commission at the time of submission of the study to turn its attention to more immediate problems of regulation, as a result of the activities of the Association.

(c) Schedule of fees for services, activities and functions; notice and hearing; actual cost standard

Nothing in this section shall limit the authority of the Commission to promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act [7 U.S.C. 1 et seq.]: *Provided*, That the fees for any specified service or activity or function shall not exceed the actual cost thereof to the Commission.

(Pub. L. 95-405, § 26, Sept. 30, 1978, 92 Stat. 877; Pub. L. 97-444, title II, § 237, Jan. 11, 1983, 96 Stat. 2325.)

REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsec. (c), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§ 1 et seq.) of this title. For complete classification of this Act to the Code, see section 1 of this title and Tables.

CODIFICATION

Section was enacted as part of the Futures Trading Act of 1978, and not as part of the Commodity Exchange Act which comprises this chapter.

AMENDMENTS

1983—Pub. L. 97-444 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-444 effective Jan. 11, 1983, see section 239 of Pub. L. 97-444, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 28 of Pub. L. 95-405, set out as an Effective Date of 1978 Amendment note under section 2 of this title.

STUDY OF ASSESSMENTS ON TRANSACTIONS

Pub. L. 102-546, title II, § 218, Oct. 28, 1992, 106 Stat. 3612, provided that:

“(a) STUDY.—The Comptroller General of the United States shall conduct a study to determine whether—

“(1) it is feasible to fund some or all of the enforcement and market surveillance activities of the Commodity Futures Trading Commission, as required by the amendments to the Commodity Exchange Act made by the Futures Trading Practices Act of 1992 [see Short Title of 1992 Amendment note set out under section 1 of this title], through the imposition