

(2) is not a fulltime employee of the standards development organization that engaged in such activity, and

(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.

(f) Applicability

This section shall be applicable only if the challenged conduct of a person defending against a claim is not in violation of any decree or order, entered or issued after October 11, 1984, in any case or proceeding under the antitrust laws or any State law similar to the antitrust laws challenging such conduct as part of a joint venture, or of a standards development activity engaged in by a standards development organization.

(Pub. L. 98-462, §4, Oct. 11, 1984, 98 Stat. 1816; Pub. L. 103-42, §3(e)(1), June 10, 1993, 107 Stat. 119; Pub. L. 108-237, title I, §105, June 22, 2004, 118 Stat. 663.)

AMENDMENTS

2004—Subsecs. (a)(1), (b)(1), (c)(1). Pub. L. 108-237, §105(1), inserted “, or for a standards development activity engaged in by a standards development organization against which such claim is made” after “joint venture”.

Subsec. (e). Pub. L. 108-237, §105(3), added subsec. (e). Former subsec. (e) redesignated (f).

Pub. L. 108-237, §105(2)(A), inserted “, or of a standards development activity engaged in by a standards development organization” before period at end.

Subsec. (f). Pub. L. 108-237, §105(2)(B), redesignated subsec. (e) as (f).

1993—Subsecs. (a) to (c). Pub. L. 103-42, §3(e)(1)(A), (B), in introductory provisions inserted “of this section” after “subsection (d)” and in par. (1) substituted “joint venture” for “joint research and development venture”.

Subsec. (e). Pub. L. 103-42, §3(e)(1)(A), (C), substituted “October 11, 1984,” for “the effective date of this Act” and substituted “joint venture” for “joint research and development venture”.

§ 4304. Award of costs, including attorney’s fees, to substantially prevailing party; offset

(a) Notwithstanding sections 15 and 26 of this title, in any claim under the antitrust laws, or any State law similar to the antitrust laws, based on the conducting of a joint venture, or of a standards development activity engaged in by a standards development organization, the court shall, at the conclusion of the action—

(1) award to a substantially prevailing claimant the cost of suit attributable to such claim, including a reasonable attorney’s fee, or

(2) award to a substantially prevailing party defending against any such claim the cost of suit attributable to such claim, including a reasonable attorney’s fee, if the claim, or the claimant’s conduct during the litigation of the claim, was frivolous, unreasonable, without foundation, or in bad faith.

(b) The award made under subsection (a) may be offset in whole or in part by an award in favor of any other party for any part of the cost of suit, including a reasonable attorney’s fee, at-

tributable to conduct during the litigation by any prevailing party that the court finds to be frivolous, unreasonable, without foundation, or in bad faith.

(c) Subsections (a) and (b) shall not apply with respect to any person who—

(1) directly participates in a standards development activity with respect to which a violation of any of the antitrust laws is found,

(2) is not a fulltime employee of a standards development organization that engaged in such activity, and

(3) is, or is an employee or agent of a person who is, engaged in a line of commerce that is likely to benefit directly from the operation of the standards development activity with respect to which such violation is found.

(Pub. L. 98-462, §5, Oct. 11, 1984, 98 Stat. 1817; Pub. L. 103-42, §3(e)(2), June 10, 1993, 107 Stat. 119; Pub. L. 108-237, title I, §106, June 22, 2004, 118 Stat. 664.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-237, §106(1), inserted “, or of a standards development activity engaged in by a standards development organization” after “joint venture” in introductory provisions.

Subsec. (c). Pub. L. 108-237, §106(2), added subsec. (c). 1993—Subsec. (a). Pub. L. 103-42 substituted “joint venture” for “joint research and development venture” in introductory provisions.

§ 4305. Disclosure of joint venture

(a) Written notifications; filing

(1) Any party to a joint venture, acting on such venture’s behalf, may, not later than 90 days after entering into a written agreement to form such venture or not later than 90 days after October 11, 1984, whichever is later, file simultaneously with the Attorney General and the Commission a written notification disclosing—

(A) the identities of the parties to such venture,

(B) the nature and objectives of such venture, and

(C) if a purpose of such venture is the production of a product, process, or service, as referred to in section 4301(a)(6)(D) of this title, the identity and nationality of any person who is a party to such venture, or who controls any party to such venture whether separately or with one or more other persons acting as a group for the purpose of controlling such party.

Any party to such venture, acting on such venture’s behalf, may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4303 of this title. In order to maintain the protections of section 4303 of this title, such venture shall, not later than 90 days after a change in its membership, file simultaneously with the Attorney General and the Commission a written notification disclosing such change.

(2) A standards development organization may, not later than 90 days after commencing a standards development activity engaged in for the purpose of developing or promulgating a¹

¹ So in original.

voluntary consensus standards or not later than 90 days after June 22, 2004, whichever is later, file simultaneously with the Attorney General and the Commission, a written notification disclosing—

- (A) the name and principal place of business of the standards development organization, and
- (B) documents showing the nature and scope of such activity.

Any standards development organization may file additional disclosure notifications pursuant to this section as are appropriate to extend the protections of section 4303 of this title to standards development activities that are not covered by the initial filing or that have changed significantly since the initial filing.

(b) Publication; Federal Register; notice

Except as provided in subsection (e), not later than 30 days after receiving a notification filed under subsection (a), the Attorney General or the Commission shall publish in the Federal Register a notice with respect to such venture that identifies the parties to such venture and that describes in general terms the area of planned activity of such venture, or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms. Prior to its publication, the contents of such notice shall be made available to the parties to such venture or available to such organization, as the case may be.

(c) Effect of notice

If with respect to a notification filed under subsection (a), notice is published in the Federal Register, then such notification shall operate to convey the protections of section 4303 of this title as of the earlier of—

- (1) the date of publication of notice under subsection (b), or
- (2) if such notice is not so published within the time required by subsection (b), after the expiration of the 30-day period beginning on the date the Attorney General or the Commission receives the applicable information described in subsection (a).

(d) Exemption; disclosure; information

Except with respect to the information published pursuant to subsection (b)—

- (1) all information and documentary material submitted as part of a notification filed pursuant to this section, and
- (2) all other information obtained by the Attorney General or the Commission in the course of any investigation, administrative proceeding, or case, with respect to a potential violation of the antitrust laws by the joint venture, or the standards development activity, with respect to which such notification was filed,

shall be exempt from disclosure under section 552 of title 5, and shall not be made publicly available by any agency of the United States to which such section applies except in a judicial or administrative proceeding in which such information and material is subject to any protective order.

(e) Withdrawal of notification

Any person or standards development organization that files a notification pursuant to this section may withdraw such notification before notice of the joint venture involved is published under subsection (b). Any notification so withdrawn shall not be subject to subsection (b) and shall not confer the protections of section 4303 of this title on any person or any standards development organization with respect to whom such notification was filed.

(f) Judicial review; inapplicable with respect to notifications

Any action taken or not taken by the Attorney General or the Commission with respect to notifications filed pursuant to this section shall not be subject to judicial review.

(g) Admissibility into evidence; disclosure of conduct; publication of notice; supporting or answering claims under antitrust laws

(1) Except as provided in paragraph (2), for the sole purpose of establishing that a person or standards development organization is entitled to the protections of section 4303 of this title, the fact of disclosure of conduct under subsection (a) and the fact of publication of a notice under subsection (b) shall be admissible into evidence in any judicial or administrative proceeding.

(2) No action by the Attorney General or the Commission taken pursuant to this section shall be admissible into evidence in any such proceeding for the purpose of supporting or answering any claim under the antitrust laws or under any State law similar to the antitrust laws.

(Pub. L. 98-462, §6, Oct. 11, 1984, 98 Stat. 1818; Pub. L. 103-42, §3(f), June 10, 1993, 107 Stat. 119; Pub. L. 108-237, title I, §107, June 22, 2004, 118 Stat. 664.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-237, §107(1), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, of par. (1), and added par. (2).

Subsec. (b). Pub. L. 108-237, §107(2), inserted “, or a notice with respect to such standards development activity that identifies the standards development organization engaged in such activity and that describes such activity in general terms” before period at end of first sentence and “or available to such organization, as the case may be” before period at end of last sentence.

Subsec. (d)(2). Pub. L. 108-237, §107(3), inserted “, or the standards development activity,” after “venture”.

Subsec. (e). Pub. L. 108-237, §107(4), substituted “person or standards development organization that” for “person who” and inserted “or any standards development organization” after “on any person”.

Subsec. (g)(1). Pub. L. 108-237, §107(5), inserted “or standards development organization” after “person”.

1993—Pub. L. 103-42, §3(f)(1), substituted “joint venture” for “joint research and development venture” in section catchline.

Subsec. (a). Pub. L. 103-42, §3(f)(2), (3), substituted “joint venture” for “joint research and development venture” and “October 11, 1984” for “the date of the enactment of this Act” and added par. (3).

Subsecs. (d)(2), (e). Pub. L. 103-42, §3(f)(3), substituted “joint venture” for “joint research and development venture”.

REPORTS ON JOINT VENTURES AND UNITED STATES
COMPETITIVENESS

Pub. L. 103-42, § 4, June 10, 1993, 107 Stat. 120, provided that:

“(a) **PURPOSE.**—The purpose of the reports required by this section is to inform Congress and the American people of the effect of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4301 et seq.] on the competitiveness of the United States in key technological areas of research, development, and production.

“(b) **ANNUAL REPORT BY THE ATTORNEY GENERAL.**—In the 30-day period beginning at each 1-year interval in the 6-year period beginning on the date of the enactment of this Act [June 10, 1993], the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate—

“(1) a list of joint ventures for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4305(a)] during the 12-month period for which such report is made, including—

“(A) the purpose of each joint venture;

“(B) the identity of each party described in section 6(a)(1) of such Act; and

“(C) the identity and nationality of each person described in section 6(a)(3) of such Act; and

“(2) a list of cases and proceedings, if any, brought during such period under the antitrust laws by the Department of Justice, and by the Federal Trade Commission, with respect to joint ventures for which notice was filed under such section at any time.

“(c) **TRIENNIAL REPORT BY THE ATTORNEY GENERAL.**—In the 30-day period beginning at each 3-year interval in the 6-year period beginning on the date of the enactment of this Act [June 10, 1993], the Attorney General, after consultation with such other agencies as the Attorney General considers to be appropriate, shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a description of the technological areas most commonly pursued by joint ventures for production for which notice was filed under section 6(a) of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4305(a)] during the 3-year period for which such report is made, and an analysis of the trends in the competitiveness of United States industry in such areas.

“(d) **REVIEW OF ANTITRUST TREATMENT UNDER FOREIGN LAWS.**—In the three 30-day periods beginning 1 year, 3 years, and 6 years after the date of the enactment of this Act [June 10, 1993], the Attorney General, after consultation with such other agencies as the Attorney General considers to be appropriate, shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on the antitrust treatment of United States businesses with respect to participation in joint ventures for production, under the law of each foreign nation any of whose domestic businesses disclosed its nationality under section 6(a)(3) of the National Cooperative Research and Production Act of 1993 [15 U.S.C. 4305(a)(3)] at any time.”

§ 4306. Application of section 4303 protections to production of products, processes, and services

Notwithstanding sections 4303 and 4305 of this title, the protections of section 4303 of this title shall not apply with respect to a joint venture's production of a product, process, or service, as referred to in section 4301(a)(6)(D) of this title, unless—

(1) the principal facilities for such production are located in the United States or its territories, and

(2) each person who controls any party to such venture (including such party itself) is a United States person, or a foreign person from a country whose law accords antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production.

(Pub. L. 98-462, § 7, as added Pub. L. 103-42, § 3(g), June 10, 1993, 107 Stat. 119.)

CHAPTER 70—COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION

Sec.

4401. Public education.

4402. Smokeless tobacco warning.

4403. Ingredient reporting.

4404. Enforcement, regulations, and construction.

4405. Injunctions.

4406. Preemption.

4407. Omitted.

4408. Definitions.

§ 4401. Public education

(a) Development

(1) The Secretary of Health and Human Services shall establish and carry out a program to inform the public of any dangers to human health resulting from the use of smokeless tobacco products. In carrying out such program the Secretary shall—

(A) develop educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco;

(B) make such programs, materials, and announcements available to States, local governments, school systems, the media, and such other entities as the Secretary determines appropriate to further the purposes of this chapter;

(C) conduct and support research on the effect of smokeless tobacco on human health; and

(D) collect, analyze, and disseminate information and studies on smokeless tobacco and health.

(2) In developing programs, materials, and announcements under paragraph (1) the Secretary shall consult with the Secretary of Education, medical and public health entities, consumer groups, representatives of manufacturers of smokeless tobacco products, and other appropriate entities.

(b) Assistance

The Secretary of Health and Human Services may provide technical assistance and may make grants to States—

(1) to assist in the development of educational programs and materials and public service announcements respecting the dangers to human health from the use of smokeless tobacco,

(2) to assist in the distribution of such programs, materials, and announcements throughout the States, and

(3) to establish 18 as the minimum age for the purchase of smokeless tobacco.

(Pub. L. 99-252, § 2, Feb. 27, 1986, 100 Stat. 30.)