

102-237, title X, §1011(5), Dec. 13, 1991, 105 Stat. 1898.)

CODIFICATION

Section was formerly classified to section 557 of this title.

AMENDMENTS

1991—Subsecs. (a) to (c). Pub. L. 102-237 substituted periods for semicolons at end of subsecs. (a) to (c).

1972—Subsec. (a). Pub. L. 92-231 directed the Secretary to order commission merchants, dealers, or brokers who are the losing party to pay the prevailing party, as reparation or additional reparation, reasonable fees and expenses incurred in connection with hearings.

1962—Subsec. (c). Pub. L. 87-725, §9, limited time for filing the bond to within 30 days from and after the date of the reparation order, and required such bond to be in cash, negotiable securities having a market value of at least equivalent to the amount of bond prescribed or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department.

Subsec. (d). Pub. L. 87-725, §10, lengthened period upon the expiration of which the license is suspended from ten to thirty days, and provided that if the judgment is stayed by a court of competent jurisdiction the suspension becomes effective ten days after the expiration of such stay.

1940—Subsec. (c). Act May 14, 1940, inserted proviso in first sentence.

1938—Subsec. (a). Act June 23, 1938, inserted last two sentences.

1937—Subsec. (a). Act Aug. 20, 1937, among other changes, inserted "or without hearing as provided in section 499f of this title, paragraphs (c) and (d), or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified" after "section 499f".

Subsec. (b). Act Aug. 20, 1937, among other changes, substituted "pay the reparation award" for "comply with an order for the payment of money".

Subsec. (c). Act Aug. 20, 1937, inserted "together with a bond in double the amount of the reparation award conditioned upon the payment of the judgment entered by the court plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail" after "upon adverse party" and struck out proviso in first sentence and "by registered mail" after "adverse party".

Subsec. (d). Act Aug. 20, 1937, inserted proviso.

1936—Subsec. (c). Act June 19, 1936, inserted proviso in first sentence and "by registered mail" after "adverse party".

1934—Subsec. (b). Act Apr. 13, 1934, §11, inserted after first sentence "The orders, writs and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States."

Subsecs. (c), (d). Act Apr. 13, 1934, §§12, 13, added subsecs. (c) and (d).

§ 499h. Grounds for suspension or revocation of license

(a) Authority of Secretary

Whenever (1) the Secretary determines, as provided in section 499f of this title, that any commission merchant, dealer, or broker has violated any of the provisions of section 499b of this title, or (2) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 499n(b) of this title, the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the viola-

tion is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.

(b) Unlawful employment of certain persons; restrictions; bond assuring compliance; approval of employment without bond; change in amount of bond; payment of increased amount; penalties

Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—

(1) whose license has been revoked or is currently suspended by order of the Secretary;

(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 499b of this title, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 499g(c) of this title.

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 499b of this title, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee's business will be conducted in accordance with this chapter and that the licensee will pay all reparation awards, subject to its right of appeal under section 499g(c) of this title, which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a reduction in the amount of the bond. A licensee who is notified by the Secretary to provide a bond in an increased amount shall do so within a reasonable time to be specified by the Secretary, and if the licensee fails to do so the approval of employment shall automatically terminate. The Secretary may, after thirty days notice and an opportunity for a hearing, suspend or revoke the license of any licensee who, after the date given in such notice, continues to employ any person in violation of this section. The Secretary may extend the period of employment sanction as to a responsibly connected person for an additional one-year period upon the determination that the person has been unlawfully employed as provided in this subsection.

(c) Fraud in procurement

If, after a license shall have been issued to an applicant, the Secretary believes that the license was obtained through a false or misleading statement in the application therefor or through a misrepresentation, concealment, or withholding of facts respecting any violation of this chapter by any officer, agent, or employee,

he may, after thirty days' notice and an opportunity for a hearing, revoke said license, whereupon no license shall be issued to said applicant or any applicant in which the person responsible for such false or misleading statement or misrepresentation, concealment, or withholding of facts is financially interested, except under the conditions set forth in section 499d(b) of this title.

(d) Injunction

In addition to being subject to the penalties provided by section 499c(a) of this title, any commission merchant, dealer, or broker who engages in or operates such business without a valid and effective license from the Secretary shall be liable to be proceeded against in any court of competent jurisdiction in a suit by the United States for an injunction to restrain such defendant from further continuing so to engage in or operate such business, and, if the court shall find that the defendant is continuing to engage in such business without a valid and effective license, the court shall issue an injunction to restrain such defendant from continuing to engage in or to operate such business without such license.

(e) Alternative civil penalties

In lieu of suspending or revoking a license under this section when the Secretary determines, as provided by section 499f of this title, that a commission merchant, dealer, or broker has violated section 499b of this title or subsection (b) of this section, the Secretary may assess a civil penalty not to exceed \$2,000 for each violative transaction or each day the violation continues. In assessing the amount of a penalty under this subsection, the Secretary shall give due consideration to the size of the business, the number of employees, and the seriousness, nature, and amount of the violation. Amounts collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(June 10, 1930, ch. 436, § 8, 46 Stat. 535; Apr. 13, 1934, ch. 120, § 14, 48 Stat. 588; Aug. 20, 1937, ch. 719, § 11, 50 Stat. 730; July 30, 1956, ch. 786, § 5, 70 Stat. 727; Pub. L. 87-725, § 11, Oct. 1, 1962, 76 Stat. 675; Pub. L. 102-237, title X, § 1011(6), Dec. 13, 1991, 105 Stat. 1898; Pub. L. 104-48, §§ 11, 12(b), Nov. 15, 1995, 109 Stat. 430, 431.)

CODIFICATION

Section was formerly classified to section 558 of this title.

AMENDMENTS

1995—Subsec. (b). Pub. L. 104-48, § 12(b), inserted at end “The Secretary may extend the period of employment sanction as to a responsibly connected person for an additional one-year period upon the determination that the person has been unlawfully employed as provided in this subsection.”

Subsec. (e). Pub. L. 104-48, § 11, added subsec. (e).

1991—Subsec. (a). Pub. L. 102-237 redesignated cls. (a) and (b) as (1) and (2), respectively, and substituted a period for semicolon at end.

1962—Subsec. (b). Pub. L. 87-725 amended subsec. (b) generally, and among other changes, provided that any licensee hiring any person without the Secretary's approval in violation of this section, after notice and opportunity for hearing, may have his license suspended

or revoked, that the restrictions shall apply to persons found, after notice and opportunity for hearing, to have committed any flagrant or repeated violation of section 499b of this title, but not where such violator's license was suspended and the suspension has expired or is not in effect, and shall also apply to persons against whom there is a unpaid reparation award issued within two years, subject to appeal under section 499g(c) of this title, permitted the Secretary to approve employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant and repeated violation of section 499b of this title, if the licensee furnishes a bond as assurance that his business will be conducted in accordance with this chapter and he will pay all reparation awards issued within four years following approval, subject to appeal under section 499g(c) of this title, or without bond after two years from the effective date of the disciplinary order, authorized the Secretary to increase or decrease the amount of bond, and required licensees notified of an increased bond to provide such in a reasonable time or the approval of employment will terminate.

1956—Subsec. (b). Act July 30, 1956, provided for suspension of licenses, and restricted authority to permit employment to those cases where licenses have been revoked or suspended for failure to pay a reparation award.

1937—Subsec. (a). Act Aug. 20, 1937, among other changes, inserted cl. (a) designation and inserted “or (b) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 499n(b) of this title” after “section 499b of this title”.

Subsec. (b). Act Aug. 20, 1937, amended subsec. (b) generally.

Subsecs. (c), (d). Act Aug. 20, 1937, added subsecs. (c) and (d).

1934—Subsec. (b). Act Apr. 13, 1934, added subsec. (b).

§ 499i. Accounts, records, and memoranda; duty of licensees to keep; contents; suspension of license for violation of duty

Every commission merchant, dealer, and broker shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. If such accounts, records, and memoranda are not so kept, the Secretary may publish the facts and circumstances and/or, by order, suspend the license of the offender for a period not to exceed ninety days.

(June 10, 1930, ch. 436, § 9, 46 Stat. 535.)

CODIFICATION

Section was formerly classified to section 559 of this title.

§ 499j. Orders; effective date; continuance in force; suspension, modification and setting aside; penalty

Any order of the Secretary under this chapter other than an order for the payment of money shall take effect within such reasonable time, not less than ten days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, accordingly as it is prescribed in the order, unless such order is suspended, modified, or set aside by the Secretary or is suspended, modified, or set aside by a court of competent jurisdiction. Any such order of the Secretary, if regularly made, shall be final, unless before the date pre-