

nated subpars. (A) and (B) as pars. (1) and (2), respectively, in subsec. (c) substituted references to subsection (b) for references to paragraph (2), in subsec. (d) substituted reference to subsection (a) for reference to paragraph (1), and added subsec. (e).

1978—Par. (1)(B). Pub. L. 95-405 substituted “An exchange shall make public its findings and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence therefor, except to the person who is suspended, expelled, or disciplined or denied access, and to the Commission” for “Otherwise the notice and reasons shall be kept confidential”.

#### 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

For effective date of section, see section 418 of Pub. L. 93-463, set out as an Effective Date of 1968 Amendment note under section 2 of this title.

### § 12d. Commission action for noncompliance with export sales reporting requirements

The Commission may, in accordance with the procedures provided for in this chapter, refuse to register, register conditionally, or suspend, place restrictions upon, or revoke the registration of, any person, and may bar for any period as it deems appropriate any person from using or participating in any manner in any market regulated by the Commission, if such person is subject to a final decision or order of any court of competent jurisdiction or agency of the United States finding such person to have knowingly violated any provision of the export sales reporting requirements of section 612c-3<sup>1</sup> of this title, or of any regulation issued thereunder.

(Sept. 21, 1922, ch. 369, §8d, as added Pub. L. 97-444, title II, §226, Jan. 11, 1983, 96 Stat. 2316.)

#### REFERENCES IN TEXT

Section 612c-3 of this title, referred to in text, was repealed by Pub. L. 101-624, title XV, §1578, Nov. 28, 1990, 104 Stat. 3702.

#### EFFECTIVE DATE

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

### § 12e. Commission oversight; deficiency orders

#### (a) Assessments

At least once every two years, to the extent practicable, the Commission shall assess whether the trade monitoring system of each contract market satisfies section 7a(b) of this title.

#### (b) Deficiency orders

##### (1) Causes

The Commission may issue a proposed deficiency order in accordance with paragraph (2), or take such other administrative or enforcement action as the Commission determines is appropriate, if, based on its assessment or on other information, the Commission at any time has reason to believe that a contract market's trade monitoring system imple-

mented pursuant to section 7a(b) of this title does not satisfy one or more of the requirements of such section.

#### (2) Contents

A proposed deficiency order issued under this subsection shall specify—

(A) the deficiencies the Commission has reason to believe exist in the trade monitoring system of the contract market and a statement of reasons supporting the Commission's belief that those deficiencies exist;

(B) the corrective action that the Commission believes that the contract market must take and an acceptable timetable for such corrective action; and

(C) a date, not less than twenty days from the date of issuance of the proposed deficiency order, when such deficiency order will become final, subject to subsection (d)<sup>1</sup> of this section.

#### (3) Remedies

On becoming final, the Commission deficiency order may—

(A) require the contract market to—

(i) institute appropriate improvements in its trade monitoring system necessary to correct the deficiencies noted therein;

(ii) satisfy stated objective performance criteria to correct such deficiencies;

(iii) upgrade or reconfigure existing systems for collecting or processing relevant data on trading and trader or broker activity, including, where appropriate, the commitment of additional resources; or

(B) revoke any exemption of the contract market from the regulations prohibiting the privilege of dual trading under section 6j(a) of this title, if the deficiency noted in such deficiency order relates to—

(i) the audit trail system the contract market is required to maintain under paragraph (2), (3), or (4) of section 7a(b) of this title; or

(ii) the prevention, detection, or disciplining of violations attributable to such trading at such contract market, subject to the standards, exceptions, and duration provisions of section 6j(a) of this title; or

(C) take any combination of the actions described in subparagraphs (A) and (B).

#### (4) Removal

If the Commission finds, after notice and opportunity for a hearing on the record prior to such deficiency order becoming final, that a named officer, director, committee member, or employee of such contract market has willfully—

(A) violated this chapter, the rules or regulations of the Commission thereunder, or the rules of such contract market;

(B) abused the authority of such person; or

(C) without reasonable justification or excuse, failed to enforce compliance with any provision of the rules of such contract market by any member or person associated with a member thereof,

<sup>1</sup> See References in Text note below.

<sup>1</sup> So in original. Probably should be subsection “(c)”.

the Commission may issue a deficiency order under this section to remove such officer, director, committee member, or employee.

**(5) Designation as contract market**

Notwithstanding section 8 of this title, during the period that a proposed or final deficiency order under this section is in effect, the Commission may refrain from approving any application for designation as a contract market made by the board of trade whose contract market is the subject of such deficiency order.

**(6) Delegation**

The Commission shall not delegate the authority to issue deficiency orders under this subsection.

**(c) Rescission, modification, or delay of deficiency orders**

Before any proposed deficiency order issued by the Commission under subsection (b) of this section may become final, the Commission shall—

(1) provide the affected contract market with an opportunity for a hearing through submission of written data, views, or arguments and, under terms set by the Commission at the request of the contract market, through an oral presentation of views and comments to the Commission, in order to petition the Commission to rescind, modify, or delay such deficiency order; and

(2) rule on such petition, not less than twenty days before the deficiency order takes effect, making findings, as appropriate, as to whether—

(A) the deficiencies cited by the Commission have been corrected or are being corrected under an expeditious timetable acceptable to the Commission;

(B) the trade monitoring system of the contract market is deficient as noted in the deficiency order; or

(C) the timetable for corrective action by the contract market in the proposed deficiency order, and the particular corrective action proposed, is appropriate in light of the deficiencies noted and the purposes of this chapter.

**(d) Penalties**

Violation of a final deficiency order issued under subsection (c) of this section shall be considered a violation of an order of the Commission for purposes of—

(1) establishing liability and assessing penalties against a contract market or any director, officer, agent, or employee thereof under section 13a or 13a-1 of this title; or

(2) initiating proceedings under section 7b or 8(a) of this title.

**(e) Judicial review**

**(1) Persons**

Any person, other than a contract market, aggrieved by a deficiency order issued under subsection (b)(4) of this section, may obtain review of such deficiency order when issued by the Commission under the terms and conditions in section 8(b) of this title.

**(2) Contract markets**

Any contract market that has petitioned the Commission to rescind, modify, or delay any

proposed deficiency order issued under subsection (b) of this section may obtain judicial review of any final such deficiency order only in the United States Court of Appeals for the circuit in which the party seeking review resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, under the standards applicable to rulemaking proceedings under section 553 of title 5.

(Sept. 21, 1922, ch. 369, §8e, as added Pub. L. 102-546, title II, §202(a), Oct. 28, 1992, 106 Stat. 3598.)

REFERENCES IN TEXT

Section 8 of this title, referred to in subsec. (b)(5), was in the original "section 6" meaning section 6 of act Sept. 21, 1922, ch. 369, which is classified to sections 8, 9, 9a, 13b, and 15 of this title. See Codification note set out under section 8 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6j of this title.

**§ 13. Violations generally; punishment; costs of prosecution**

**(a) Felonies generally**

It shall be a felony punishable by a fine of not more than \$1,000,000 (or \$500,000 in the case of a person who is an individual) or imprisonment for not more than five years, or both, together with the costs of prosecution, for:

(1) Any person registered or required to be registered under this chapter, or any employee or agent thereof, to embezzle, steal, purloin, or with criminal intent convert to such person's use or to the use of another, any money, securities, or property having a value in excess of \$100, which was received by such person or any employee or agent thereof to margin, guarantee, or secure the trades or contracts of any customer or accruing to such customer as a result of such trades or contracts or which otherwise was received from any customer, client, or pool participant in connection with the business of such person. The word "value" as used in this paragraph means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

(2) Any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any contract market, or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce, or knowingly to violate the provisions of section 6, section 6b, subsections (a) through (e) of subsection<sup>1</sup> 6c, section 6h, section 6o(1), or section 23 of this title.

(3) Any person knowingly to make, or cause to be made, any statement in any application,

<sup>1</sup> So in original. Probably should be "section".