

nation of the authority granted in any subchapter or section of this chapter, or of any rule, regulation, or order issued thereunder, shall not operate to defeat any suit, action, or prosecution, whether theretofore or thereafter commenced, with respect to any right, liability, or offense incurred or committed prior to the termination date of such subchapter or of such rule, regulation, or order. No costs shall be assessed against the United States in any proceeding under this chapter. All litigation arising under this chapter or the regulations promulgated thereunder shall be under the supervision and control of the Attorney General.

(Sept. 8, 1950, ch. 932, title VII, § 706, 64 Stat. 817; July 31, 1951, ch. 275, title I, § 109(e), 65 Stat. 139.)

TERMINATION OF SECTION

For termination of section, see section 4564(a) of this title.

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning act Sept. 8, 1950, ch. 932, 64 Stat. 798, known as the Defense Production Act of 1950, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 4501 of this title and Tables.

AMENDMENTS

1951—Subsec. (a). Act July 31, 1951, broadened relief a court may grant when Government seeks to enjoin violations.

Executive Documents

DELEGATION OF FUNCTIONS

Authority of President to implement the Defense Production Act of 1950 (this chapter) in this subchapter—

(1) with respect to hoarding of health and medical resources necessary to respond to the spread of COVID-19 within the United States delegated to Secretary of Health and Human Services, see section 2(a)(i) of Ex. Ord. 13910, Mar. 23, 2020, 85 F.R. 17001, set out as a note under section 4512 of this title;

(2) with respect to responding to the spread of COVID-19 within the United States delegated to Secretary of Health and Human Services and Secretary of Homeland Security, see section 2(a) of Ex. Ord. No. 13911, Mar. 27, 2020, 85 F.R. 18403, set out as a note under section 4511 of this title; and

(3) in addition to the delegation of authority in Ex. Ord. No. 13911, delegated to Chief Executive Officer of the United States International Development Finance Corporation, see section 2 of Ex. Ord. No. 13922, May 14, 2020, 85 F.R. 30583, set out as a note under section 4532 of this title.

Functions of President under this chapter relating to production, conservation, use, control, distribution, and allocation of energy, delegated to Secretary of Energy, see section 4 of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15, Commerce and Trade.

§ 4557. Liability for compliance with invalid regulations; discrimination against orders or contracts affected by priorities or allocations

No person shall be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with a rule, regulation, or order issued pursuant to this

chapter, notwithstanding that any such rule, regulation, or order shall thereafter be declared by judicial or other competent authority to be invalid. No person shall discriminate against orders or contracts to which priority is assigned or for which materials or facilities are allocated under subchapter I of this chapter or under any rule, regulation, or order issued thereunder, by charging higher prices or by imposing different terms and conditions for such orders or contracts than for other generally comparable orders or contracts, or in any other manner.

(Sept. 8, 1950, ch. 932, title VII, § 707, 64 Stat. 818; June 30, 1952, ch. 530, title I, § 118, 66 Stat. 306.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning act Sept. 8, 1950, ch. 932, 64 Stat. 798, known as the Defense Production Act of 1950, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 4501 of this title and Tables.

CODIFICATION

Section was formerly classified to section 2157 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1952—Act June 30, 1952, in first sentence struck out “his” before “compliance with”.

§ 4558. Voluntary agreements and plans of action for preparedness programs and expansion of production capacity and supply

(a) Immunity from civil and criminal liability or defense to action under antitrust laws; exceptions

Except as specifically provided in subsection (j) of this section, no provision of this chapter shall be deemed to convey to any person any immunity from civil or criminal liability, or to create defenses to actions, under the antitrust laws.

(b) Definitions

For purposes of this chapter—

(1) Antitrust laws

The term “antitrust laws” has the meaning given to such term in subsection (a) of section 12 of title 15, except that such term includes section 45 of title 15 to the extent that such section 45 applies to unfair methods of competition.

(2) Plan of action

The term “plan of action” means any of 1 or more documented methods adopted by participants in an existing voluntary agreement to implement that agreement.

(c) Prerequisites for agreements and plans of action; delegation of authority to Presidential designees

(1) Upon finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, the President may consult with representatives of industry, business, financing, agriculture, labor, and other in-

terests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements and plans of action to help provide for the national defense.

(2) The authority granted to the President in paragraph (1) and subsection (d) may be delegated by him (A) to individuals who are appointed by and with the advice and consent of the Senate, or are holding offices to which they have been appointed by and with the advice and consent of the Senate, (B) upon the condition that such individuals consult with the Attorney General and with the Federal Trade Commission not less than ten days before consulting with any persons under paragraph (1), and (C) upon the condition that such individuals obtain the prior approval of the Attorney General, after consultation by the Attorney General with the Federal Trade Commission, to consult under paragraph (1).

(3) Upon a determination by the President, on a nondelegable basis, that a specific voluntary agreement or plan of action is necessary to meet national defense requirements resulting from an event that degrades or destroys critical infrastructure—

(A) an individual that has been delegated authority under paragraph (1) with respect to such agreement or plan shall not be required to consult with the Attorney General or the Federal Trade Commission under paragraph (2)(B); and

(B) the President shall publish a rule in accordance with subsection (e)(2)(B) and publish notice in accordance with subsection (e)(3)(B) with respect to such agreement or plan as soon as is practicable under the circumstances.

(d) Advisory committees; establishment; applicable provisions; membership; notice and participation in meetings; verbatim transcript; availability to public

(1) To achieve the objectives of subsection (c)(1) of this section, the President or any individual designated pursuant to subsection (c)(2) may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section and except as provided in subsection (n), any such advisory committee shall be subject to the provisions of the Federal Advisory Committee Act, whether or not such Act or any of its provisions expire or terminate during the term of this chapter or of such committees, and in all cases such advisory committees shall be chaired by a Federal employee (other than an individual employed pursuant to section 3109 of title 5) and shall include representatives of the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

(2) A full and complete verbatim transcript shall be kept of such advisory committee meetings, and shall be taken and deposited, together with any agreement resulting therefrom, with the Attorney General and the Federal Trade Commission. Such transcript and agreement shall be made available for public inspection and copying, subject to the provisions of paragraphs (1), (3), and (4) of section 552(b) of title 5.

(e) Rules; promulgation by Presidential designees; consultation by Attorney General with Chairman of Federal Trade Commission; approval of Attorney General; procedures; incorporation of standards and procedures for development of agreements and plans of action

(1) The individual or individuals referred to in subsection (c)(2) shall, after approval of the Attorney General, after consultation by the Attorney General with the Chairman of the Federal Trade Commission, promulgate rules, in accordance with section 553 of title 5, incorporating standards and procedures by which voluntary agreements and plans of action may be developed and carried out.

(2) In addition to the requirements of section 553 of title 5—

(A) general notice of the proposed rulemaking referred to in paragraph (1) shall be published in the Federal Register, and such notice shall include—

(i) a statement of the time, place, and nature of the proposed rulemaking proceedings;

(ii) reference to the legal authority under which the rule is being proposed; and

(iii) either the terms of substance of the proposed rule or a description of the subjects and issues involved;

(B) the required publication of a rule shall be made not less than thirty days before its effective date; and

(C) the individual or individuals referred to in paragraph (1) shall give interested persons the right to petition for the issuance, amendment, or repeal of a rule.

(3) The rules promulgated pursuant to this subsection incorporating standards and procedures by which voluntary agreements may be developed shall provide, among other things, that—

(A) such agreements shall be developed at meetings which include—

(i) the Attorney General or his delegate,

(ii) the Chairman of the Federal Trade Commission or his delegate, and

(iii) an individual designated by the President in subsection (c)(2) or his delegate,

and which are chaired by the individual referred to in clause (iii);

(B) at least seven days prior to any such meeting, notice of the time, place, and nature of the meeting shall be published in the Federal Register;

(C) interested persons may submit written data and views concerning the proposed voluntary agreement, with or without opportunity for oral presentation;

(D) interested persons may attend any such meeting unless the individual designated by the President in subsection (c)(2) finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5;

(E) a full and verbatim transcript shall be made of any such meeting and shall be transmitted by the chairman of the meeting to the Attorney General and to the Chairman of the Federal Trade Commission;

(F) any voluntary agreement resulting from the meetings shall be transmitted by the chairman of the meetings to the Attorney General, the Chairman of the Federal Trade Commission, and the Congress; and

(G) any transcript referred to in subparagraph (E) and any voluntary agreement referred to in subparagraph (F) shall be available for public inspection and copying, subject to paragraphs (1), (3), and (4) of section 552(b) of title 5.

(f) Commencement of agreements and plans of action; expiration date; extensions

(1) A voluntary agreement or plan of action may not become effective unless and until—

(A) the individual referred to in subsection (c)(2) who is to administer the agreement or plan approves it and certifies, in writing, that the agreement or plan is necessary to carry out the purposes of subsection (c)(1) and submits a copy of such agreement or plan to the Congress; and

(B) the Attorney General (after consultation with the Chairman of the Federal Trade Commission) finds, in writing, that such purpose may not reasonably be achieved through a voluntary agreement or plan of action having less anticompetitive effects or without any voluntary agreement or plan of action and publishes such finding in the Federal Register.

(2) Each voluntary agreement or plan of action which becomes effective under paragraph (1) shall expire 5 years after the date it becomes effective (and at 5-year intervals thereafter, as the case may be), unless (immediately prior to such expiration date) the individual referred to in subsection (c)(2) who administers the agreement or plan and the Attorney General (after consultation with the Chairman of the Federal Trade Commission) make the certification or finding, as the case may be, described in paragraph (1) with respect to such voluntary agreement or plan of action and publish such certification or finding in the Federal Register, in which case, the voluntary agreement or plan of action may be extended for an additional period of 5 years.

(g) Monitoring of agreements and plans of action by Attorney General and Chairman of Federal Trade Commission

The Attorney General and the Chairman of the Federal Trade Commission shall monitor the carrying out of any voluntary agreement or plan of action to assure—

(1) that the agreement or plan is carrying out the purposes of subsection (c)(1);

(2) that the agreement or plan is being carried out under rules promulgated pursuant to subsection (e);

(3) that the participants are acting in accordance with the terms of the agreement or plan; and

(4) the protection and fostering of competition and the prevention of anticompetitive practices and effects.

(h) Required provisions of rules for implementation of agreements and plans of action

The rules promulgated under subsection (e) with respect to the carrying out of voluntary agreements and plans of action shall provide—

(1) for the maintenance, by participants in any voluntary agreement or plan of action, of documents, minutes of meetings, transcripts, records, and other data related to the carrying out of any voluntary agreement or plan of action;

(2) that participants in any voluntary agreement or plan of action agree, in writing, to make available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General and the Chairman of the Federal Trade Commission for inspection and copying at reasonable times and upon reasonable notice any item maintained pursuant to paragraph (1);

(3) that any item made available to the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, or the Chairman of the Federal Trade Commission pursuant to paragraph (2) shall be available from such individual, the Attorney General, or the Chairman of the Federal Trade Commission, as the case may be, for public inspection and copying, subject to paragraph (1), (3), or (4) of section 552(b) of title 5;

(4) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission, or their delegates, may attend meetings to carry out any voluntary agreement or plan of action;

(5) that a Federal employee (other than an individual employed pursuant to section 3109 of title 5) shall attend meetings to carry out any voluntary agreement or plan of action;

(6) that participants in any voluntary agreement or plan of action provide the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action, the Attorney General, and the Chairman of the Federal Trade Commission with adequate prior notice of the time, place, and nature of any meeting to be held to carry out the voluntary agreement or plan of action;

(7) for the attendance by interested persons of any meeting held to carry out any voluntary agreement or plan of action, unless the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5;

(8) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action has published in the Federal Register prior notification of the time, place, and nature of any meeting held to carry out any voluntary agreement or plan of action, unless he finds that the matter or matters to be discussed at such meeting falls within the purview of matters described in section 552b(c) of title 5, in which case, notification of the time, place, and nature of such meeting shall be published in the Federal Register within ten days of the date of such meeting;

(9) that—

(A) the Attorney General (after consultation with the Chairman of the Federal Trade Commission and the individual designated by the President in subsection (c)(2) to administer a voluntary agreement or plan of action), or

(B) the individual designated by the President in subsection (c)(2) to administer a voluntary agreement or plan of action (after consultation with the Attorney General and the Chairman of the Federal Trade Commission),

may terminate or modify, in writing, the voluntary agreement or plan of action at any time, and that effective, immediately upon such termination or modification, any antitrust immunity conferred upon the participants in the voluntary agreement or plan of action by subsection (j) shall not apply to any act or omission occurring after the time of such termination or modification;

(10) that participants in any voluntary agreement or plan of action be reasonably representative of the appropriate industry or segment of such industry; and

(11) that the individual designated by the President in subsection (c)(2) to administer the voluntary agreement or plan of action shall provide prior written notification of the time, place, and nature of any meeting to carry out a voluntary agreement or plan of action to the Attorney General, the Chairman of the Federal Trade Commission and the Congress.

(i) Rules; promulgation by Attorney General and Chairman of Federal Trade Commission

The Attorney General and the Chairman of the Federal Trade Commission shall each promulgate such rules as each deems necessary or appropriate to carry out his responsibility under this section.

(j) Defenses

(1) In general

Subject to paragraph (4), there shall be available as a defense for any person to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out any voluntary agreement or plan of action under this section that—

(A) such action was taken—

(i) in the course of developing a voluntary agreement initiated by the President or a plan of action adopted under any such agreement; or

(ii) to carry out a voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement, and

(B) such person—

(i) complied with the requirements of this section and any regulation prescribed under this section; and

(ii) acted in accordance with the terms of the voluntary agreement or plan of action.

(2) Scope of defense

Except in the case of actions taken to develop a voluntary agreement or plan of action, the defense established in paragraph (1) shall be available only if and to the extent that the person asserting the defense demonstrates that the action was specified in, or was within the scope of, an approved voluntary agreement initiated by the President and approved in accordance with this section or a plan of action adopted under any such agreement and approved in accordance with this section. The defense established in paragraph (1) shall not be available unless the President or the President's designee has authorized and actively supervised the voluntary agreement or plan of action.

(3) Burden of persuasion

Any person raising the defense established in paragraph (1) shall have the burden of proof to establish the elements of the defense.

(4) Exception for actions taken to violate the antitrust laws

The defense established in paragraph (1) shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

(k) Surveys and studies by Attorney General and Federal Trade Commission; content; annual report to Congress and President by Attorney General

The Attorney General and the Federal Trade Commission shall each make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this section. Such surveys shall include studies of the voluntary agreements and plans of action authorized by this section. The Attorney General shall (after consultation with the Federal Trade Commission) submit to the Congress and the President at least once every year reports setting forth the results of such studies of voluntary agreements and plans of action.

(l) Annual report to Congress and President by Presidential designees; contents

The individual or individuals designated by the President in subsection (c)(2) shall submit to the Congress and the President at least once every year reports describing each voluntary agreement or plan of action in effect and its contribution to achievement of the purpose of subsection (c)(1).

(m) Jurisdiction to enjoin statutory exemption or suspension and order for production of transcripts, etc.; procedures

On complaint, the United States District Court for the District of Columbia shall have jurisdiction to enjoin any exemption or suspension pursuant to subsections (d)(2), (e)(3)(D) and (G), and (h)(3), (7), and (8), and to order the production of transcripts, agreements, items, or other records maintained pursuant to this section by the Attorney General, the Federal Trade Com-

mission or any individual designated under subsection (c)(2), where the court determines that such transcripts, agreements, items, or other records have been improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such transcripts, agreements, items, or other records in camera to determine whether such transcripts, agreements, items, or other records or any parts thereof shall be withheld under any of the exemption or suspension provisions referred to in this subsection, and the burden is on the Attorney General, the Federal Trade Commission, or such designated individual, as the case may be, to sustain its action.

(n) Exemption from Advisory Committee Act provisions

Notwithstanding any other provision of law, the Federal Advisory Committee Act (5 U.S.C. App.) and any other provision of Federal law relating to advisory committees shall not apply to—

(1) the consultations referred to in subsection (c)(1); or

(2) any activity conducted under a voluntary agreement or plan of action approved pursuant to this section that complies with the requirements of this section.

(o) Preemption of contract law in emergencies

In any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken during an emergency to carry out a voluntary agreement or plan of action authorized and approved in accordance with this section. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

(Sept. 8, 1950, ch. 932, title VII, § 708, 64 Stat. 818; June 30, 1952, ch. 530, title I, § 116(c), 66 Stat. 305; Aug. 9, 1955, ch. 655, § 6, 69 Stat. 581; Pub. L. 87-305, § 5(b), Sept. 26, 1961, 75 Stat. 667; Pub. L. 91-151, title I, § 9, Dec. 23, 1969, 83 Stat. 376; Pub. L. 94-152, § 3, Dec. 16, 1975, 89 Stat. 810; Pub. L. 102-99, § 5, Aug. 17, 1991, 105 Stat. 487; Pub. L. 111-67, § 9, Sept. 30, 2009, 123 Stat. 2018.)

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in subssecs. (a), (b), and (d)(1), was in the original “this Act”, meaning act Sept. 8, 1950, ch. 932, 64 Stat. 798, known as the Defense Production Act of 1950, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 4501 of this title and Tables.

The Federal Advisory Committee Act, referred to in subssecs. (d)(1) and (n), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was formerly classified to section 2158 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2009—Subsec. (c)(1). Pub. L. 111-67, § 9(1)(A), substituted “national defense.” for “defense of the United States through the development of preparedness pro-

grams and the expansion of productive capacity and supply beyond levels needed to meet essential civilian demand in the United States.”

Subsec. (c)(3). Pub. L. 111-67, § 9(1)(B), added par. (3).
Subsec. (f)(2). Pub. L. 111-67, § 9(2), substituted “5 years” for “two years” in two places and substituted “5-year” for “two-year”.

Subsec. (n). Pub. L. 111-67, § 9(3), added subsec. (n) and struck out former subsec. (n). Prior to amendment, text read as follows: “Notwithstanding any other provision of law, any activity conducted under a voluntary agreement or plan of action approved pursuant to this section, when conducted in compliance with the requirements of this section, any regulation prescribed under this subsection, and the provisions of the voluntary agreement or plan of action, shall be exempt from the Federal Advisory Committee Act and any other Federal law and any Federal regulation relating to advisory committees.”

1991—Subsec. (a). Pub. L. 102-99, § 5(1), struck out reference to section 708A(j) of act Sept. 8, 1950, ch. 932, after reference to subsec. (j) of this section.

Subsec. (b). Pub. L. 102-99, § 5(2), added subsec. (b) and struck out former subsec. (b) which defined the term “antitrust laws” as used in this section and in section 708A of act Sept. 8, 1950, ch. 932.

Subsec. (c)(1). Pub. L. 102-99, § 5(3), inserted “and plans of action” after “voluntary agreements” and struck out provisions relating to exception as provided in section 708A of act Sept. 8, 1950, ch. 932.

Subsec. (c)(2). Pub. L. 102-99, § 5(4), struck out at end “For the purpose of carrying out the objectives of subchapter I of this chapter, the authority granted in paragraph (1) of this subsection shall not be delegated to more than one individual.”

Subsec. (d)(1). Pub. L. 102-99, § 5(5), inserted “and except as provided in subsection (n)” after “specified in this section” and struck out “, and the meetings of such committees shall be open to the public” after “representatives of the public”.

Subsec. (d)(2). Pub. L. 102-99, § 5(6), substituted “paragraphs (1), (3), and (4) of section 552(b)” for “section 552(b)(1) and (b)(3)”.

Subsec. (e)(1). Pub. L. 102-99, § 5(7), substituted “voluntary agreements and plans of action” for “voluntary agreements”.

Subsec. (e)(3)(D). Pub. L. 102-99, § 5(8), substituted “section 552b(c)” for “subsection (b)(1) or (b)(3) of section 552”.

Subsec. (e)(3)(F). Pub. L. 102-99, § 5(9), inserted reference to Congress.

Subsec. (e)(3)(G). Pub. L. 102-99, § 5(10), substituted “paragraphs (1), (3), and (4) of section 552(b)” for “subsections (b)(1) and (b)(3) of section 552”.

Subsec. (f)(1). Pub. L. 102-99, § 5(11)(A), inserted “or plan of action” after “voluntary agreement”.

Subsec. (f)(1)(A). Pub. L. 102-99, § 5(12), inserted “and submits a copy of such agreement or plan to the Congress” after “subsection (c)(1)”.

Pub. L. 102-99, § 5(11)(B), inserted “or plan” after “the agreement” wherever appearing.

Subsec. (f)(1)(B). Pub. L. 102-99, § 5(13), inserted before period “and publishes such finding in the Federal Register”.

Pub. L. 102-99, § 5(11)(A), inserted “or plan of action” after “voluntary agreement” wherever appearing.

Subsec. (f)(2). Pub. L. 102-99, § 5(14), inserted “and publish such certification or finding in the Federal Register” before “, in which case”.

Pub. L. 102-99, § 5(11), inserted “or plan” after “the agreement”, and “or plan of action” after “voluntary agreement” wherever appearing.

Subsec. (g). Pub. L. 102-99, § 5(11)(A), inserted “or plan of action” after “voluntary agreement”.

Subsec. (g)(1) to (3). Pub. L. 102-99, § 5(11)(B), inserted “or plan” after “the agreement”.

Subsec. (h). Pub. L. 102-99, § 5(15)(A), inserted “and plans of action” after “voluntary agreements”.

Subsec. (h)(1), (2). Pub. L. 102-99, § 5(15)(B), inserted “or plan of action” after “voluntary agreement” wherever appearing.

Subsec. (h)(3). Pub. L. 102-99, §5(16), substituted “paragraph (1), (3), or (4) of section 552(b)” for “subsections (b)(1) and (b)(3) of section 552”.

Pub. L. 102-99, §5(15)(B), inserted “or plan of action” after “voluntary agreement”.

Subsec. (h)(4) to (6). Pub. L. 102-99, §5(15)(B), inserted “or plan of action” after “voluntary agreement” wherever appearing.

Subsec. (h)(7), (8). Pub. L. 102-99, §5(15)(B), (17), inserted “or plan of action” after “voluntary agreement” wherever appearing and substituted “section 552b(c)” for “subsection (b)(1) or (b)(3) of section 552”.

Subsec. (h)(9), (10). Pub. L. 102-99, §5(15)(B), inserted “or plan of action” after “voluntary agreement” wherever appearing.

Subsec. (h)(11). Pub. L. 102-99, §5(15)(C)-(E), added par. (11).

Subsec. (j). Pub. L. 102-99, §5(18), added subsec. (j) and struck out former subsec. (j) which read as follows: “There shall be available as a defense for any person to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any act or omission to act to develop or carry out any voluntary agreement under this section that—

“(1) such act or omission to act was taken in good faith by that person—

“(A) in the course of developing a voluntary agreement under this section, or

“(B) to carry out a voluntary agreement under this section; and

“(2) such person fully complied with this section and the rules promulgated hereunder, and acted in accordance with the terms of the voluntary agreement.”

Subsec. (k). Pub. L. 102-99, §5(19), inserted “and plans of action” after “voluntary agreements” wherever appearing.

Subsec. (l). Pub. L. 102-99, §5(20), inserted “or plan of action” after “voluntary agreement”.

Subsecs. (n), (o). Pub. L. 102-99, §5(21), added subsecs. (n) and (o).

1975—Subsec. (a). Pub. L. 94-152 substituted provisions relating to immunity from civil and criminal liability under the antitrust laws for provisions authorizing President to approve voluntary programs and agreements under this chapter.

Subsec. (b). Pub. L. 94-152 substituted definition of “antitrust laws” for provisions exempting under certain conditions acts or omissions to act pursuant to this chapter from the antitrust laws or the Federal Trade Commission Act.

Subsec. (c). Pub. L. 94-152 restructured subsec. (c) into pars. (1) and (2), and, as so restructured, inserted provisions of par. (1) authorizing President to consult with leaders of industry, finance, agriculture and labor with a view to developing voluntary agreements to help provide for the defense of the United States whenever he finds conditions exist which pose a threat to the national defense or preparedness programs and transferred existing provisions to par. (2), and, as transferred, substituted provisions which authorized President to delegate authority granted to him in par. (1) of this subsection and under subsec. (d) of this section, for provisions authorizing delegation of authority of subsec. (b) of this section.

Subsec. (d). Pub. L. 94-152 substituted provisions relating to establishment, membership, meetings, transcripts, etc. of advisory committees, for provisions relating to application of this section to acts or omissions to act after withdrawal of any request or finding under this section or withdrawal of approval of Attorney General.

Subsec. (e). Pub. L. 94-152 substituted provisions relating to promulgation of rules for voluntary agreements, procedures for promulgation and required provisions, for provisions relating to monitoring by Attorney General of agreements in force and reports to President and Congress.

Subsecs. (f) to (m). Pub. L. 94-152 added subsecs. (f) to (m).

1969—Subsec. (b). Pub. L. 91-151, §9(a), struck out provision under which exemption from prohibitions of antitrust laws and application of Federal Trade Commission Act had been limited to only those voluntary agreements covering military equipment purchased by Defense Department.

Subsec. (f). Pub. L. 91-151, §9(b), struck out subsec. (f) which prohibited approval of voluntary credit control agreements under this section after June 30, 1952.

1961—Subsec. (e). Pub. L. 87-305 struck out “, and the reports hereafter required,” after “Such surveys” and “within ninety days after the approval of this chapter, and” after “President” and substituted “studies of voluntary agreements and programs authorized by this section” for “such surveys and including such recommendations as he may deem desirable”.

1955—Subsec. (b). Act Aug. 9, 1955, §6(1), inserted proviso.

Subsec. (d). Act Aug. 9, 1955, §6(2), exempted subsequent acts or omissions to act upon withdrawal by Attorney General of his approval of voluntary agreement or program.

Subsec. (e). Act Aug. 9, 1955, §6(3), (4), included studies of voluntary agreements and programs in surveys and reports, and required Attorney General to report to Congress at least once every three months.

1952—Subsec. (f). Act June 30, 1952, added subsec. (f).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102-99 effective Oct. 20, 1990, see section 7 of Pub. L. 102-99, set out as a note under section 4511 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Pub. L. 94-152, §9, Dec. 16, 1975, 89 Stat. 821, as amended by Pub. L. 94-153, Dec. 16, 1975, 89 Stat. 822; Pub. L. 94-220, Feb. 27, 1976, 90 Stat. 195, provided that: “This Act and the amendments made by it [see Tables for classification] shall take effect at the close of November 30, 1975, except that the amendment made by section 3 [amending this section] shall take effect upon the one hundred and twentieth day beginning after the date of its enactment [Dec. 16, 1975].”

EFFECTIVE DATE OF 1955 AMENDMENT

Amendment by act Aug. 9, 1955, effective as of the close of July 31, 1955, see section 11 of act Aug. 9, 1955, set out as a note under section 4502 of this title.

CONTINUATION IN EFFECT OF EXISTING VOLUNTARY AGREEMENTS

Pub. L. 94-152, §4, Dec. 16, 1975, 89 Stat. 820, provided that:

“(a) Any voluntary agreement—

“(1) entered into under section 708 of the Defense Production Act of 1950 [50 U.S.C. 4558] prior to the effective date of this Act [see Effective Date of 1975 Amendment note above], and

“(2) in effect immediately prior to such date may continue in effect (except as otherwise provided in section 708A(o) of the Defense Production Act of 1950, as amended by this Act) and shall be carried out in accordance with such section 708 [50 U.S.C. 4558], as amended by this Act, and such section 708A.

“(b) No provision of the Defense Production Act of 1950 [50 U.S.C. 4501 et seq.], as amended by this Act, shall be construed as granting immunity for, nor as limiting or in any way affecting any remedy or penalty which may result from any legal action or proceeding arising from, any acts or practices which occurred (1) prior to the date of enactment of this Act [Dec. 16, 1975], (2) outside the scope and purpose or not in compliance with the terms and conditions of the Defense Production Act of 1950, or (3) subsequent to the expiration or repeal of the Defense Production Act of 1950.

“(c) Effective on the date of enactment of this Act [Dec. 16, 1975], the immunity conferred by section 708 or

708A of the Defense Production Act of 1950, as amended by this Act, shall not apply to any action taken or authorized to be taken by or under the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.].”

[Section 708A of the Defense Production Act of 1950, referred to in section 4 of Pub. L. 94-152, set out above, which was classified to section 2158a of the former Appendix to this title, was repealed by Pub. L. 102-99, § 4, Aug. 17, 1991, 105 Stat. 487.]

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Executive Documents

DELEGATION OF FUNCTIONS

Authority of President under subsecs. (c)(1) and (d) of this section with respect to responding to the spread of COVID-19 within the United States delegated to Secretary of Health and Human Services and Secretary of Homeland Security, see section 3 of Ex. Ord. No. 13911, Mar. 27, 2020, 85 F.R. 18404, set out as a note under section 4511 of this title.

Functions conferred upon President under this section necessary to effect changes in composition of, or to take other action respecting voluntary agreements and programs relating to, small business production pools approved prior to July 31, 1953, delegated to Administrator of Small Business Administration by Ex. Ord. No. 10493, Oct. 14, 1953, 18 F.R. 6583, set out as a note under section 640 of Title 15, Commerce and Trade.

Functions of President under this chapter relating to production, conservation, use, control, distribution, and allocation of energy, delegated to Secretary of Energy, see section 4 of Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185, set out as a note under section 761 of Title 15.

For delegation of authority of President under subsecs. (c) and (d) of this section, see sections 401 and 402 of Ex. Ord. No. 13603, Mar. 16, 2012, 77 F.R. 16656, set out as a note under section 4553 of this title.

§ 4559. Public participation in rulemaking

(a) Exemption from Administrative Procedure Act

Any regulation issued under this chapter shall not be subject to sections 551 through 559 of title 5.

(b) Opportunity for notice and comment

(1) In general

Except as provided in subsection (c), any regulation issued under this chapter shall be published in the Federal Register and opportunity for public comment shall be provided for not less than 30 days, consistent with the requirements of section 553(b) of title 5.

(2) Waiver for temporary provisions

The requirements of paragraph (1) may be waived, if—

(A) the officer authorized to issue the regulation finds that urgent and compelling circumstances make compliance with such requirements impracticable;

(B) the regulation is issued on a temporary basis; and

(C) the publication of such temporary regulation is accompanied by the finding made under subparagraph (A) (and a brief statement of the reasons for such finding) and an opportunity for public comment is provided for not less than 30 days before any regulation becomes final.

(3) Consideration of public comments

All comments received during the public comment period specified pursuant to paragraph (1) or (2) shall be considered and the publication of the final regulation shall contain written responses to such comments.

(c) Public comment on procurement regulations

Any procurement policy, regulation, procedure, or form (including any amendment or modification of any such policy, regulation, procedure, or form) issued under this chapter shall be subject to section 1707 of title 41.

(Sept. 8, 1950, ch. 932, title VII, § 709, 64 Stat. 819; Pub. L. 102-558, title I, § 136(a), Oct. 28, 1992, 106 Stat. 4216.)

TERMINATION OF SECTION

For termination of section, see section 4564(a) of this title.

Editorial Notes

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning act Sept. 8, 1950, ch. 932, 64 Stat. 798, known as the Defense Production Act of 1950, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 4501 of this title and Tables.

CODIFICATION

Section was formerly classified to section 2159 of the former Appendix to this title prior to editorial reclassification and renumbering as this section.

In subsec. (c), “section 1707 of title 41” substituted for “section 22 of the Office of Federal Procurement Policy Act” on authority of Pub. L. 111-350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1992—Pub. L. 102-558 amended section generally. Prior to amendment, section read as follows: “The functions exercised under this chapter shall be excluded from the operation of the Administrative Procedure Act (60 Stat. 237) except as to the requirements of section 3 thereof. Any rule, regulation, or order, or amendment thereto, issued under authority of this chapter shall be accompanied by a statement that in the formulation thereof there has been consultation with industry representatives, including trade association representatives, and that consideration has been given to their recommendations, or that special circumstances have rendered such consultation impracticable or contrary to the interest of the national defense, but no such rule, regulation, or order shall be invalid by reason of any subsequent finding by judicial or other authority that such a statement is inaccurate.”