

AMENDMENT OF SECTION

For termination of amendment by section 942 of Pub. L. 106-78, see Termination Date of 1999 Amendment note below.

AMENDMENTS

2002—Pub. L. 107-171, §10502(b)(1), substituted “packer or swine contractor” for “packer” in introductory provisions.

Subsec. (c). Pub. L. 107-171, §10502(b)(2)(A), inserted “, swine contractor,” after “other packer” in two places.

1999—Subsec. (b). Pub. L. 106-78, §§912, 942, temporarily struck out “whatsoever” after “locality in any respect” and after “disadvantage in any respect”. See Termination Date of 1999 Amendment note below.

1991—Subsec. (c). Pub. L. 102-237 substituted a comma for period after second reference to “dealer”.

1987—Pub. L. 100-173, §3(1), substituted “for any packer with respect to livestock, meats, meat food products, or livestock products in unmanufactured form, or for any live poultry dealer with respect to live poultry, to” for “with respect to livestock, meats, meat food products, livestock products in unmanufactured form, poultry, or poultry products for any packer or any live poultry dealer or handler to” in introductory provisions.

Par. (c). Pub. L. 100-173, §3(2), struck out reference to poultry handlers wherever appearing and substituted “such persons” for “such packers”.

1976—Pub. L. 94-410 struck out “in commerce” wherever appearing.

1958—Pub. L. 85-909 inserted “with respect to livestock, meats, meat food products, livestock products in unmanufactured form, poultry, or poultry products” after “unlawful”.

1935—Act Aug. 15, 1921, title V, §503, as added Aug. 14, 1935, inserted “or any live poultry dealer or handler” after “packer” wherever appearing.

TERMINATION DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-78 to terminate Sept. 30, 2020, see section 942 of Pub. L. 106-78, as amended, set out in a Livestock Mandatory Reporting note under section 1635 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-173 effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as a note under section 182 of this title.

§ 193. Procedure before Secretary for violations

(a) Complaint; hearing; intervention

Whenever the Secretary has reason to believe that any packer or swine contractor has violated or is violating any provision of this subchapter, he shall cause a complaint in writing to be served upon the packer or swine contractor, stating his charges in that respect, and requiring the packer or swine contractor to attend and testify at a hearing at a time and place designated therein, at least thirty days after the service of such complaint; and at such time and place there shall be afforded the packer or swine contractor a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may on application be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel. At any time prior to the close of the hearing the Secretary

may amend the complaint; but in case of any amendment adding new charges the hearing shall, on the request of the packer or swine contractor, be adjourned for a period not exceeding fifteen days.

(b) Report and order; penalty

If, after such hearing, the Secretary finds that the packer or swine contractor has violated or is violating any provisions of this subchapter covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the packer or swine contractor an order requiring such packer or swine contractor to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture. The Secretary may also assess a civil penalty of not more than \$10,000 for each such violation. In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business. If, after the lapse of the period allowed for appeal or after the affirmance of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may refer the matter to the Attorney General who may recover such penalty by an action in the appropriate district court of the United States.

(c) Amendment of report or order

Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 194 of this title, the Secretary at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the packer or swine contractor to be heard, may amend or set aside the report or order, in whole or in part.

(d) Service of process

Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 45 of title 15.

(Aug. 15, 1921, ch. 64, title II, §203, 42 Stat. 161; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §6(a), Aug. 28, 1958, 72 Stat. 944; Pub. L. 94-410, §3(b), Sept. 13, 1976, 90 Stat. 1249; Pub. L. 107-171, title X, §10502(b)(1), May 13, 2002, 116 Stat. 509.)

AMENDMENTS

2002—Subsecs. (a) to (c). Pub. L. 107-171 substituted “packer or swine contractor” for “packer” wherever appearing.

1976—Subsec. (b). Pub. L. 94-410 inserted provisions dealing with authority of Secretary to assess a civil penalty for violations and, upon failure to pay, procedure for recovery of such penalty.

1958—Subsec. (c). Pub. L. 85-791 struck out “a transcript of” after “until”.

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted “court of appeals” for “circuit court of appeals”.

TRANSFER OF FUNCTIONS

Functions of all officers, agencies, and employees of Department of Agriculture transferred, with certain ex-

ceptions, to Secretary of Agriculture by 1953 Reorg. Plan No. 2, § 1, eff. June 4, 1953, 18 F.R. 3219, 67 Stat. 633, set out as a note under section 2201 of this title.

§ 194. Conclusiveness of order; appeal and review

(a) Filing of petition; bond

An order made under section 193 of this title shall be final and conclusive unless within thirty days after service the packer or swine contractor appeals to the court of appeals for the circuit in which he has his principal place of business, by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such packer or swine contractor will pay the costs of the proceedings if the court so directs.

(b) Filing of record by Secretary

The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

(c) Temporary injunction

At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction, restraining, to the extent it deems proper, the packer or swine contractor and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

(d) Evidence

The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case.

(e) Action by court

The court may affirm, modify, or set aside the order of the Secretary.

(f) Additional evidence

If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modifications or setting aside of his order, with the return of such additional evidence.

(g) Injunction

If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the packer or swine contractor, and his officers, directors, agents, and employees from violating the provisions of such order or such order as modified.

(h) Finality

The court of appeals shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, if such writ is duly applied for within sixty days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the court of appeals, insofar as such decree operates as an injunction unless so ordered by the Supreme Court.

(Aug. 15, 1921, ch. 64, title II, § 204, 42 Stat. 162; June 7, 1934, ch. 426, 48 Stat. 926; June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Pub. L. 85-791, § 6(b), (c), Aug. 28, 1958, 72 Stat. 944; Pub. L. 98-620, title IV, § 402(5), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 107-171, title X, § 10502(b)(1), May 13, 2002, 116 Stat. 509.)

CODIFICATION

Former subsec. (i), which extended the former term "circuit court of appeals", in case the principal place of business of the packer is in the District of Columbia, to the United States Court of Appeals for the District of Columbia, for the purposes of sections 191 to 195 of this title, was omitted from the Code as obsolete. The District of Columbia is a judicial circuit under sections 41 and 43 of Title 28, Judiciary and Judicial Procedure. See, also, Change of Name note below.

AMENDMENTS

2002—Subsecs. (a), (c), (g). Pub. L. 107-171 substituted "packer or swine contractor" for "packer" wherever appearing.

1984—Subsec. (d). Pub. L. 98-620 struck out provisions requiring proceedings in such cases in the court of appeals to be made a preferred cause and expedited in every way.

1958—Subsec. (b). Pub. L. 85-791 § 6(b), substituted "thereupon file in the court" for "forthwith prepare, certify, and file in the court a full and accurate transcript of", and "as provided in section 2112 of Title 28" for "including the complaint, the evidence, and the report and order" in first sentence, and "record" for "transcript" in second sentence.

Subsec. (c). Pub. L. 85-791, § 6(b), substituted "petition" for "transcript".

Subsec. (d). Pub. L. 85-791, § 6(b), struck out "duly certified" after "admitted".

Subsec. (h). Pub. L. 85-791, § 6(c), substituted "jurisdiction, which upon the finding of the record with it shall be exclusive," for "exclusive jurisdiction," and section "1254" for "347".

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended May 24, 1949, substituted "court of appeals" for "circuit court of appeals", wherever appearing.

Act of June 7, 1934, provided that Court of Appeals in District of Columbia, should hereafter be known as the United States Court of Appeals for the District of Columbia.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 195. Punishment for violation of order

Any packer or swine contractor, or any officer, director, agent, or employee of a packer or