

sion basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock.

(b) Whenever complaint is made to the Secretary by any person, or whenever the Secretary has reason to believe, that any stockyard owner, market agency, or dealer is violating the provisions of subsection (a), the Secretary after notice and full hearing may make an order that he shall cease and desist from continuing such violation to the extent that the Secretary finds that it does or will exist. 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 affirmation 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.

(Aug. 15, 1921, ch. 64, title III, §312, 42 Stat. 167; Pub. L. 85-909, §2(5), Sept. 2, 1958, 72 Stat. 1750; Pub. L. 90-446, §1(e), July 31, 1968, 82 Stat. 475; Pub. L. 94-410, §3, Sept. 13, 1976, 90 Stat. 1249.)

Editorial Notes

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-410, §3(a), (c), struck out “in commerce” after “or handling” and substituted “livestock” for “live stock”.

Subsec. (b). Pub. L. 94-410, §3(b), 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.

1968—Subsec. (a). Pub. L. 90-446 inserted “determining whether persons should be authorized to operate at stockyards, or with” after “in connection with”.

1958—Subsec. (a). Pub. L. 85-909 struck out “at a stockyard” after “in commerce”.

§ 214. Effective date of orders

Except as otherwise provided in this chapter all orders of the Secretary under this subchapter, other than orders for the payment of money, shall take effect within such reasonable time, not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction.

(Aug. 15, 1921, ch. 64, title III, §313, 42 Stat. 167.)

§ 215. Failure to obey orders; punishment

(a) Any stockyard owner, market agency, or dealer who knowingly fails to obey any order made under the provisions of sections 211, 212, or 213 of this title shall forfeit to the United States the sum of \$500 for each offense. Each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense. Such forfeiture shall be recoverable in a civil suit in the name of the United States.

(b) It shall be the duty of the various United States attorneys, under the direction of the Attorney General, to prosecute for the recovery of forfeitures. The costs and expense of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

(Aug. 15, 1921, ch. 64, title III, §314, 42 Stat. 167; June 25, 1948, ch. 646, §1, 62 Stat. 909.)

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted “United States attorneys” for “district attorneys” in subsec. (a). See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision Notes thereunder.

§ 216. Proceedings to enforce orders; injunction

If any stockyard owner, market agency, or dealer fails to obey any order of the Secretary other than for the payment of money while the same is in effect, the Secretary, or any party injured thereby, or the United States by its Attorney General, may apply to the district court for the district in which such person has his principal place of business for the enforcement of such order. If after hearing the court determines that the order was lawfully made and duly served and that such person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person, his officers, agents, or representatives from further disobedience of such order or to enjoin upon him or them obedience to the same.

(Aug. 15, 1921, ch. 64, title III, §315, 42 Stat. 167.)

Court Rules

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

§ 217. Proceedings for suspension of orders

For the purposes of this subchapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this subchapter, and to any person subject to the provisions of this subchapter.

(Aug. 15, 1921, ch. 64, title III, §316, 42 Stat. 168.)

Statutory Notes and Related Subsidiaries

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee

of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 1301 of Title 49.

§ 217a. Fees for inspection of brands or marks

(a) Authorization by Secretary; registration as market agency

The Secretary may, upon written application made to him, and if he deems it necessary, authorize the charging and collection, at any stockyard subject to the provisions of this chapter, by any department or agency of any State in which branding or marking or both branding and marking livestock as a means of establishing ownership prevails by custom or statute, or by a duly organized livestock association of any such State, of a reasonable and nondiscriminatory fee for the inspection of brands, marks, and other identifying characteristics of livestock originating in or shipped from such State, for the purpose of determining the ownership of such livestock. No charge shall be made under any such authorization until the authorized department, agency, or association has registered as a market agency. No more than one such authorization shall be issued with respect to such inspection of livestock originating in or shipped from any one State. If more than one such application is filed with respect to such inspection of livestock originating in or shipped from any one State, the Secretary shall issue such authorization to the applicant deemed by him best qualified to perform the proposed service, on the basis of (1) experience, (2) financial responsibility, (3) extent and efficiency of organization, (4) possession of necessary records, and (5) any other factor relating to the ability of the applicant to perform the proposed service. The Secretary may receive and consider the recommendations of the commissioner, secretary, or director of agriculture, or other appropriate officer or agency of a State as to the qualifications of any applicant in such State. The decision of the Secretary as to the applicant best qualified shall be final.

(b) Applicability of section

The provisions of this subchapter, relating to the filing, publication, approval, modification, and suspension of any rate or charge for any stockyard service shall apply with respect to charges authorized to be made under this section.

(c) Collection and payment of charges

Charges authorized to be made under this section shall be collected by the market agency or other person receiving and disbursing the funds received from the sale of livestock with respect to the inspection of which such charge is made, and paid by it to the department, agency, or association performing such service.

(d) Revocation of authorization or registration

The Secretary may, if he deems it to be in the public interest, suspend, and after hearing, revoke any authorization and registration issued under the provisions of this section or any similar authorization and registration issued under any other provision of law. The order of the Secretary suspending or revoking any such authorization and registration shall not be subject to review.

(Aug. 15, 1921, ch. 64, title III, §317, as added June 19, 1942, ch. 421, 56 Stat. 372.)

Editorial Notes

PRIOR PROVISIONS

Former provisions relating to fees for inspection of brands appearing upon livestock were contained in section 231 of this title.

Statutory Notes and Related Subsidiaries

ADMINISTRATIVE ORDERS REVIEW ACT

Court of appeals exclusive jurisdiction respecting final orders of Secretary of Agriculture under this chapter, except orders issued under section 210(e) of this title and this section, see section 2342 of Title 28, Judiciary and Judicial Procedure.

§ 217b. Statutory trust established; dealer

(a) Establishment

(1) In general

All livestock purchased by a dealer in cash sales and all inventories of, or receivables or proceeds from, such livestock shall be held by such dealer in trust for the benefit of all unpaid cash sellers of such livestock until full payment has been received by such unpaid cash sellers.

(2) Exemption

Any dealer whose average annual purchases of livestock do not exceed \$100,000 shall be exempt from the provisions of this section.

(3) Effect of dishonored instruments

For purposes of determining full payment under paragraph (1), a payment to an unpaid cash seller shall not be considered to have been made if the unpaid cash seller receives a payment instrument that is dishonored.

(b) Preservation of trust

An unpaid cash seller shall lose the benefit of a trust under subsection (a) if the unpaid cash seller has not preserved the trust by giving written notice to the dealer involved and filing such notice with the Secretary—

(1) within 30 days of the final date for making a payment under section 228b of this title in the event that a payment instrument has not been received; or

(2) within 15 business days after the date on which the seller receives notice that the payment instrument promptly presented for payment has been dishonored.

(c) Notice to lien holders

When a dealer receives notice under subsection (b) of the unpaid cash seller's intent to preserve the benefits of the trust, the dealer shall, within 15 business days, give notice to all persons who have recorded a security interest in, or lien on, the livestock held in such trust.

(d) Cash sales defined

For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.

(e) Purchase of livestock subject to trust

(1) In general

A person purchasing livestock subject to a dealer trust shall receive good title to the livestock if the person receives the livestock—