

**§ 228b-3. Judicial review of order regarding live poultry dealer**

**(a) Finality of order unless appeal to court of appeals; time limit; bond**

An order made under section 228b-2 of this title shall be final and conclusive unless within 30 days after service the live poultry dealer 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 live poultry dealer will pay the costs of the proceedings if the court so directs.

**(b) Notification of appeal to Secretary; filing of record with court**

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) Issuance of 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 live poultry dealer 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 in record as evidence in case; expedited proceedings**

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. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

**(e) Action by court**

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

**(f) Taking of additional evidence; modified or additional findings by Secretary**

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 modification or setting aside of his order, with the return of such additional evidence.

**(g) Affirmance or modification of order as injunction**

If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate

as an injunction to restrain the live poultry dealer, and his officers, directors, agents, and employees from violating the provisions of such order or such order as modified.

**(h) Exclusive jurisdiction of court of appeals; finality of decree; appeal to Supreme Court; stay of decree**

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 60 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 IV, §412, as added Pub. L. 100-173, §9(2), Nov. 23, 1987, 101 Stat. 921.)

EFFECTIVE DATE

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

**§ 228b-4. Violation of final order by live poultry dealer; penalty**

Any live poultry dealer, or any officer, director, agent, or employee of a live poultry dealer, who fails to obey any order of the Secretary issued under the provisions of section 228b-2 of this title, or such order as modified—

(1) after the expiration of the time allowed for filing a petition in the court of appeals to set aside or modify such order, if no such petition has been filed within such time;

(2) after the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the court of appeals and no such writ has been applied for within such time; or

(3) after such order, or such order as modified, has been sustained by the courts as provided in section 228b-3 of this title;

shall on conviction be fined not less than \$1,000 nor more than \$20,000. Each day during which such failure continues shall be deemed a separate offense.

(Aug. 15, 1921, ch. 64, title IV, §413, as added Pub. L. 100-173, §9(2), Nov. 23, 1987, 101 Stat. 922.)

EFFECTIVE DATE

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

**§ 228c. Federal preemption of State and local requirements**

No requirement of any State or territory of the United States, or any subdivision thereof, or the District of Columbia, with respect to bonding of packers or prompt payment by packers for livestock purchases may be enforced upon any packer operating in compliance with the bonding provisions under section 204 of this title, and prompt payment provisions of section

228b of this title, respectively: *Provided*, That this section shall not preclude a State from enforcing a requirement, with respect to payment for livestock purchased by a packer at a stockyard subject to this chapter, which is not in conflict with this chapter or regulations thereunder: *Provided further*, That this section shall not preclude a State from enforcing State law or regulations with respect to any packer not subject to this chapter or section 204 of this title.

(Aug. 15, 1921, ch. 64, title IV, §414, formerly §410, as added Pub. L. 94-410, §9, Sept. 13, 1976, 90 Stat. 1252; renumbered §414, Pub. L. 100-173, §9(1), Nov. 23, 1987, 101 Stat. 919.)

#### § 228d. Annual assessment of cattle and hog industries

Not later than March 1 of each year, the Secretary shall submit to Congress and make publicly available a report that—

- (1) assesses the general economic state of the cattle and hog industries;
- (2) describes changing business practices in those industries; and
- (3) identifies market operations or activities in those industries that appear to raise concerns under this chapter.

(Aug. 15, 1921, ch. 64, title IV, §415, as added Pub. L. 106-472, title III, §312(e)(2), Nov. 9, 2000, 114 Stat. 2077.)

#### PRIOR PROVISIONS

A prior section 415 of act Aug. 15, 1921, was renumbered section 416 and is classified to section 229 of this title.

### § 229. Annual report

#### (a) In general

Not later than March 1 of each year, the Secretary shall submit to Congress and make publicly available a report that—

- (1) states, for the preceding year, separately for livestock and poultry and separately by enforcement area category (financial, trade practice, or competitive acts and practices), with respect to investigations into possible violations of this chapter—

(A) the number of investigations opened;

(B) the number of investigations that were closed or settled without a referral to the General Counsel of the Department of Agriculture;

(C) for investigations described in subparagraph (B), the length of time from initiation of the investigation to when the investigation was closed or settled without the filing of an enforcement complaint;

(D) the number of investigations that resulted in referral to the General Counsel of the Department of Agriculture for further action, the number of such referrals resolved without administrative enforcement action, and the number of enforcement actions filed by the General Counsel;

(E) for referrals to the General Counsel that resulted in an administrative enforcement action being filed, the length of time from the referral to the filing of the administrative action;

(F) for referrals to the General Counsel that resulted in an administrative enforcement action being filed, the length of time from filing to resolution of the administrative enforcement action;

(G) the number of investigations that resulted in referral to the Department of Justice for further action, and the number of civil enforcement actions filed by the Department of Justice on behalf of the Secretary pursuant to such a referral;

(H) for referrals that resulted in a civil enforcement action being filed by the Department of Justice, the length of time from the referral to the filing of the enforcement action;

(I) for referrals that resulted in a civil enforcement action being filed by the Department of Justice, the length of time from the filing of the enforcement action to resolution; and

(J) the average civil penalty imposed in administrative or civil enforcement actions for violations of this chapter, and the total amount of civil penalties imposed in all such enforcement actions; and

(2) includes any other additional information the Secretary considers important to include in the annual report.

#### (b) Format of information provided

For subparagraphs (C), (E), (F), and (H) of subsection (a)(1), the Secretary may, if appropriate due to the number of complaints for a given category, provide summary statistics (including range, maximum, minimum, mean, and average times) and graphical representations.

(Aug. 15, 1921, ch. 64, title IV, §416, as added Pub. L. 110-234, title XI, §11004(a)(2), May 22, 2008, 122 Stat. 1355, and Pub. L. 110-246, §4(a), title XI, §11004(a)(2), June 18, 2008, 122 Stat. 1664, 2117.)

#### REPEAL OF SECTION

*Pub. L. 110-246, title XI, §11004(b), June 18, 2008, 122 Stat. 2118, provided that, effective Sept. 30, 2012, this section is repealed.*

#### CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 enacted identical sections and contained identical future repeals of this section. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246.

#### PRIOR PROVISIONS

A prior section 416 of act Aug. 15, 1921, was renumbered section 417 and is classified to section 229c of this title.

Another prior section 416 of act Aug. 15, 1921, was classified to section 229a of this title, prior to repeal by Pub. L. 106-78.

#### EFFECTIVE DATE OF REPEAL

Pub. L. 110-234, title XI, 11004(b), May 22, 2008, 122 Stat. 1356, and Pub. L. 110-246, §4(a), title XI, §11004(b), June 18, 2008, 122 Stat. 1664, 2118, provided that the repeal of this section is effective Sept. 30, 2012.

[Pub. L. 110-234 and Pub. L. 110-246 enacted identical provisions. Pub. L. 110-234 was repealed by section 4(a) of Pub. L. 110-246, set out as a note under section 8701 of this title.]

#### EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the