

shall not exercise power or jurisdiction with regard to acts or transactions (other than retail sales) involving such commodities if the Secretary within ten days from the date of receipt of the notice notifies the Commission that there is pending in his Department an investigation of, or proceeding for the prevention of, an alleged violation of this chapter involving the same subject matter.

(3) Over all transactions in commerce in margarine, oleomargarine, or poultry products and over retail sales of meat, meat food products and livestock products in unmanufactured form.

(c) Limitation of Federal Trade Commission jurisdiction

The Federal Trade Commission shall have no power or jurisdiction over any matter which by this chapter is made subject to the jurisdiction of the Secretary, except as provided in subsection (b) of this section.

(d) Jurisdiction of Secretary of Agriculture except for poultry products

The Secretary of Agriculture shall exercise power or jurisdiction over oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form only when he determines, in any investigation of, or any proceeding for the prevention of, an alleged violation of this chapter, that such action is necessary to avoid impairment of his power or jurisdiction over acts or transactions involving livestock, meat, meat food products, livestock products in unmanufactured form, or poultry other than retail sales thereof. In order to avoid unnecessary duplication of effort by the Government and burdens upon the industry, the Secretary shall notify the Federal Trade Commission of such determination, the reasons therefor, and the acts or transactions involved, and shall not exercise power or jurisdiction with respect to acts or transactions involving oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form if the Commission within 10 days from the date of receipt of such notice notifies the Secretary that there is pending in the Commission an investigation of, or proceeding for the prevention of, an alleged violation of any Act administered by the Commission involving the same subject matter.

(e) Jurisdiction of Secretary of Agriculture regarding poultry products

The Secretary of Agriculture shall exercise jurisdiction over poultry products only in a proceeding brought under section 197 of this title or section 228b-1 of this title when such action is necessary to avoid impairment of his jurisdiction.

(f) Information to be included in annual reports

The Secretary of Agriculture and the Federal Trade Commission shall include in their respective annual reports information with respect to the administration of subsections (b), (d), and (e) of this section.

(Aug. 15, 1921, ch. 64, title IV, §406, 42 Stat. 169; Pub. L. 85-909, §1(2), Sept. 2, 1958, 72 Stat. 1749; Pub. L. 100-173, §7, Nov. 23, 1987, 101 Stat. 919;

Pub. L. 102-237, title X, §1008(2), Dec. 13, 1991, 105 Stat. 1898.)

CODIFICATION

Subsection (a) of section 406 is classified to section 226 of this title.

AMENDMENTS

1991—Subsec. (b)(2). Pub. L. 102-237 struck out comma after “unmanufactured form.”

1987—Subsec. (b)(2). Pub. L. 100-173, §7(1)(A)(ii), which directed insertion of “or” before “livestock products in unmanufactured form.” was executed by making insertion before “livestock products in unmanufactured form,” as the probable intent of Congress.

Pub. L. 100-173, §7(1)(A)(i), struck out “or poultry products” after “in unmanufactured form.”

Subsec. (b)(3). Pub. L. 100-173, §7(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “Over all transactions in commerce in margarine or oleomargarine and over retail sales of meat, meat food products, livestock products in unmanufactured form, and poultry products.”

Subsec. (d). Pub. L. 100-173, §7(2), amended subsec. (d) generally, striking out reference to poultry products in two places and substituting “10 days” for “ten days”.

Subsec. (e). Pub. L. 100-173, §7(3), (4), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 100-173, §7(3), (5), redesignated former subsec. (e) as (f) and substituted “subsections (b), (d), and (e)” for “subsections (b) and (d)”.

1958—Pub. L. 85-909 substituted subsecs. (b) to (e) for former provisions providing that Federal Trade Commission shall have no power or jurisdiction over matters within jurisdiction of Secretary of Agriculture except when Secretary requests Commission to make investigations and reports in any case, which were incorporated in subsecs. (b)(1) and (c).

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.

TRANSFER OF FUNCTIONS

Executive and administrative functions of Federal Trade Commission, with certain reservations, transferred to Chairman of such Commission by 1950 Reorg. Plan No. 8, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out in the Appendix to Title 5, Government Organization and Employees.

CONSTRUCTION OF 1987 AMENDMENTS

Pub. L. 100-173, §11, Nov. 23, 1987, 101 Stat. 922, provided that:

“(a) GENERAL RULE.—The amendments made by this Act [see Short Title of 1987 Amendment note set out under section 181 of this title] to the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.], shall not be construed to limit or otherwise affect the power or jurisdiction of the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] to prevent the use of—

“(1) unfair methods of competition in or affecting commerce, and

“(2) unfair and deceptive acts or practices in or affecting commerce, involving poultry products.

“(b) SECRETARY’S AUTHORITY.—Subsection (a) shall not be construed to limit or otherwise affect the authority of the Secretary of Agriculture under section 406(e), as amended, of the Packers and Stockyards Act, 1921 [7 U.S.C. 227(e)].”

§ 228. Authority of Secretary

(a) Rules, regulations, and expenditures; appropriations

The Secretary may make such rules, regulations, and orders as may be necessary to carry

out the provisions of this chapter and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this chapter in the District of Columbia and elsewhere, and as may be appropriated for by Congress, and there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose.

(b) Deductions from proceeds for financing promotional, educational, and research activities

Notwithstanding any other provision of law, the authority of the Secretary under this chapter shall not apply to deductions made from sales proceeds for the purpose of financing promotion and research activities, including educational activities relating to livestock, meat, and other products covered by the chapter.

(c) Budget estimate; testimony of Secretary before Congressional committees

On or before February 15 of each calendar year beginning with calendar year 1977, or such other date as may be specified by the appropriate committee, the Secretary of Agriculture shall testify before the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture and provide justification in detail of the amount requested in the budget to be appropriated for the next fiscal year for the purposes authorized in this chapter.

(d) Development and promulgation of rules governing hearings

The Secretary shall, not later than sixty days after September 13, 1976, prescribe and implement rules to assure that any hearing from which any order may issue under this chapter or any hearing the expenses of which are paid from funds authorized to be appropriated under this chapter shall—

- (1) if such hearing concerns a single unit of local government or the residents thereof, be held within the boundaries of such unit;
- (2) if such hearing concerns a single geographic area within a State or the residents thereof, be held within the boundaries of such area; or
- (3) if such hearing concerns a single State or the residents thereof, be held within such State.

(e) Definitions

For the purposes of subsection (d) of this section—

- (1) the term “unit of local government” means a county, municipality, town, township, village, or other unit of general government below the State level; and
- (2) the term “geographic area within a State” means a special purpose district or

other region recognized for governmental purposes within such State which is not a unit of local government.

(Aug. 15, 1921, ch. 64, title IV, § 407, 42 Stat. 169; Pub. L. 85-909, § 4, Sept. 2, 1958, 72 Stat. 1750; Pub. L. 88-61, July 8, 1963, 77 Stat. 79; Pub. L. 94-410, § 11, Sept. 13, 1976, 90 Stat. 1252; Pub. L. 103-354, title II, § 293(b), Oct. 13, 1994, 108 Stat. 3237; Pub. L. 103-437, § 4(a)(2), Nov. 2, 1994, 108 Stat. 4581.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-354, § 293(b)(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “The Secretary shall maintain within the Department of Agriculture a separate enforcement unit to administer and enforce subchapter II of this chapter.”

Subsec. (c). Pub. L. 103-437, which directed the amendment of subsec. (d) by substituting “Committee on Agriculture, Nutrition, and Forestry” for “Committee on Agriculture and Forestry”, was executed by making the amendment to subsec. (c) to reflect the probable intent of Congress and the intervening redesignation of subsec. (d) as (c) by Pub. L. 103-354. See below.

Pub. L. 103-354, § 293(b)(2), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsecs. (d) to (f). Pub. L. 103-354, § 293(b)(2), (3), redesignated subsecs. (d) to (f) as (c) to (e), respectively, and in subsec. (e) substituted “subsection (d)” for “subsection (e)”.

1976—Subsecs. (d) to (f). Pub. L. 94-410 added subsecs. (d) to (f).

1963—Subsec. (c). Pub. L. 88-61 added subsec. (c).

1958—Pub. L. 85-909 designated existing provisions as subsec. (a) and added subsec. (b).

REGULATIONS

Pub. L. 110-234, title XI, § 11006, May 22, 2008, 122 Stat. 1358, and Pub. L. 110-246, § 4(a), title XI, § 11006, June 18, 2008, 122 Stat. 1664, 2120, provided that: “As soon as practicable, but not later than 2 years after the date of the enactment of this Act [June 18, 2008], the Secretary of Agriculture shall promulgate regulations with respect to the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) to establish criteria that the Secretary will consider in determining—

“(1) whether an undue or unreasonable preference or advantage has occurred in violation of such Act;

“(2) whether a live poultry dealer has provided reasonable notice to poultry growers of any suspension of the delivery of birds under a poultry growing arrangement;

“(3) when a requirement of additional capital investments over the life of a poultry growing arrangement or swine production contract constitutes a violation of such Act; and

“(4) if a live poultry dealer or swine contractor has provided a reasonable period of time for a poultry grower or a swine production contract grower to remedy a breach of contract that could lead to termination of the poultry growing arrangement or swine production contract.”

[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.]

§ 228a. Authority of Secretary to request temporary injunction or restraining order

Whenever the Secretary has reason to believe that any person subject to this chapter (a) with respect to any transactions subject to this chapter, has failed to pay or is unable to pay for livestock, meats, meat food products, or livestock