

gated thereunder, he shall cause a complaint in writing to be served upon the person, stating his charges in that respect, and requiring the person 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 person 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 rules and regulations as the Secretary of Agriculture may prescribe. At any time prior to the close of the hearing the Secretary of Agriculture may amend the complaint; but in case of any amendment adding new provisions the hearing shall, on the request of the person, be adjourned for a period not exceeding fifteen days.

**(b) Report of Secretary of Agriculture**

If, after such hearing, the Secretary of Agriculture finds that the person has violated or is violating any provisions of the chapter or rules and regulations 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 person an order requiring such person 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.

**(c) Amendment of report**

Until the record in such hearing has been filed in a court of appeals as provided in section 1600 of this title, the Secretary of Agriculture at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the person to be heard, may amend or set aside the report or order, in whole or in part.

**(d) Service**

Complaints, orders, and other processes of the Secretary of Agriculture under this section may be served by anyone duly authorized by the Secretary of Agriculture, either (1) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (2) by leaving a copy thereof at the principal office or place of business of such person, partnership, or corporation; or (3) by mailing a copy thereof by registered mail or by certified mail addressed to such person, partnership, or corporation at his or its last known principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said order shall be proof of the same, and the return post-office receipt for said complaint, order, or other process mailed by registered mail or by certified mail as aforesaid shall be proof of the service of the same.

(Aug. 9, 1939, ch. 615, title IV, §409, 53 Stat. 1287; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §24(a), Aug. 28, 1958, 72 Stat. 949; Pub. L. 86-507, §1(7), June 11, 1960, 74 Stat. 200.)

AMENDMENTS

1960—Subsec. (d). Pub. L. 86-507 substituted "mailing a copy thereof by registered mail or by certified mail" for "registering and mailing a copy thereof" and "mailed by registered mail or by certified mail" for "registered and mailed".

1958—Subsec. (c). Pub. L. 85-791 struck out "a transcript of" before "the record".

CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1949, substituted "court of appeals" for "circuit court of appeals" which appeared in subsec. (c) of this section.

EFFECTIVE DATE

See section 1610 of this title.

**§ 1600. Appeal to court of appeals**

An order made under section 1599 of this title shall be final and conclusive unless within thirty days after the service the person appeals to the court of appeals for the circuit in which such person resides or 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 person will pay the costs of the proceedings if the court so directs.

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.

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 person and his officers, directors, agents, and employees from violating any of the provisions of the order pending the final determination of the appeal.

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

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

(Aug. 9, 1939, ch. 615, title IV, §410, 53 Stat. 1287; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24,

1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §24(b), Aug. 28, 1958, 72 Stat. 949; Pub. L. 98-620, title IV, §402(7)(A), Nov. 8, 1984, 98 Stat. 3357.)

#### AMENDMENTS

1984—Pub. L. 98-620 in fourth par., 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—Pub. L. 85-791 substituted, in first sentence of second par., “thereupon file in the court the record in such proceedings as provided in section 2112 of title 28” for “forthwith prepare, certify, and file in the court a full and accurate transcript of the record in such proceedings, including the complaint, the evidence, and the report and order”, substituted, in second sentence of second par., “record” for “transcript”, substituted in third par., “petition” for “transcript”, and struck out, in fourth par., “, duly certified” after “admitted”.

#### CHANGE OF NAME

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

#### 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.

#### EFFECTIVE DATE

See section 1610 of this title.

### § 1601. Enforcement of order

If any person against whom an order is issued under section 1599 of this title fails to obey the order, the Secretary of Agriculture, or the United States, by its Attorney General, may apply to the court of appeals of the United States, within the circuit where the person against whom the order was issued resides or has his principal place of business, for the enforcement of the order, and shall file the record in such proceedings, as provided in section 2112 of title 28. Upon such filing of the application the court shall cause notice thereof to be served upon the person against whom the order was issued. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as provided in section 1600 of this title for applications to set aside or modify orders.

(Aug. 9, 1939, ch. 615, title IV, §411, 53 Stat. 1288; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85-791, §24(c), Aug. 28, 1958, 72 Stat. 949; Pub. L. 98-620, title IV, §402(7)(B), Nov. 8, 1984, 98 Stat. 3357.)

#### AMENDMENTS

1984—Pub. L. 98-620 struck out second par. which required proceedings in such cases to be made a preferred cause and expedited in every way.

1958—Pub. L. 85-791 substituted “file the record in such proceedings as provided in section 2112 of title 28” for “certify and file with its application a full and accurate transcript of the record in such proceedings, including the complaint, the evidence, the report, and the order” in first sentence, and struck out “and transcript” after “application” in second sentence.

#### CHANGE OF NAME

Act June 25, 1948, as amended by act May 24, 1948, as amended by act May 24, 1949, substituted “court of ap-

peals” for “circuit court of appeals” wherever appearing in this section.

#### 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.

#### EFFECTIVE DATE

See section 1610 of this title.

### § 1602. Separability

The institution of any one of the proceedings provided for in sections 1595, 1596, 1599 to 1601 of this title shall not bar institution of any of the others, except that action shall not be instituted under both subsections 1596(a) and (b) of this title for the same cause of action. Nothing in this chapter shall be construed as requiring the Secretary of Agriculture to recommend prosecution, or institution of civil penalty proceedings, libel proceedings, cease-and-desist proceedings, or proceedings for the enforcement of a cease-and-desist order, for minor violations of this chapter or the rules and regulations made and promulgated thereunder whenever he believes that the public interest will be adequately served by suitable written notice or warning.

(Aug. 9, 1939, ch. 615, title IV, §412, 53 Stat. 1288; July 9, 1956, ch. 520, §3, 70 Stat. 508.)

#### AMENDMENTS

1956—Act July 9, 1956, inserted references to civil penalties as well as criminal penalties under section 1596 of this title.

#### EFFECTIVE DATE OF 1956 AMENDMENT

Amendments made by act July 9, 1956, applicable only with respect to violations occurring after July 9, 1956, see section 4 of act July 9, 1956, set out as a note under section 1596 of this title.

#### EFFECTIVE DATE

See section 1610 of this title.

### § 1603. Procedural powers; witness fees and mileage

(a) In carrying on the work herein authorized, the Secretary of Agriculture, or any officer or employee designated by him for such purpose, shall have power to hold hearings, administer oaths, sign and issue subpoenas, examine witnesses, take depositions, and require the production of books, records, accounts, memoranda, and papers, and have access to office and warehouse premises. Upon refusal by any person to appear, testify, or produce pertinent books, records, accounts, memoranda, and papers in response to a subpoena, or to permit access to premises, the proper United States district court shall have power to compel obedience thereto.

(b) Witnesses summoned before the Secretary or any officer or employee designated by him shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like service in the courts of the United States.