with any inquiry instituted upon his own motion as though he had been appealed to by petition, including the power to make and enforce any order or orders in the case or relating to the matter or thing concerning which the inquiry is had, except orders for the payment of money.

(d) Damage to complainant not required

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(e) Award and payment of damages

If after hearing on a complaint the Secretary determines that the complainant is entitled to an award of damages, the Secretary shall make an order directing the defendant to pay to the complainant the sum to which he is entitled on or before a day named.

(f) Enforcement of orders

If the defendant does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may within one year of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the defendant or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Secretary in the premises. Such suit in the district court shall proceed in all respects like other civil suits for damages except that the findings and orders of the Secretary shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit.

(Aug. 15, 1921, ch. 64, title III, § 309, 42 Stat. 165; Pub. L. 94–410, § 3(c), Sept. 13, 1976, 90 Stat. 1249.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94–410 substituted ''livestock'' for ''live-stock'' after ''request of the''.

§ 211. Order of Secretary as to charges or practices; prescribing rates and practices generally

Whenever after full hearing upon a complaint made as provided in section 210 of this title, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be violative of section 205, 206, or 208 of this title, the Secretary—

(a) May in accordance with the standard set forth in section 206 of this title determine and prescribe what will be the rate or charge, or rates or charges, to be thereafter in such case observed as the maximum or minimum or both to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed: *Provided*, That the Secretary shall prescribe the rate or charge, or rates or charges, on a percentage or per head basis at the election of the stockyard owner or market agency, or on any other basis elected by the stockyard owner or market agency unless the Secretary finds such other basis to be violative of section 206 of this title; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge or rates or charges so prescribed; and (3) shall conform to and observe the regulation or practice so prescribed.

(Aug. 15, 1921, ch. 64, title III, § 310, 42 Stat. 166; Aug. 10, 1939, ch. 663, 53 Stat. 1351; Pub. L. 95–409, § 1(b), Oct. 2, 1978, 92 Stat. 886.)

AMENDMENTS

1978—Pub. L. 95–409, § 1(b)(1), in provision preceding subsec. (a), substituted ''violative of section 205, 206 or 208 of this title'' for ''unjust, unreasonable, or discriminatory''.

Subsec. (a). Pub. L. 95–409, § 1(b)(2), substituted ''May in accordance with the standard set forth in section 206 of this title determine and prescribe what will be the rate'' for ''May determine and prescribe what will be the just and reasonable rate'', and ''as the maximum or minimum or both'' for ''as both the maximum and minimum'', and inserted proviso relating to prescription by the Secretary of rates or charges on a percentage or per head basis at the election of the owner or agency or any other basis unless violative of section 206 of this title.

Subsec. (b). Pub. L. 95–409, § 1(b)(3), substituted ''other than the rate or charge or rates or charges'' for ''more or less than the rate or charge''.

1939—Subsec. (a). Act Aug. 10, 1939, substituted ''as both'' for ''or the''.

Subsec. (b)(2). Act Aug. 10, 1939, substituted ''more or less than the rate or charge so prescribed'' for ''other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be''.

§ 212. Prescribing rates and practices to prevent discrimination between intrastate and interstate commerce

Whenever in any investigation under the provisions of this subchapter, or in any investigation instituted by petition of the stockyard owner, market agency, or dealer concerned, which petition is authorized to be filed, the Secretary after full hearing finds that any rate, charge, regulation, or practice of any stockyard owner, market agency, or dealer, for or in connection with the buying or selling on a commission basis or otherwise, receiving, marketing, feeding, holding, delivery, shipment, weighing, or handling, not in commerce, of livestock, causes any undue or unreasonable advantage, prejudice, or preference as between persons or localities in intrastate commerce in livestock on the one hand and interstate or foreign commerce in livestock on the other hand, or any undue, unjust, or unreasonable discrimination against interstate or foreign commerce in livestock, which is hereby forbidden and declared to

be unlawful, the Secretary shall prescribe the rate, charge, regulation, or practice thereafter to be observed, in such manner as, in his judgment, will remove such advantage, preference, or discrimination. Such rates, charges, regulations, or practices shall be observed while in effect by the stockyard owners, market agencies, or dealers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

(Aug. 15, 1921, ch. 64, title III, § 311, 42 Stat. 167; Pub. L. 85–909, § 2(4), Sept. 2, 1958, 72 Stat. 1750; Pub. L. 94–410, § 3(c), Sept. 13, 1976, 90 Stat. 1249.)

AMENDMENTS

1976—Pub. L. 94–410 substituted ''livestock'' for ''live stock'' wherever appearing.

1958—Pub. L. 85–909 substituted ''stockyard owner, market agency, or dealer'' for ''stockyard owner or market agency'' wherever occurring, and ''stockyard owners, market agencies, or dealers'' for ''stockyard owners or market agencies''.

§ 213. Prevention of unfair, discriminatory, or deceptive practices

(a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with the receiving, marketing, buying, or selling on a commission 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) of this section, 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 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.

(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.)

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.)

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.)