

is subject to important limitations. For instance, it is insufficient to defend solely on the basis that competition in a particular market is very keen, requiring that special allowances be given to some customers if a packer is "to be competitive."

8. *Cost justification.* It is no defense to a charge of unlawful discrimination in the payment of an allowance or the furnishing of a service for a packer to show that such payment or service could be justified through savings in the cost of manufacture, sale, or delivery.

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[58 FR 52886, Oct. 13, 1993; 58 FR 58902, Nov. 4, 1993, as amended at 68 FR 75388, Dec. 31, 2003]

§ 203.15 Trust benefits under sections 206 and 207 of the Act.

(a) Within the times specified under sections 206(b) and 207(d) of the Act, any livestock seller, live poultry seller or grower, to preserve his interest in the statutory trust, must give written notice to the appropriate packer or live poultry dealer and file such notice with the Secretary. One of the ways to satisfy the notification requirement under these provisions is to make certain that notice is given to the packer or live poultry dealer within the prescribed time by letter, mailgram, or telegram stating:

- (1) Notification to preserve trust benefits;
- (2) Identification of packer or live poultry dealer;
- (3) Identification of seller or poultry grower;
- (4) Date of the transaction;
- (5) Date of seller's or poultry grower's receipt of notice that payment instrument has been dishonored (if applicable); and
- (6) Amount of money due; and to make certain that a copy of such letter, mailgram, or telegram is filed with a GIPSA Regional Office or with GIPSA, USDA, Washington, DC 20250, within the prescribed time.

(b) While the above information is desirable, any written notice which informs the packer or live poultry dealer and the Secretary that the packer or live poultry dealer has failed to pay is sufficient to meet the above-mentioned

statutory requirement if it is given within the prescribed time.

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[54 FR 16357, Apr. 24, 1989, as amended at 68 FR 75388, Dec. 31, 2003]

§ 203.16 Mailing of checks in payment for livestock purchased for slaughter, for cash and not on credit.

(a) The Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) recognizes that one who sells livestock to a packer, market agency, or dealer, who is purchasing for slaughter, may not intend to be present at the point of transfer of possession of the livestock, to receive payment, at the time a check in payment for such livestock may be delivered by the purchaser, and may not wish to authorize a representative to receive such a check; or for other reasons such a seller may prefer that such a purchaser make payment by mailing a check within the time limit as prescribed in section 409(a) of the Act. In cases when the seller does not intend to be present, he may use the following form of notification to the purchaser:

I do not intend to be present at the point of transfer of possession of livestock sold by me to (name of packer, market agency, or dealer) for the purpose of receiving a check in payment for such livestock.

I hereby direct (name of packer, market agency, or dealer) to make payment for livestock purchased from me, by mailing a check for the full amount of the purchase price before the close of the next business day following the purchase of livestock and transfer of possession thereof or, in the case of a purchase on a "carcass" or "grade and yield" basis, not later than the close of the first business day following determination of the purchase price.

This does not constitute an extension of credit to (name of packer, market agency or dealer). This is subject to cancellation by me at any time, and if not cancelled by (date), it shall terminate on that date.

If the seller, for reasons other than not being present to receive payment, prefers to have the packer, market agency, or dealer make payment by mailing a check within the time limit as provided in section 409(a), he may use the above form but should not include the

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statement in the first sentence that he does not intend to be present.

(b) The Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) believes that such an agreement would not constitute an extension of credit within the meaning of section 206 of the Act because it would not give the purchaser any more time to issue a check than is provided in section 409(a).

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(Sec. 401, 42 Stat. 168 (7 U.S.C. 221); sec. 407, 42 Stat. 169 (7 U.S.C. 228); sec. 409, as added by sec. 7, 90 Stat. 1250 (7 U.S.C. 228b); 7 CFR 2.17, 2.54; 42 FR 35625; Pub. L. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.); 7 U.S.C. 222 and 228 and 15 U.S.C. 46)

[42 FR 49929, Sept. 28, 1977, as amended at 49 FR 39516, Oct. 9, 1984; 68 FR 75388, Dec. 31, 2003]

§ 203.17 Statement of general policy with respect to rates and charges at posted stockyards.

(a) Requests have been received from stockyard operators, market agencies, and livestock producers urging a reduction of rate regulation at posted stockyards. Their requests are based on the belief that competition among markets will set a level of rates and charges fair to both the market operator and to the livestock producer. Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) will accept for filing tariffs containing any level of charges after 10 days' notice to the public and to the Secretary as required by the Act.

(b) Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) will not investigate the level of rates and charges established by stockyard owners and market agencies for reasonableness except upon receipt of a valid complaint or under compelling circumstances warranting such an investigation. Stockyard owners and market agencies will have substantial flexibility in setting their own rates and charges.

(c) Complaints filed about the reasonableness of rates and charges will be investigated to determine the validity of such complaints and appropriate action taken if warranted.

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(d) Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) will continue to insure that the schedules of rates and charges filed with the Department are applied uniformly and in a nondiscriminatory manner.

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(7 U.S.C. 203, 204, 207, 217a, 222 and 228)

[49 FR 33004, Aug. 20, 1984, as amended at 68 FR 75388, Dec. 31, 2003]

§ 203.18 Statement with respect to packers engaging in the business of custom feeding livestock.

(a) In its administration of the Packers and Stockyards Act, the Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) has sought to promote and maintain open and fair competition in the livestock and packing industries, and to prevent unfair or anticompetitive practices when they are found to exist. It is the opinion of the Administration that the ownership or operation of custom feedlots by packers presents problems which may, under some circumstances, result in violations of the Packers and Stockyards Act.

(b) Packers contemplating entering into such arrangements with custom feedlots are encouraged to consult with the Administration prior to the commencement of such activities. Custom feedlots are not only places of production, but are also important marketing centers, and in connection with the operation of a custom feedlot, it is customary for the feedlot operator to assume responsibility for marketing fed livestock for the accounts of feedlot customers. When a custom feedlot is owned or operated by a packer, and when such packer purchases fed livestock from the feedlot, this method of operation potentially gives rise to a conflict of interest. In such situations, the packer's interest in the fed livestock as a buyer is in conflict with its obligations to feedlot customers to market their livestock to the customer's best advantage. Under these circumstances, the packer should take appropriate measures to eliminate any