may be in violation of the provisions of the Packers and Stockyards Act, if they have agreed to perform the packer’s obligations under the Act with respect to a program which they have represented to be usable and suitable for all the packer’s competing customers if it should later develop that the program was not offered to all or, if offered, was not usable or suitable, or was otherwise administered in a discriminatory manner.

6. Customer’s liability. A customer, subject to the Packers and Stockyards Act, who knows, or should know, that it is receiving payments or services which are not available on proportionally equal terms to its competitors engaged in the resale of the same packer’s products may be in violation of the provisions of the Act. Also, customers (subject to the Packers and Stockyards Act) that make unauthorized deductions from purchase invoices for alleged advertising or other promotional allowances may be proceeded against under the provisions of the Act.

Example: A customer subject to the Act should not induce or receive an allowance in excess of that offered in the packer’s advertising plan by billing the packer at “vendor rates” or for any other amount in excess of that authorized in the packer’s promotion program.

7. Meeting competition. A packer charged with discrimination under the provisions of the Packers and Stockyards Act may defend its actions by showing that the payments were made or the services were furnished in good faith to meet equally high payments made by a competing packer to the particular customer, or to meet equivalent services furnished by a competing packer to the particular customer. This defense, however, 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.


§ 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.


§ 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 live-
stock 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, pre-
fers to have the packer, market agen-
cy, or dealer make payment by mailing
a check within the time limit as pro-
vided in section 409(a), he may use the
above form but should not include the
statement in the first sentence that he
do not intend to be present.

(b) The Grain Inspection, Packers
and Stockyards Administration (Pack-
ers and Stockyards Programs) believes
that such an agreement would not con-
istute 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).

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

(a) In its administration of the Pack-
ers and Stockyards Act, the Grain In-
spection, Packers and Stockyards Ad-
mistration (Packers and Stockyards
Programs) has sought to promote and
maintain open and fair competition in
the livestock and packing industries,