

upon the basis of the record in the proceeding, whether the packer has violated the Act and should be ordered to cease and desist from continuing such violation.

(Secs. 407(a), 4, 42 Stat. 169, 72 Stat. 1750; 7 U.S.C. 228(a). Interprets or applies sec. 202, 42 Stat. 161 et seq., as amended; 7 U.S.C. 192)

[30 FR 14966, Dec. 3, 1965, as amended at 32 FR 7701, May 26, 1967]

§§ 203.8–203.9 [Reserved]

§ 203.10 Statement with respect to insolvency; definition of current assets and current liabilities.

(a) Under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 et seq.), the principal test of insolvency is to determine whether a person's current liabilities exceed his current assets. This current ratio test of insolvency under the Act has been reviewed and affirmed by a United States Court of Appeals. *Bowman v. United States Department of Agriculture*, 363 F. 2d 81 (5th Cir. 1966).

(b) For the purposes of the administration of the Packers and Stockyards Act, 1921, the following terms shall be construed, respectively, to mean:

(1) *Current assets* means cash and other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business, which is considered to be one year.

(2) *Current liabilities* means obligations whose liquidation is reasonably expected to require the use of existing resources principally classifiable as current assets or the creation of other current liabilities during the one year operating cycle of the business.

(c) The term current assets generally includes: (1) Cash in bank or on hand; (2) sums due a market agency from a custodial account for shippers' proceeds; (3) accounts receivable, if collectable; (4) notes receivable and portions of long-term notes receivable within one year from date of balance sheet, if collectable; (5) inventories of livestock acquired for purposes of resale or for purposes of market support; (6) feed inventories and other inventories which are intended to be sold or consumed in the normal operating

cycle of the business; (7) accounts due from employees, if collectable; (8) accounts due from officers of a corporation, if collectable; (9) accounts due from affiliates and subsidiaries of corporations if the financial position of such subsidiaries and affiliates justifies such classification; (10) marketable securities representing cash available for current operations and not otherwise pledged as security; (11) accrued interest receivable; and (12) prepaid expenses.

(d) The term current assets generally excludes: (1) Cash and claims to cash which are restricted as to withdrawal, such as custodial funds for shippers' proceeds and current proceeds receivable from the sale of livestock sold on a commission basis; (2) investments in securities (whether marketable or not) or advances which have been made for the purposes of control, affiliation, or other continuing business advantage; (3) receivables which are not expected to be collected within 12 months; (4) cash surrender value of life insurance policies; (5) land and other natural resources; and (6) depreciable assets.

(e) The term current liabilities generally includes: (1) Bank overdrafts (per books); (2) amounts due a custodial account for shippers' proceeds; (3) accounts payable within one year from date of balance sheet; (4) notes payable or portions thereof due and payable within one year from date of balance sheet; (5) accruals such as taxes, wages, social security, unemployment compensation, etc., due and payable as of the date of the balance sheet; and (6) all other liabilities whose regular and ordinary liquidation is expected to occur within one year.

(Sec. 407(a), 42 Stat. 169, 72 Stat. 1750; 7 U.S.C. 228(a). Interprets or applies secs. 202, 307, 312, 502, 505; 42 Stat. 161 et seq., as amended; 7 U.S.C. 192, 208, 213, 218a, 218d)

[32 FR 6901, May 5, 1967]

§ 203.11 [Reserved]

§ 203.12 Statement with respect to providing services and facilities at stockyards on a reasonable and nondiscriminatory basis.

(a) Section 304 of the Packers and Stockyards Act (7 U.S.C. 205) provides that: "All stockyard services furnished

pursuant to reasonable request made to a stockyard owner or market agency at such stockyard shall be reasonable and nondiscriminatory and stockyard services which are furnished shall not be refused on any basis that is unreasonable or unjustly discriminatory * * *."

(b) Section 305 of the Act (7 U.S.C. 206) states that: "All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory * * *."

(c) Section 307 (7 U.S.C. 208) provides that: "It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services * * *."

(d) Section 312(a) (7 U.S.C. 213(a)) provides that: "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, in commerce, of livestock."

(e) Section 301(b) (7 U.S.C. 201(b)) defines "stockyard services" as any "services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling, in commerce, of livestock."

(f) It is the view of the Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) that it is a violation of sections 304, 307, and 312(a) of the Act for a stockyard owner or market agency to discriminate, in the furnishing of stockyard services or facilities or in establishing rules or regulations at the stockyard, because of race, religion, color, or national origin of those persons using the stockyard services or facilities. Such services and facilities include, but are not limited to, the res-

taurant, restrooms, drinking fountains, lounge accommodations, those furnished for the selling, weighing, or other handling of the livestock, and facilities for observing such services.

(g) If the Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) has reason to believe that any stockyard owner or market agency has so discriminated in the furnishing of stockyard services or facilities, consideration will be given to the issuance of a complaint charging the stockyard or market agency with violations of the Act.

(Sec. 407(a), 42 Stat. 159, 72 Stat. 1750; 7 U.S.C. 228(a). Interprets or applies secs. 304, 307, 312, 42 Stat. 161 et seq., as amended, 7 U.S.C. 205, 208, 213)

[33 FR 17621, Nov. 26, 1968]

§ 203.13 [Reserved]

§ 203.14 Statement with respect to advertising allowances and other merchandising payments and services.

The Guidelines

1. *Who is a customer?* (a) A *customer* is a person who buys for resale directly from the packer, or through the packer's agent or broker; and in addition, a customer is any buyer of the packer's product for resale who purchases from or through a wholesaler or other intermediate reseller.

(NOTE: In determining whether a packer has fulfilled its obligations toward its customers, the Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs) will recognize that there may be some exceptions to this general definition of "customer." For example, the purchaser of distress merchandise would not be considered a "customer" simply on the basis of such purchase. Similarly, a retailer who purchases solely from other retailers or one who makes only sporadic purchases, or one who does not regularly sell the packer's product or who is a type of retail outlet not usually selling such products will not be considered a "customer" of the packer unless the packer has been put on notice that such retailer is selling its product.)

(b) *Competing customers* are all businesses that compete in the resale of the packer's products of like grade and quality at the same functional level of distribution, regardless of whether they purchase direct from the packer or through some intermediary.