Overview of Packers and Stockyards Act
By Ernest H. VanHooser

I. **Background** – Livestock segment is the largest segment of nation's agricultural economy. Livestock and poultry account for over one-half of U.S. agricultural cash receipts. In 2015, value of U.S. cattle and calf production amounted to approximately $60 billion. (U.S.D.A. Economic Research Service report July 13, 2016).

Meatpacking began as a local, decentralized industry before the railroads helped transform it into a highly centralized industry centered in a few areas. During the late 1800s, terminal stockyards grew up in places like Chicago and East St. Louis, Illinois; Kansas City, Missouri; Omaha, Nebraska; South St. Paul, Minnesota; Sioux Falls, South Dakota, and Oklahoma City, Oklahoma. Packers and railroads exercised significant control over the terminal stockyards and, by extension, the commission firms and dealers who conducted business at the terminal stockyards.

Following World War II, packers increasingly moved from plants centered on terminal stockyards to more decentralized facilities closer to livestock. Rather than being loaded onto railcars and shipped to terminal stockyards, livestock were more and more loaded onto trucks and shipped to local livestock markets and/or sent to feedyards for finishing. The nation went from having a small number of terminal stockyards in 1920 to having more than 800 local stockyards by 2015.

II. **Overview of Packers and Stockyards Act** –

A. At the outbreak of World War I, President Woodrow Wilson order the Federal Trade Commission to investigate the meatpacking industry. The FTC reported that packers were manipulating markets, restricting the flow of meat, controlling the price for dressed meat, defrauding producers and consumers and crushing competition. The FTC recommended governmental ownership of the stockyards. In 1921, in response to the FTC report and pressure from Midwest farmer's groups, Congress enacted the Packers and Stockyards Act (the Act). (Public Law 67-51) (7 U.S.C. 181 et seq.). When it was enacted the Act's purpose was to "regulate interstate and foreign commerce in livestock, livestock produce, dairy products, poultry, poultry products and eggs and for other purposes." Originally the Act did not regulate stockyards whose pen space was less than 20,000 square feet.

B. Today, the Act covers packers, stockyard owners, market agencies, livestock dealers, swine contractors, and live poultry dealers. Feedlots and farmers generally are not subject to the Act.

C. The Act prohibits packers, swine contractors and live poultry dealers from a number of activities or practices including engaging in or using any unfair, unjustly discriminatory or deceptive practice or device; from manipulating or controlling prices; and from engaging in any course of business for the purpose of creating a monopoly or restraining commerce. (7 U.S.C. 192)

D. The Act prohibits stockyards owners, market agencies and dealers from a number of activities or practices including engaging in or using any unfair, unjustly discriminatory or deceptive practice or device. (7 U.S.C. 213)

E. The Act is constitutional. See, e.g., *Stafford v. Wallace*, 258 U.S. 495 (1922). Almost every transaction involving livestock or poultry is deemed to be in interstate commerce and therefore subject to the Act. See, e.g., *Safeway Stores, Inc. v. Freeman*, 369 F.2d 952 (D.C. Cir. 1966); *Bruhn's Freezer Meats of Chicago, Inc. v. United States Dep't of Agric.*, 438 F.2d 1332 (8th Cir. 1971).

III. **Packers**

A. Packer "means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or (c) of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce." (7 U.S.C. 191).

B. Bonding requirements

Every packer that purchases more than $500,000 worth of livestock per year, either directly or indirectly, must execute, file and maintain a bond or bond equivalent in an amount determined by the U.S.D.A. to secure the performance of the obligations it incurs in the purchase of livestock. 7 U.S.C. 204; 9 C.F.R. 29(d). The formula for determining the amount of the bond can be found at 9 C.F.R. 201.30(d).

A claim against a packer's bond or bond equivalent must be filed within 60 days from the date of the transaction upon which the claim is based. 9 C.F.R. 27, 201.33.

Suit on a claim may not be filed earlier than 120 days or more than 547 days from the date of the transaction on which the claim is based. 9 C.F.R. 201.27, 201.33. Filing a claim is a precondition to filing suit on a claim. See, *Dockendorf v. Orner*, 206 Neb. 456, 293 N.W. 2d 395 (1980).

C. Payment requirements

As a general rule, every packer, market agency and dealer who purchases livestock must deliver to the seller or the seller's representative the full purchase price before the close of the next business day following the purchase and transfer of possession of the livestock. 7 U.S.C. 228b. If the seller or his representative is not present at the point of transfer of possession to receive payment, the packer, market agency or dealer may wire transfer the payment by the close of the next business day or mail a check in payment as long as the check is deposited in the mail, properly addressed, before the close of the next business day after the price has been determined. 7 U.S.C. 228b.

Packers, market agencies and dealers cannot pay for livestock with a draft which is not a check unless the seller expressly agrees in writing before the transaction that payment may be made by such a draft. 9 C.F.R. 201.43(b).

Any packer whose average annual purchases exceed $500,000 is prohibited from purchasing livestock on credit unless before purchasing the livestock the packer obtains from the seller a written acknowledgment that the seller is waiving his rights under the trust provisions of section 206 of the Act. 9 C.F.R. 201.200.

D. Packer Statutory Trust

Section 196(b) of 7 U.S.C. requires packers whose annual average purchases of livestock exceed $500,000 to hold all livestock purchased from cash sellers, all inventories of, or receivables or proceeds from, meat, meat food products or livestock products derived from such livestock, in a trust fund for the benefit of all unpaid cash sellers of livestock until those unpaid cash sellers receive full payment.

As beneficiaries of this statutory trust, unpaid cash sellers have priority over lenders with security interests in the packer's inventory and other assets. *Fillippo v. S. Bonaccurso & Sons, Inc.*, 466 F. Supp. 1008 (E.D. Pa. 1978); *In re Gotham Provision Co, Inc.*, 669 F.2d 1000 (5th Cir. 1982, cert. denied, 459 U.S. 858 (1980); *In re Frosty Morn Meats, Inc.*, 7 B.R. 988 (M. D. Tenn. 1980).

The assets in the packer statutory trust are not assets of the bankrupt's bankruptcy estate. *In re Frosty Morn Meats, Inc., supra; In re Matheson,* 10 B.R. 652 (S.D. Ala. 1981).

E. Violations

Any time the Secretary of Agriculture has reason to believe that a packer is violating any of the provisions of the Act or the regulations issued under the Act, the Secretary may file an administrative complaint which sets forth the charges. 7 U.S.C. 193. The rules of practice for such formal adjudicatory administrative proceedings are set forth in 7 C.F.R. 1.130 et seq.

IV. Stockyards, Market Agencies and Dealers

A. The term "stockyard" as used in the Act means "Any place, establishment or facility commonly known as stockyards, conducted, operated or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce". 7 U.S.C. 202 (a).

B. A "market agency" is "any person who is engaged in the business of buying or selling livestock in commerce on a commission or fee basis, or furnishing stockyard services". 7 U.S.C. 201(c). There are two types of market agencies: (1) those who sell on commission or fee basis and (2) those who buy on a commission or fee basis. Market agencies who buy on a commission or fee basis are known commonly as "order buyers".

C. A "dealer" is "any person not a market agency who is engaged in the business of buying or selling in commerce livestock, either for his own account or as the employee or agent of the seller or buyer". 7 U.S.C. 201(d).

D. Posting of stockyards

Section 202(b) of 7 U.S.C. charges the Secretary of Agriculture with the duty of ascertaining the stockyards that are subject to the Act. Once that determination has been made, the Secretary must give notice of that determination to the stockyard owners and the public by posting notice at the stockyard and publishing in the Federal Register. Once a stockyard is posted it remains subject to the Act until it has been officially deposted. 7 U.S.C. 202(b).

E. Registration of Market Agencies and Dealers

Every person who wants to operate as a market agency or livestock dealer must apply for registration by filing an application with Grain Inspection, Packers & Stockyards Administration (GIPSA). 9 C.F.R. 201.10.

Each application for registration must be filed with the regional supervisor for the area in which the applicant proposes to operate. 9 C.F.R. 201.10(b).

Concurrently with filing the application, the applicant must also file a bond or bond equivalent as required by 201 C.F.R. 201.27-201.34.

F. Bonding Requirements

Every market agency and dealer, except packer buyers registered as dealers to purchase livestock for slaughter only, must execute, file, and maintain a bond or bond equivalent. 7 U.S.C. 204; 9 C.F.R. 201.290-201.34. The formula for determining the required bond amount is set out in 201.30(a) and (b).

A claim against a market agency or dealer's bond must be filed within 60 days from the date of the transaction on which the claim is based. 9 C.F.R. 201.33.

Suit on a claim must be filed not less than 120 days nor more than 547 days from the date of the transaction upon which the claim is based. *Dockendorf v. Orner, supra*.

G. Rates and Charges

Every stockyard and market agency operating at a posted stockyard must file a schedule of its rates and charges with GIPSA. The schedule must be posted for public inspection at the stockyard and filed with the applicable GIPSA regional office at least 10 days before the effective date. 9 C.F.R. 201.17.

H. Custodial Account for Shippers' Proceeds

Every market agency selling on a commission basis must establish and maintain, separate from its regular operating account, a bank account designated as a custodial account for shippers' proceeds to disclose that the market agency is acting as a fiduciary with respect to the account and that the funds in the account are trust funds. 9 C.F.R. 201.42(b).

Before the close of the next business day after livestock are sold, a market agency selling on commission must deposit into its custodial account (1) the proceeds from the sale of livestock that have been collected and (2) an amount equal to the proceeds receivable from the sale of livestock that are due from (a) the market agency, (b) any owner, officer or employee of the market agency, and (c) any buyer to whom the market agency has extended credit. 9 C.F.R. 201.42(c). Thereafter, the market agency must deposit into its custodial account all funds that it receives until the account has been reimbursed in full and, before the seventh day following the sale, must deposit an amount equal to all proceeds receivable, regardless of whether the market agency has received those proceeds. 9 C.F.R. 201.42(c).

I. Violations

If a complaint is made to the Secretary or if the Secretary has reason to believe that any stockyard owner, market agency or dealer is violating 7 U.S.C. 213, the Secretary may file a complaint. If, after full notice and hearing, the Secretary finds such violation, the Secretary may suspend the person's registration and order the person to cease and desist from continuing the violation. The Secretary may also assess a civil penalty of up to $11,000 per violation. 7 U.S.C. 213(b).

Rules of practice governing formal adjudicatory administrative proceeding are set forth in 7 C.F.R. 1.130 et seq.

Any stockyard owner, market agency or dealer who knowingly fails to obey an order concerning rates, charges, regulations or practices involving stockyard services, or an order forbidding unfair, discriminatory or deceptive practices, or an order that has been issued to prevent undue advantages, preferences or discrimination between person in intrastate commerce and interstate or foreign commerce is required to forfeit to the United States $750 for each offense. Each distinct violation is a separate offence and, in the case of a continuing violation, each day is considered a separate offense. Such forfeiture is recoverable by civil suit. 7 U.S.C. 215.

Any market agency or dealer that fails to register subjects itself to a civil penalty of not more than $750 for each such offense and not more than $37.50 per day for each day it continues. 7 U.S.C. 203.

Any stockyard owner or market agency that fails to comply with the requirements of 7 U.S.C. 207 regarding rate schedules subjects itself to a civil penalty of up to $750 for each offense and up to $37.50 for each day it continues, and any stockyard owner or market agency that willfully fails to comply with 7 U.S.C. 207 subject itself to a fine of up to $1,000 or imprisonment for up to one year, or both.

Any stockyard owner, market agency or dealer who fails to keep proper records, after being told by the Secretary in what manner and form to keep them, is, upon conviction, subject to a fine of up to $5,000, or imprisonment for up to three years, or both. 7 U.S.C. 221.

In addition to the administrative, civil and criminal remedies set out above, the Secretary is also authorized to seek a temporary restraining order or temporary injunction from a U.S. district court to enjoin persons who have failed to pay or are unable to pay for livestock, meat, meat food products, or poultry, or have operated while insolvent, or do not have the required bond, from operating until an administrative complaint has been issued and the matter finally disposed of. 7 U.S.C. 228a.

V. Poultry

A. Public Law 100-73 amended numerous sections of the Packers and Stockyards Act as they apply to live poultry dealers. See, e.g., 7 U.S.C. 182 (where "live poultry dealer", "poultry growing arrangement", "poultry product", and "poultry are defined); 7 U.S.C. 192 (enumerating unlawful practices); 7 U.S.C. 197 (establishing a statutory trust for unpaid cash sellers of poultry or poultry growers); 7 U.S.C. 209 (reparation provisions); 7 U.S.C. 221 keeping of accounts and records; 7 U.S.C. 223 (responsibility of principal for act or omission of an agent); 7 U.S.C. 227 (powers of Federal Trade Commission and Secretary of Agriculture); 7 U.S.C. 228a (requests for temporary injunction or restraining orders); 7 U.S.C. 228b-1 (final date for live poultry dealer to make payment); 7 U.S.C. 228b-2 (violations by live poultry dealers); 7 U.S.C. 228b-3 (judicial review of live poultry dealer) and 7 U.S.C. 228b-4 (penalties for violation of final order by live poultry dealer).

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IMPORTANT TIME LIMITS FOR LIVESTOCK MARKETING BUSINESSES

Prompt Payment

Under Section 409 of the Packers & Stockyards Act, the basic requirement for "prompt payment" is that every packer, market agency and dealer must pay the full purchase price for livestock before the close of the next business day following the purchase and transfer of possession of the livestock. 7 U.S.C. 228b.

Custodial Accounts

Before the close of the next business day after livestock are sold through a market, the market agency must deposit in its custodial account:

(a) All proceeds from the sale that have been collected (i.e., payment received from buyers); and

(b) An amount equal to the proceeds receivable that are due from the market agency; from any owner, officer or employee of the market agency; and from any buyer to whom the market agency has extended credit.

Before the close of the seventh calendar day (not seventh business day) following the sale, the market agency must deposit an amount equal to all remaining proceeds receivable, even if the market has not received the money from the buyers. 9 C.F.R. 201.42 (c).

Bond Claims

Claims against the bond or bond equivalent maintained by a packer, market agency or dealer must be filed within 60 days from the date of the transaction on which the claim is based, and suit on a claim must be filed between 120 and 547 days from the date of the transaction on which the claim is based. 9 C.F.R. 201.33(d).

Packer Statutory Trust Fund Claims

In order to have a valid claim to the statutory trust fund, an unpaid cash seller (including market agencies and dealers) must give written notice to GIPSA and the packer;

(a) Within 30 days after the next business day following the purchase and transfer of possession of livestock where no payment instrument is received; or

(b) In the case of a purchase on a "carcass" or "grade and yield" basis, within 30 days after the first business day following a determination of the purchase price; or

(c) Within 15 business days after the seller has received notice that a payment instrument promptly presented for payment has been dishonored. 7 U.S.C. 196.

Scales Used In Weighing Livestock

Scales used by stockyard owners, market agencies, and dealers must be tested by a competent person at least twice during each calendar year, once between January 1 and June 30 and once between July 1 and December 31. There must be a period of at least 120 days between the two tests. 9 C.F.R. 201.72.

The empty scale must be balanced each day before weighing begins. The zero balance must be verified at intervals of not more than 15 drafts or 15 minutes, whichever comes first, and any time a weigher has been absent from the scale. (This verification must be recorded on the scale ticket or other permanent record.) 9 C.F.R. 201.73-1.

"Lien" Notices

Direct notice of a security interest in livestock (i.e., notice from the seller or the lender) is valid for one year from the date it is received. Central notice (i.e., notice from the state) is valid for five years. 7 U.S.C. 1631.

Records Retention

GIPSA requires stockyard owners, market agencies, dealers and packers to retain records that contain, explain or modify purchase and sale transactions for a period of two full years. (Those records must be kept longer than two years if GIPSA gives written notification to do so.) 9 C.F.R. 203.4 (b), (c).

APHIS requires approved livestock facilities to retain documents such as weight tickets, sales invoices, and records regarding origin, identification and destination for two years for swine and for five years for cattle, bison, sheep, goats, cervids, and equines. 9 C.F.R. 71.20(a).

Annual Reports

Every packer, stockyard owner, market agency and dealer must file an annual report with GIPSA not later than April 15 following the calendar year end or, if the records are kept on a fiscal year basis, not more than 90 days after the close of the fiscal year. 9 C.F.R. 201.97.

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REQUIREMENTS FOR WEIGHING LIVESTOCK

All scales used by stockyard owners, market agencies, and dealers (registrants) to weigh livestock for the purpose of purchase, sale or settlement must be installed, maintained and operated to insure accurate weights. Scales must meet the requirements contained in the Institute of Standards and Technology Handbook 44. Handbook 44 is for sale by the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402.

Every registrant must have its scales tested by a competent person at least twice during each calendar year. The first of the two scale tests must be completed between January 1 and June 30. The second test must be completed between July 1 and December 31. There must be a minimum period of 120 days between the two tests. More frequent testing will be required in cases where the scale does not maintain accuracy between tests. Every registrant is required to retain a copy of each test report, and to file one copy of the report with the Grain Inspection, Packers & Stockyards Administration's Regional Office for the region in which the scale is located.

Whenever a weigher has reason to believe that a scale is not functioning properly, he must discontinue weighing, report to the party responsible for scale maintenance and request testing or repair of the scale.

When a scale has been adjusted, modified or repaired in any way that might affect the accuracy of the weighing or weight recording, the weigher is not to use the scale until it has been tested and found to be accurate.

Registrants are required to employ qualified persons to operate their scales and to require those employees to operate the scales in accordance with the GIPSA regulations. Copies of the P&S instructions for weighing livestock are available from each GIPSA regional office. Weighers must acknowledge their receipt of the instructions and agree to comply with them by signing, in duplicate, P&SP Form 4000. One copy of the signed form is to be filed with the Regional GIPSA office and the other retained by the entity employing the weigher.

The empty scale must be balanced each day before weighing begins and maintained in correct balance while weighing operations continue. The zero balance must be verified at intervals of not more than 15 drafts or 15 minutes, whichever comes first.

In addition, the zero balance must be verified whenever a weigher resumes weighing duties after being absent from the scale and whenever a load exceeding half the scale capacity or 10,000 pounds (whichever is less) has been weighed and is followed by a load of less than 1,000 pounds. The time at which an empty scale is balanced or its zero balance is verified must be recorded on the scale tickets or other permanent records. "Balance Tickets" must be filed with the other scale tickets issued on that date.

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The weight of each draft of livestock must be recorded immediately after load balance is obtained and before any poises are moved or the load is removed from the scale platform. The weigher is required to make certain that the printed weight record agrees with the weight value
visually indicated when the correct load balance is obtained, and to assure himself that the printed weight value is legible. If the weight value is not printed clearly and correctly, the scale ticket must be marked void and a new one printed before the livestock are removed from the scale.

Scale tickets used to record the weight values of livestock in purchase or sales transactions must be used in the order of their consecutive serial numbers unless otherwise marked to show the order of their use. Scale tickets that are soiled, damaged, incorrectly executed or voided, are not to be destroyed; they must be kept and filed along with the "good" scale tickets in order to complete the serial number sequence.

Scale tickets must show: (1) the name and location of the agency performing the weighing service; (2) the date of the weighing; (3) the name of the buyer and seller or consignor, or a designation by which they may be readily identified; (4) the number of head; (5) kind; (6) actual weight of each draft of livestock; and (7) the name, initials, or number of the person who weighed the livestock or if required by state law, the signature of the weigher.

A scale ticket cannot be used to record the weight of livestock for non-sale purposes unless the scale ticket is clearly marked to show why the weight was determined.

Scale tickets must be locked up when the weigher is not at his duty station so that unused or incomplete scale tickets are not accessible to unauthorized personnel.

Each draft of livestock must be weighed accurately to the nearest weight value that can be indicated or recorded.

Livestock owners, buyers or others having a legitimate interest in a draft of livestock must be permitted to observe the balancing, weighing, and recording procedures. In addition, a weigher must check the zero balance of the scale or re-weigh a draft of livestock when requested by the owner or buyer, or at the request of any authorized representative of the Secretary of Agriculture.

When weight values are recorded by means of automatic recording equipment directly on the accounts of sale or other basic records, such record may serve in lieu of a scale ticket.

Taken from 9 C.F.R. 201.71, 201.72, 201.73 and 201.73-1.

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TEN RULES FOR HANDLING CUSTODIAL ACCOUNTS FOR SHIPPERS' PROCEEDS

Every livestock market agency selling on commission must have a custodial account for shippers' proceeds. Payments made by livestock buyers to market agencies selling on commission and funds deposited in the custodial account are trust funds. Here are ten of the most important rules regarding the handling of custodial accounts.

Rule 1: Every market agency selling on a commission or agency basis must maintain a separate bank account designated as "custodial account for shippers' proceeds" or some similar identifying designation. 9 C.F.R. 201.42(b).

Rule 2: Before the close of the next business day after livestock are sold through a market, the market agency must deposit in its custodial account:

(a) All proceeds from the sale that have been collected (i.e., payments received from buyers); and

(b) An amount equal to the proceeds receivable from the sale of livestock that are due from the market agency; from any owner, officer or employee of the market agency; and from any buyer to whom the market agency has extended credit. 9 C.F.R. 201.42(c).

Rule 3: Before the close of the seventh calendar day following the sale, the market agency must deposit an amount equal to all remaining proceeds receivable whether or not the market has received the money from the buyers. 9 C.F.R. 201.42(c).

Rule 4: Money can be withdrawn from the custodial account for only three things:

(a) To pay net proceeds to the consignor or to other persons, such as lien holders, that are legally entitled to payment;

(b) To pay lawful charges such as brand inspection fees, etc.; and

(c) To pay money due to the market as compensation for its services, such as commission and yardage. 9 C.F.R. 201.42(d).

Rule 5: Custodial accounts must be kept in banks whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). 9 C.F.R. 201.42(f).

Rule 6: Excess funds in a custodial account may be kept in interest bearing accounts or invested in certificates of deposit. The accounts must be designated as part of the market agency's custodial account. Certificates of deposit must be issued by the bank in which the custodial account is kept and must be made payable to the market agency in its fiduciary capacity as trustee of the custodial funds. 9 C.F.R. 201.42(g).

<u>Rule 7</u>: Unless the market agency knows or should know that someone other than the consignor has an interest in the livestock, the market agency must transmit or deliver the net sales proceeds to the consignor or the consignor's duly authorized agent before the close of the next business day following the sale. In addition, the market agency must transmit or deliver to the consignor or the consignor's duly authorized agent a true written account of the sale, showing the number, weight and price of each kind of livestock sold, the date of sale, the commission, yardage and other lawful charges. 9 C.F.R. 201.39.

<u>Rule 8</u>: A market agency cannot issue a non-check draft to a consignor unless the seller expressly agrees in writing before the transaction that payment may be made by such a draft. 9 C.F.R. 201.43(b).

<u>Rule 9</u>: A market agency cannot mail the consignor his check (a) unless the seller or his duly authorized representative is not present to receive actual delivery of the check, or (b) unless the consignor expressly agrees in writing before the transaction that the market agency can mail his check. When a check is mailed to the consignor, the market agency must place the check in an envelope properly addressed to the consignor with proper first class postage pre-paid and must deposit the envelope in a mail box from which the envelope will be collected before the close of the next business day following the sale. 7 U.S.C. 228b, 9 C.F.R. 201.43.

<u>Rule 10</u>: Every market agency must keep accounts and records which will disclose at all times the handling of funds in its custodial account for shippers' proceeds. Those accounts and records must disclose the names of all consignors and the amount due and payable to each consignor. 9 C.F.R. 201.42(e).

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CHECKLIST FOR HANDLING FARM PRODUCTS SECURITY INTERESTS

Step 1: Identify the seller (i.e., get the seller's name, address, and Social Security number or taxpayer ID number or other exclusive identifier).

Step 2: Identify the state where the livestock were produced (e.g., the state where the livestock have been located when they are sent to you for sale).

Step 3: Determine whether the state where the livestock were produced is a direct notice state or a central notice state. (Note: If a state has not implemented a central notice system for farm products, it is automatically a direct notice state.)

Step 4: If the livestock were produced in a direct notice state, check to see whether you have received, within one (1) year prior to the date of sale, a written notice of a security interest in the livestock that are being sold.

(a) If you have received a notice, determine what payment obligations are imposed on you by the secured party and issue payment for livestock in accordance with the payment instructions in the notice.
(Note: Payment instructions usually require the issuance of payment jointly to the seller and the secured party. Note also: If you have received more than one notice, issue payment jointly to the seller and all of the secured parties.)

(b) If you have not received a notice, you may issue payment for livestock to the seller.

Step 5: If the livestock were produced in a central notice state, determine whether you're registered with the Secretary of State's office in the "state of production" to receive the "lien" list for livestock. If you are registered, proceed to Step 6; if you are not, proceed to Step 7.

Step 6: Check the central notice list to see whether the seller is listed.

(a) If the seller is listed, issue payment in accordance with payment instructions. (Note: Issue payment jointly to seller and all secured parties.)

(b) If the seller is not listed on the central notice list, check to see if you received a direct notice and follow the procedure in Step 4 above.

Step 7: Contact the Secretary of State's office in the "state of production" and have them conduct a "lien" search for security interests in the seller's livestock.

(a) If the seller is listed, request written confirmation from the Secretary of State's office and issue payment in accordance with payment instructions. (Note: Issue payment jointly to the seller and all secured parties.)

(b) If the seller is not listed, check to see if you received a direct notice and follow the procedure in Step 4 above.

(Compiled based on information contained in 7 U.S.C. 1631.)

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Overview of Packer Statutory Trust Fund

Section 2016 of the Packers and Stockyards Act (7 U.S.C. 196) requires packers whose average annual purchases of livestock exceed $500,000 to hold all livestock purchased from cash sellers, all inventories of, or receivables or proceeds from meat, meat food products, or livestock products derived from such livestock, in a trust fund for the benefit of all unpaid cash sellers of livestock, until those unpaid cash sellers receive full payment.

As beneficiaries of this statutory trust, unpaid cash sellers have priority over lenders with security interests in those assets that are covered by the statutory trust. Additionally, the courts have found that the statutory trust fund is not an asset of a bankrupt packer's bankruptcy estate. *In re Frosty Morn Meats, Inc.,* 7 B.R. 988 (M.D. 1980); *In re Matheson*, 10 B.R. 652 (S.D. Ala. 1981). See also, *Morris Okun, Inc. v Harry Zimmerman, Inc*., 814 F. Supp. 346 (S.D. N.Y. 1993); *In re Fresh Approach*, 51 B.R. 412 (N.D. Tex. 1985).

In order to have a valid claim to this statutory trust, an unpaid cash seller must give written notice to the packer and the Grain Inspection, Packers and Stockyards Administration, USDA:

1. Within 30 days after the next business day following the purchase and transfer of possession of livestock where no payment instrument is received; or
2. In the case of a purchase on a "carcass" or "grade and yield" basis, within 30 days after the first business day following a determination of the purchase price; or
3. Within 15 business days after the unpaid cash seller has received notice that a payment instrument promptly presented for payment has been dishonored. 7 US.C. 196(b).

Although written notice is not required to be in any specific form, the notice should generally state that it is a notification to preserve trust benefits and contain the following information:

1. Identification of the packer;
2. Identification of the seller;
3. Date of the transaction;
4. Description of the livestock;
5. Date of seller's receipt of notice that a payment instrument has been dishonored (if applicable); and
6. Amount of money due.

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Court decisions, etc. applicable to packer statutory trust:

The statutory trust is essential for the full protection of the unpaid sellers of livestock and it is clearly in the public interest to give it a broad interpretation. *Pennsylvania Agr. Co-op v. Ezra Martin Company*, 495 F. Supp. 565 (M.D. Pa. 1980).

7 U.S.C. 196 is a federally created right to bring a private action as the beneficiary of a statutory trust. *Fillippo v. S. Bonaccurso & Sons, Inc.,* 466 F. Supp. 1008 (E.D. Pa 1978); *Hedrick v. S. Bonaccurso & Sons, Inc.,* 466 F. Supp. 1025 (E.D. Pa. 1978); *In re Frosty Morn Meats, Inc.,* 7 B.R. 988 (M.D. Tenn. 1980).

Implied agreement or course of dealing in which delays in payment are tolerated are not sufficient to constitute an extension of credit. In re Gotham Provision Co., 669 F.2d 1000 (5th Cir. 1982); *Fillippo v. S. Bonaccurso & Sons, Inc.,* 466 F. Supp. 1008 (E.D. Pa 1978); *Hedrick v. S. Bonaccurso & Sons, Inc.,* 466 F. Supp. 1025 (E.D. Pa. 1978).

To the extent a livestock seller qualifies under the statutory trust, the P&S Act governs the claim; to the extent the seller does not so qualify, the state UCC applies in determining the priority of claims. *Fillippo v. S. Bonaccurso & Sons, Inc.,* 466 F. Supp. 1025 (E.D. Pa. 1978); *Hedrick v. S. Bonaccurso & Sons, Inc*., 466 F. Supp. 1025 (E.D. Pa. 1978).

No specific identification of the livestock (i.e., no tracing) is required. Instead the livestock are held in a pool in trust for the benefit of all unpaid cash sellers. H.R. Rep. No. 1043, 94th Cong. 2d Sess. 7 (1976); S. Rep. No. 932, 94th Cong. 2d Sess. 13 (1976). See, also, *Lykes Bros., Inc. v. Jeannette E. Tavormina and City Nat'l Bank of Miami,* Case Number No. 78-1492-BK-CA-B (S.D. Fla entered April 23 1979).

Congress intended that the "full payment" under 7 U.S.C. 196(b) includes the principal amount (purchase amount), prejudgment interest on that amount from the date following delivery and acceptance of the livestock, and costs incurred by the suppliers in seeking to enforce their rights. *Pennsylvania Agr. Co-op v. Ezra Martin Company*, 495 F. Supp. 565 (M.D. Pa. 1980).

The debtor and secured party lenders receiving trust assets become trustees under 7 U.S.C. 196. *In re Gotham Provision Co.,* 669 F.2d 1000 (5th Cir. 1982); *Morris Okun, Inc. v. Harry Zimmerman, Inc.,* 814 F. Supp. 346 (S.D.N.Y. 1993).

The trustees must preserve trust assets for the benefit of the trust beneficiaries (i.e., unpaid cash sellers that file timely notice). *In re Frosty Morn Meats, Inc.,* 7 B.R. 988 (M.D. Tenn. 1980); *In re Matheson*, 10 B.R. 652 (S.D. Ala. 1981); *In re Harmon*, 829 F. Supp. 651 (S.D. N.Y. 1993).

Statutory trustees are personally liable for defalcation of the trust. *Mid-Valley Produce Corp. v. FourXXX Produce Corp*., 819 F Supp. 209 (E.D.N.Y. 1993); *In re Matheson*, 10 B.R. 652 (S.D. Ala. 1981).