



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS-FTPP-19-0037]

Feasibility Study on Livestock Dealer Statutory Trust

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice: Request for Information.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA), is soliciting comments on the feasibility of establishing a livestock dealer statutory trust.

DATES: Comments must be received by [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments via the Internet at <http://www.regulations.gov> or to S. Brett Offutt, Chief Legal Officer/Policy Advisor, Packers and Stockyards Division, Fair Trade Practices Program, Agricultural Marketing Service, U.S. Department of Agriculture 1400 Independence Avenue, SW, Room 2507 STOP 3601, Washington, DC 20250. Comments should make reference to the date and page number of this issue of the Federal Register and will be made available for public inspection at the above office during regular business hours.

Please be advised that all comments submitted in response to this notice will be included in the record and will be made available to the public on the Internet via <http://www.regulations.gov>. Also, the identity of the individuals or entities submitting the comments will be made public.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor, Packers and Stockyards Division, Fair Trade Practices Program, Agricultural Marketing Service, U.S. Department of Agriculture, telephone (202) 690-4355, email s.brett.offutt@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 12103 of the Agriculture Improvement Act of 2018 (Pub. L. 115-334), the 2018 Farm Bill, charged the Secretary with conducting a study to determine the feasibility of establishing a livestock dealer statutory trust. Section 12103 requires that the study: (1) Analyze how the establishment of a livestock dealer statutory trust would affect buyer and seller behavior in markets for livestock (as defined in section 2(a) of the Packers and Stockyards Act, 1921 (7 U.S.C. 182)); (2) Examine how the establishment of a livestock dealer statutory trust would affect seller recovery in the event of a livestock dealer payment default; (3) Consider what potential effects a livestock dealer statutory trust would have on credit availability, including impacts on lenders and lending behavior and other industry participants; (4) Examine unique circumstances common to livestock dealers and how those circumstances could impact the functionality of a livestock dealer statutory trust; (5) Study the feasibility of the industry-wide adoption of electronic funds transfer or another expeditious method of payment to provide sellers of livestock protection from nonsufficient funds payments; (6) Assess the effectiveness of statutory trusts in other segments of agriculture, whether similar effects could be experienced under a livestock dealer statutory trust, and whether authorizing the Secretary to appoint an independent trustee under the livestock dealer statutory trust would improve seller recovery; (7) Consider the effects of exempting dealers with average annual purchases

under a de minimis threshold from being subject to the livestock dealer statutory trust; and (8) Analyze how the establishment of a livestock dealer statutory trust would affect the treatment of sellers of livestock as it relates to preferential transfer in bankruptcy.

The study will be conducted by the U.S. Department of Agriculture's Agricultural Marketing Service (AMS). AMS has regulatory authority over two statutes that contain statutory trusts: the Packers and Stockyards (P&S) Act and the Perishable Agricultural Commodities Act (PACA). The statutory PACA trust (7 USC 449e(c)) requires commission merchants, dealers, and brokers to hold perishable agricultural commodity inventory, products, receivables, and proceeds in trust for the benefit of unpaid produce sellers. The P&S Act currently includes two trusts: the packer trust (7 USC 196), which requires packers to hold livestock, inventory, receivables and proceeds in trust for unpaid cash sellers of livestock; and the poultry trust (7 USC 197), which requires live poultry dealers to hold poultry, inventories, receivables, and proceeds in trust for unpaid cash sellers or poultry growers.

The P&S Act also regulates the business practices of livestock dealers, but livestock dealers are not currently subject to a statutory trust provision. Section 301(d) of the P&S Act (7 U.S.C. 201), defines a "dealer" as "any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser."

AMS is seeking comments to assist it in determining the feasibility of establishing a livestock dealer statutory trust. Commenters may address any or all of the eight (8) key components of the study by responding to the following questions:

(1) How would the establishment of a livestock dealer statutory trust affect buyer and seller behavior in markets for livestock?

(2) How would the establishment of a livestock dealer statutory trust affect seller recovery in the event of a livestock dealer payment default?

(3) What potential effects would a livestock dealer statutory trust have on credit availability, including impacts on lenders and lending behavior and other industry participants?

(4) How would the unique circumstances common to livestock dealers impact the functionality of a livestock dealer statutory trust?

(5) Is industry-wide adoption of electronic funds transfer or another expeditious method of payment feasible, and would such adoption provide sellers of livestock with protection from nonsufficient funds payments?

(6) How effective are statutory trusts in other segments of agriculture? Could similar effects be experienced under a livestock dealer statutory trust? Would seller recovery improve if the Secretary was authorized to appoint an independent trustee under the livestock dealer statutory trust?

(7) Should dealers with average annual purchases under a de minimis threshold be exempt from being subject to the livestock dealer statutory trust? What purchase level should be considered for exemption? What effect would such an exemption have on the effectiveness of a livestock dealer statutory trust?

(8) How would the establishment of a livestock dealer statutory trust affect the treatment of sellers of livestock as related to preferential transfers in bankruptcy?

This notice provides for a 60-day period for interested parties to comment on the components of the study.

Authority: Sec 12103, Pub. L. 115-334, 132 Stat. 4490.

Dated: April 22, 2019.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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