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July 5, 2022

Submitted via www.regulations.gov

S. Brett Offutt
Chief Legal Officer/Policy Advisor
Packers and Stockyards Division USDA AMS
Fair Trade Practices Program
Attn: AMS-FTPP-21-0015

Re: Preserving Trust Benefits Under the Packers and Stockyards Act, Proposed Rule, 9CFR Parts 201 and 203; Docket No. AMS-FTPP-21-0015, May 5, 2022, pages 26695-26699

Dear Mr. Offutt:

On behalf of the Independent Community Bankers of America (“ICBA”)¹ and community banks across America with nearly 50,000 locations, I write to share our views on the United States Department of Agriculture’s (USDA) proposed rulemaking on the establishment of a Livestock Dealer Statutory Trust, which was published in the Federal Register on May 5, 2022, with only a thirty day comment period on the rule and a sixty day comment period on information collection aspects of the proposed rule.

Due to the complexity and interactions of the rule’s proposed regulatory burdens upon the livestock industry, and directly and indirectly upon the lending industry, we believe the implementation and comment period including the information collection aspects, should be suspended until USDA-AMS can conduct outreach with the livestock industry and lenders. Such outreach could help to mitigate any unintended consequences, minimize disruptions to the industry and ensure that prices producers receive are not significantly reduced.

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5.8 trillion in assets, over \$4.8 trillion in deposits, and more than \$3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information visit ICBA’s website at www.icba.org

The proposal could, for example, harm producers if prices are lowered as a result of fewer dealers being able to purchase livestock from sellers particularly if these ‘dealers’ cannot qualify for loans with which to purchase livestock.

Although the proposed rule defines a ‘cash sale’ as one where the seller is not extending credit to the buyer/dealer, it is likely that lenders, including community banks, will have extended credit to the buyer to purchase the sellers’ livestock. The definition of a ‘cash sale’ therefore should clarify that neither the seller nor any lender has extended credit to the buyer for purchase of livestock. This would be consistent with the term ‘cash sale’ as these transactions ultimately involve more participants than just the buyers and sellers. Otherwise, the information collection burden upon lenders would be magnified many times by the necessity of attempting to follow all of the buying and selling transactions involved as livestock moves through multiple buyers and identifying whether sales were actually ‘cash sales.’

The time allowance of forty-five days is much too long for there to be unknown clear title aspects of livestock transactions. The speed in which these transactions occur and ambiguous clear title issues will cause unrealistic information collection burdens upon banks. The proposal could also cause many livestock buyers to unwittingly be classified as ‘dealers’ with a cascading impact upon many market participants. These negative impacts also include numerous information collection difficulties as lenders would need to track a multitude of arrangements and sales which could later be upended if the dealer trust kicks in.

The Federal Reserve will soon make available to depository institutions its ‘Fed Now’ payment system allowing individuals and businesses to send instant payments through their depository institution accounts. The service will provide interbank clearing and settlement that enables funds to be transferred from the account of a sender to the account of a receiver in near real-time and at any time, any day of the year. The service will have a 24-hour business day each day of the week, including weekends and holidays. This service will therefore allow for instant payments to sellers, suggesting the premise upon which the entire dealer trust requirements are based will be outdated shortly after implementation. The proposed rule does not adequately address this development and the potential impact on information collection that could be mitigated by implementing an instant payment system in lieu of the dealer trust.

We believe the USDA-AMS should suspend implementation of the proposed rule and conduct outreach to determine the least disruptive manner in which to implement the dealer trust statute taking into consideration the points made in this letter. Please feel free to contact mark.scanlan@icba.org.

Sincerely,

/s/

Mark Scanlan
Sr. Vice President, Agriculture and Rural Policy

The Nation’s Voice for Community Banks.®

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