



March 23, 2009

Market Agency, Dealer and Packer

Bond Comments

c/o Tess Butler

GIPSA, USDA

1400 Independence Ave., SW., Room 1643-S,
Washington, DC 20250-3604.

To Whom It May Concern:

Thank you for giving the Livestock Marketing Association (LMA) the opportunity to respond to the Grain Inspection, Packers and Stockyards Administration's (GIPSA or the agency) Advanced Notice of Proposed Rulemaking (ANPR) respective to market agency, dealer and packer bonds. LMA is the national voice for more than 800 livestock auction markets, dealers and related businesses.

It is our view that the alternatives offered by the agency in the ANPR are not feasible and would not result in making sellers financially whole in the event of a payment default.

Alternative 1, in which risk factors would be added to the bond formulas, potentially puts the agency on a very slippery slope of deciding who should and should not be in the business of buying and selling livestock based on now undetermined risk factors. We find it improbable, if not inappropriate, for GIPSA to want to take on the bond insurance companies' role in determining a market or dealer's financial worthiness in establishing their bond coverage. If the agency is looking at the insurance model in determining these risk factors, how does it intend to use the experience or record of losses of a market agency or dealer to determine their ability to pay their sellers, particularly in the event of an up-stream default of a dealer or packing plant? Also, it would seem reasonable that the agency could not base the bond risk factors just off the business' financial picture but would have to know something about their personal financial standing as well to make a fair judgment of their financial worthiness. In this event, the agency would need access to the major credit reporting services in order to have access to personal financial information necessary for factoring in those risks in determining the bond formulas. Should the agency take this approach, it is filled with a variety of personal privacy issues which need to be carefully considered by the agency before jumping into that potential quagmire. It also is reasonable that the agency would need to establish some very specific, non-judgmental risk factors upon which to make their risk-based bond formula decisions or risk charges or complaints of personal bias against a P&S registrant unhappy with the agency's bond

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determination. Therefore, because the ANPR lacks sufficient specificity on how the agency would implement risk-based bond determinations, LMA opposes this alternative to the current bond calculations.

LMA generally opposes changing the bond formulas for market agencies and dealers as suggested in Alternative 2. GIPSA provides little information on the real effect on current bond holders of any or all the suggested bond formulas changes enumerated in Alternative 2. Thus we are loath to suggest that any one or combination of formula factor alternatives is better or worse than another. As we have already discussed, revising the bond qualifications and limits will do little to improve the likely payout to sellers of livestock in a default and could indeed have the reverse effect of putting some financially stable market agencies and dealers out of the range of bond eligibility. Most markets are already required by the agency to maintain a bond at substantially higher levels than the minimum. Thus raising the bond by one means or another will not appreciably change what is already in practice and may well create problems in the reverse by making it harder for new businesses or smaller firms to obtain a bond and get into the business or to stay in business. It would be better in our view to keep the minimum bond amounts at a level that many can achieve than to have dealers without a bond at all. Thus, we would encourage greater enforcement of current registration and bond requirements on those dealers who would skirt the law as a more sensible alternative to raising, modifying or creating new bond formula factors as suggested in Alternative 2.

Alternative 3 would not change current agency practice. Therefore, LMA does not oppose this change in calculating the bonds for business mergers or acquisitions by another entity.

We would prefer to see the agency focus on the significant changes that have taken place in the production and marketing of livestock in the United States over the past 30 years and initiate, with the regulated industry, a more sweeping review of the P&S laws and regulations and their relevance to a very changed and changing livestock industry. This approach would in our view be much more desirable than the incremental band-aid approach that this ANPR and past modest modifications to the P&S rules have represented to the regulated industry and the sellers of livestock.

Some of the broader issues the agency should consider when looking at the problem of inadequate payment protection for sellers are:

- (1) Covering those entities that need to be covered—feedlots in particular. Custom feedlots, as the largest marketers of cattle today, should be required to meet the same financial protection standards as current registrants. While not a particularly politically popular idea, few outside of the feeder industry would disagree that more money is potentially there to be lost than there is through almost any livestock market agency.
- (2) Providing more consistent uniform enforcement of the bond requirements from area to area and region to region. Too many dealers are left to roam the countryside buying and selling livestock without bond coverage while fixed-facility businesses receive undue and burdensome scrutiny by the agency.

- (3) Further consideration of the establishment of alternative payment protection tools such as an industry or government/industry funded livestock payment protection or indemnity fund as experienced in Canada and in government-backed state revolving trust or indemnity grain and produce funds in the United States. Such payment protection funds would soon become self-sustaining and offer infinitely greater protection than a bond or bond equivalent. This is not to say however that a bond or bond equivalent should not still play a role in the overall financial protection afforded sellers of livestock. Quite the contrary many, if not all, of these other financial protection instruments may still be needed as an adjunct to the payment protection fund to insure that the regulated entities remain faithful in their efforts to operate fairly and honestly. GIPSA indicates in the ANPR that such a plan has been considered by the agency but they lacked the statutory authority to go forward with it. LMA would be very willing to work with the agency to determine the feasibility of a national livestock payment protection fund and the legislative possibilities for putting it in place.
- (4) Prohibiting banks that loan the money for a trust fund agreement or an irrevocable letter of credit from also being the trustee on those agreements. When this occurs, legitimate claimants who are entitled to the bond proceeds often are forced to file suit (with the inherent delay and cost of doing so) in order to get the bond proceeds they are entitled to. We recommend that the GIPSA Administrator, P&S Programs Deputy Administrator or someone else of the Administrator's choosing be designated as the trustee to avoid what is obviously a conflict of interest for the banks.
- (5) Setting up minimum registration requirements for all buyers of livestock as well as for those buyers who have previously failed to pay for livestock before they can get back into the business of buying and selling livestock. We recognize that the agency has an informal process for determining a potential registrant's worthiness and eligibility however we believe that the registration process should be more standardized and rigorous in order to more thoroughly scrutinize the merits of new registrants and to keep past serious violators of the Act and regulations out of the business of marketing livestock.
- (6) Directing its attention to the increasing number of markets that are self-insuring their catastrophic losses. With the increase in stolen and mortgaged livestock claims for which some markets self-insure, markets without a catastrophic insurance policy to protect them when a large hit occurs are at a much higher risk of defaulting than those who protect their assets in an extraordinary event. Also, you should be aware that some of the bond companies Livestock Marketing Insurance Agency represents now require that livestock insurance be in place in order to write the bond while others consider self-insurance as a factor upon which they decide to write the bond or not. This self-insurance issue is one we have discussed with the agency in the past and one that we believe still bears the agency's attention.
- (7) Amending the P&S Act to authorize GIPSA to file suit to force establishment of the packer statutory trust. On a number of occasions, unpaid cash sellers have experienced serious delays or have had to file suit themselves to enforce the statutory trust fund provision. LMA believes that the agency should have the necessary authority to enforce the packer statutory trust provisions of the P&S Act.

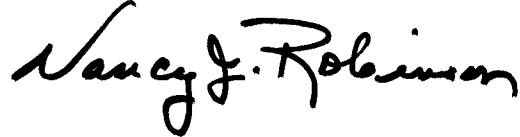
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Your consideration of LMA's comments relative to the agency's review of the bond requirements is most appreciated.

Sincerely,

A handwritten signature in black ink that reads "Nancy J. Robinson". The signature is written in a cursive style with a large, prominent initial "N".

Nancy J. Robinson
Vice President, Government
And Industry Affairs