

Agricultural Marketing Service, USDA

§ 201.42

Service (AMS), U.S. Department of Agriculture, Washington, DC 20250, by the surety. Such written notice shall be in the form of a rider or endorsement to be attached to the bond of the clearing agency.

(c) Each trust fund agreement and trust agreement shall contain a provision requiring that, prior to terminating such agreement, at least 30 days notice in writing shall be given to the Administrator, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, by the party terminating the agreement. Such provision shall state that in the event the principal named therein files an acceptable bond or bond equivalent to replace the agreement, the 30-day notice requirement may be waived and the agreement will be terminated as of the effective date of the replacement bond or bond equivalent.

(Approved by the Office of Management and Budget under control number 0580-0015)

[47 FR 32695, July 29, 1982, as amended at 54 FR 26349, June 23, 1989; 61 FR 36279, July 10, 1996; 68 FR 75388, Dec. 31, 2003; 84 FR 45647, Aug. 30, 2019]

PROCEEDS OF SALE

§ 201.39 Payment to be made to consignor or shipper by market agencies; exceptions.

(a) No market agency shall, except as provided in paragraph (b) of this section, pay the net proceeds or any part thereof, arising from the sale of livestock consigned to it for sale, to any person other than the consignor or shipper of such livestock except upon an order from the Secretary or a court of competent jurisdiction, unless (1) such market agency has reason to believe that such person is the owner of the livestock, (2) such person holds a valid, unsatisfied mortgage or lien upon the particular livestock, or (3) such person holds a written order authorizing such payment executed by the owner at the time of or immediately following the consignment of such livestock: *Provided*, That this paragraph shall not apply to deductions made from sales proceeds for the purpose of financing promotion and research activities, including educational activities, relating to livestock, meat,

and other products covered by the Act, carried out by producer-sponsored organizations.

(b) The net proceeds arising from the sale of livestock, the ownership of which has been questioned by a market agency duly authorized to inspect brands, marks, and other identifying characteristics of livestock may be paid in accordance with the directions of such brand inspection agency if the laws of the State from which such livestock originated or was shipped to market make provision for payment of the proceeds in the manner directed by the brand inspection agency and if the market agency to which the livestock was consigned, and the consignor or consignors concerned, are unable to establish the ownership of the livestock within a reasonable period of time, not to exceed 60 days after sale.

(7 U.S.C. 181 *et seq.*)

[19 FR 4528, July 22, 1954, as amended at 28 FR 7218, July 13, 1963; 44 FR 45361, Aug. 2, 1979]

§ 201.42 Custodial accounts for trust funds.

(a) *Payments for livestock are trust funds.* Each payment that a livestock buyer makes to a market agency selling on commission is a trust fund. Funds deposited in custodial accounts are also trust funds.

(b) *Custodial accounts for shippers' proceeds.* Every market agency engaged in selling livestock on a commission or agency basis shall establish and maintain a separate bank account designated as "Custodial Account for Shippers' Proceeds," or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(c) *Deposits in custodial accounts.* The market agency shall deposit in its custodial account before the close of the next business day (the next day on which banks are customarily open for business whether or not the market agency does business on that day) after livestock is sold (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 (i) the market agency, (ii) any owner, officer, or

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employee of the market agency, and (iii) any buyer to whom the market agency has extended credit. The market agency shall thereafter deposit in the custodial account all proceeds collected until the account has been reimbursed in full, and shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all the remaining proceeds receivable whether or not the proceeds have been collected by the market agency.

(d) *Withdrawals from custodial accounts.* The custodial account for shippers' proceeds shall be drawn on only for payment of (1) the net proceeds to the consignor or shipper, or to any person that the market agency knows is entitled to payment, (2) to pay lawful charges against the consignment of livestock which the market agency shall, in its capacity as agent, be required to pay, and (3) to obtain any sums due the market agency as compensation for its services.

(e) *Accounts and records.* Each market agency shall keep such accounts and records as will disclose at all times the handling of funds in such custodial accounts for shippers' proceeds. Accounts and records must at all times disclose the name of the consignors and the amount due and payable to each from funds in the custodial account for shippers' proceeds.

(f) *Insured banks.* Such custodial accounts for shippers' proceeds must be established and maintained in banks whose deposits are insured by the Federal Deposit Insurance Corporation.

(g) *Certificates of deposit and/or savings accounts.* Funds in a custodial account for shippers' proceeds may be maintained in an interest-bearing savings account and/or invested in one or more certificates of deposit, to the extent that such deposit or investment does not impair the ability of the market agency to meet its obligations to its consignors. The savings account must be properly designated as a party of the custodial account of the market agency in its fiduciary capacity as trustee of the custodial funds and maintained in the same bank as the custodial account. The certificates of deposit, as property of the custodial account, must be issued by the bank in which

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the custodial account is kept and must be made payable to the market agency in its fiduciary capacity as trustee of the custodial funds.

(Approved by the Office of Management and Budget under control number 0580-0015)

[47 FR 32696, July 29, 1982, as amended at 54 FR 26349, June 23, 1989; 68 FR 75388, Dec. 31, 2003]

ACCOUNTS AND RECORDS

§ 201.43 Payment and accounting for livestock and live poultry.

(a) *Market agencies to make prompt accounting and transmittal of net proceeds.* Each market agency shall, before the close of the next business day following the sale of any livestock consigned to it for sale, transmit or deliver to the consignor or shipper of the livestock, or the duly authorized agent, in the absence of any knowledge that any other person, or persons, has any interest in the livestock, the net proceeds received from the sale and a true written account of such sale, showing the number, weight, and price of each kind of animal sold, the date of sale, the commission, yardage, and other lawful charges, and such other facts as may be necessary to complete the account and show fully the true nature of the transaction.

(b) *Prompt payment for livestock and live poultry—terms and conditions.* (1) No packer, market agency, or dealer shall purchase livestock for which payment is made by 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. (In cases of packers whose average annual purchases exceed \$500,000, and market agencies and dealers acting as agents for such packers, see also § 201.200).

(2)(i) No packer, market agency, or dealer purchasing livestock for cash and not on credit, whether for slaughter or not for slaughter, shall mail a check in payment for the livestock unless the check is placed in an envelope with proper first class postage prepaid and properly addressed to the seller or such person as he may direct, in a post office, letter box, or other receptacle regularly used for the deposit of mail for delivery, from which such envelope