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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

9 CFR Parts 201 and 203

[Doc. No. AMS–FTPP–21–0015]

RIN 0581–AE01

Preserving Trust Benefits Under the Packers and Stockyards Act

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule revises the Packers and Stockyards regulations to provide instructions for livestock sellers who desire to preserve their interest in the statutory livestock dealer trust under the Packers and Stockyards Act (Act). This rule adds procedures and timeframes for a livestock seller to notify the livestock dealer and the Secretary of Agriculture (Secretary) that the seller has not received full payment for livestock purchased by the dealer and that the seller intends to preserve its trust interests. Additionally, this rule provides that livestock dealers with average annual purchases over \$100,000 are required to obtain written acknowledgement from livestock sellers that trust benefits do not pertain to credit sales. This rule provides further that livestock dealers are required to maintain records related to credit sales. These revisions to the Packers and Stockyards regulations reflect recent amendments to the Act that provide for a livestock dealer trust.

DATES: Effective July 24, 2023.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor; Packers and Stockyards Division, USDA AMS Fair Trade Practices Program; phone: 202–690–4355; or email: S.Brett.Offutt@usda.gov.

SUPPLEMENTARY INFORMATION: Section 763 of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260; December 27, 2020), amended the Packers and

Stockyards Act, 1921, as previously amended (7 U.S.C. 181 *et seq.*), by adding a new sec. 318 (7 U.S.C. 217b) establishing a statutory trust for the benefit of unpaid cash sellers of livestock. Under the new trust provisions, livestock dealers whose average annual purchases of livestock exceed \$100,000 must hold all inventories of, and receivables and proceeds from, livestock purchased in cash sales in trust for the benefit of all unpaid cash sellers of livestock until the cash sellers have been paid in full. Livestock sellers lose the benefit of the trust unless they notify livestock dealers and the Secretary in writing that payment has not been received. Such notice must be provided within 30 days of the final date when payment was due, or within 15 days of notice that a dealer's payment instrument has been dishonored.

The newly added sec. 318 of the Act further provides that the dealer trust provisions apply only to cash sales, which are defined in the statute as sales in which the seller does not expressly extend credit to the buyer. Thus, livestock sellers have no claim against the trust if they have extended credit to the buyer.

Currently, § 203.15 of the Packers and Stockyards regulations outlines the process by which livestock sellers and live poultry sellers and growers preserve their interest in the packer and poultry trusts previously established under the Act (see 9 CFR 203.15). This final rule revises § 203.15, which will continue to provide for preservation of trust benefits under the packer and poultry trusts, by adding the process by which livestock sellers can preserve their interests under the new livestock dealer trust. Sections 206, 207, and 318 of the Act (7 U.S.C. 196, 197, 217b) require livestock sellers and poultry sellers or growers to notify packers, live poultry dealers, or livestock dealers and the Secretary in writing of their intent to preserve their trust benefits within 30 days of the final day on which payment was due or within 15 days of receiving notice that the packer's, live poultry dealer's, or livestock dealer's payment instrument was dishonored. Accordingly, the revised § 203.15 of the regulations outlines how sellers and growers can comply with the statutory requirement. The written notification should state that notification is to preserve trust

benefits; identify both parties in the transaction; and include the date of the transaction, the date notice was received that the payment instrument was dishonored (if applicable), and the amount of money due. Written notification may be by letter, fax, email, or other electronic transmission, filed with the Packers and Stockyards Division (PSD) of the Agricultural Marketing Service (AMS). Section 203.15 of the regulations still provides that while the written notification described above is preferred, any written notice to the buyer and the Secretary that the seller has not received full payment is sufficient to meet the statutory requirement if it is given within the prescribed timeframes. Finally, § 203.15 is revised to include the statutory definition of a cash sale, meaning a sale in which the seller does not expressly extend credit to the buyer.

Section 201.200 of the regulations currently prohibits packers whose average annual livestock purchases exceed \$500,000 from entering into credit agreements with livestock sellers unless the packer obtains written acknowledgement from the seller that the seller has no trust rights with respect to each particular sale under a credit agreement. Under this final rule, § 201.200 also prohibits livestock dealers whose average annual livestock purchases exceed \$100,000 from entering into credit agreements with livestock sellers unless the purchasing dealer obtains written acknowledgement from the seller that the seller has no trust rights with respect to each particular sale under a credit agreement. The seller's written acknowledgment statement must further provide that the credit agreement covers a single sale, remains in effect until a specified date, or remains in effect until it is canceled in writing by either party. The seller's acknowledgement should be dated and signed by the seller. The purchasing livestock dealer is required to maintain records of the acknowledgement, as well as all other documents related to the credit agreement, for as long as required by any law or by the AMS Administrator, but for no less than two years following the expiration of the credit agreement referred to in the acknowledgement. Finally, the purchasing dealer is required to provide a copy of the acknowledgment to the seller.

Average annual livestock purchase amounts may be determined using information establishing actual yearly dealer purchases, or a dealer's purchases as stated on its most recent annual report filed pursuant to the requirements of 9 CFR 201.97. Average annual livestock purchase amounts may be determined for new dealers that have not operated for a year's time—and for dealers that have not filed an annual report in the prior two years—according to their actual livestock purchases for the current year to date, extrapolated to a yearly amount, if necessary. In general, the new requirements for livestock dealers in § 201.200 are similar to the current requirements for packers who enter into credit agreements with livestock sellers.

Comments

AMS published a proposed rule regarding this action on May 5, 2022 (87 FR 26695), and allowed 30 days for the public to submit comments on the proposal. The comment period closed June 6, 2022. AMS received six separate comments. Two comments were submitted by farm bureau federations. Three comments were submitted by livestock industry marketing associations. One comment was submitted by an association of community bankers.

Both farm bureau commenters supported establishment of the trust and the proposed rule generally, saying that the proposed regulations would benefit their members. One livestock marketing association commenter similarly supported establishment of the trust and AMS's efforts to add structure and functionality to the trust operation. One livestock marketing association commenter did not support establishment of the trust and opposed some provisions in the proposed rule. Another livestock marketing association commenter expressed concern about potential unintended consequences of the trust itself, as well as perceived shortcomings of the proposed rule. The association of community bankers opposed certain provisions of the dealer statutory trust and urged AMS to suspend rulemaking pending further industry outreach. Specific comments and AMS's responses are detailed below.

Credit Sales Acknowledgements

One commenter supported the proposed requirements that dealers obtain acknowledgments from sellers that sellers waive their trust rights when making credit sales and that credit agreements specify whether those agreements cover a single sale, remain

in effect until a certain date, or remain in effect until cancelled. The commenter stated these requirements protect sellers against waiving their trust rights unknowingly.

AMS agrees that requiring dealers to obtain credit sales waivers and requiring such acknowledgments to specify the length of the credit agreement term can protect livestock sellers from waiving their trust rights inadvertently. AMS is making no changes to the proposed rule based on these comments.

Definition of Cash Sale

The same commenter recommended that AMS revise the proposed definition of *cash sale* to mean one in which the seller does not expressly extend credit to the buyer *in writing*. The commenter cited case law that found “that unless the parties clearly agree in writing to a credit agreement, the transaction is a cash sale.”¹ The commenter asserted that adding “in writing” to the cash sale definition would clarify that a written extension of credit is needed for the sale to no longer be a cash sale and would make the definition of *cash sale* align with the requirements that the credit agreement and waiver be in writing.

AMS notes that the definition of cash sale is already established by the Act: sec. 409(b) of the Act (7 U.S.C. 228b), regarding prompt payment for livestock purchases, requires credit agreements to be in writing, and sec. 318(d) of the Act (7 U.S.C. 217b), provides that “[f]or the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.” Accordingly, AMS is making no changes to the proposed regulatory definition of *cash sale* based on this comment.

One commenter suggested that the definition of *cash sale* should be only those in which neither the seller *nor any lender* has extended credit to the buyer to purchase the seller's livestock. The commenter asserted that livestock sales ultimately involve more participants than just the buyers and sellers, and that lenders would face increased burden as they attempted to follow all the transactions involved to determine whether sales were actually cash sales.

The prompt payment and trust provisions of the Act are intended to protect livestock sellers, and do not, as currently stated, involve lenders and any relationship they may have with buyers of livestock. Under the Act and attendant regulations, lenders do not have priority over the livestock for which the dealer has borrowed money;

rather the trust is designed specifically to protect livestock sellers from non-payment, including situations where a lender might take livestock or proceeds from a buyer who has not paid for the livestock. Further, as mentioned above, the *cash sale* definition is statutory and not open to agency revision. Accordingly, AMS is making no change to the rule as proposed based on this comment.

Notifications

One commenter supported the proposed language in § 203.15 that provides what information should be submitted with a claim for a livestock seller to preserve the benefit of the dealer trust and that such a claim must be submitted to both the defaulting dealer and the Secretary. The commenter agreed that the required information properly identifies the sale for which trust benefits are being preserved and concurred with the proposal that while such information is desirable, any timely written notice informing the dealer and the Secretary that the dealer has failed to pay is sufficient to meet the notice requirement in order to preserve the seller's interest in the trust.

AMS notes that the proposed notification requirements mirror those currently in place in § 203.15 relating to the packer and live poultry dealer trusts. Accordingly, AMS is making no changes to the proposed rule based on these comments.

Two commenters stated that the proposed timeframes for notification are too long, one suggesting that trust notifications should be made no later than 10 business days from the date payment was due and/or postmarked, as per current prompt payment rules, with an additional three business days allowed after a payment instrument is dishonored. Both commenters expressed concern that the proposed rule's notification timeframes could allow for up to 45 days of “clear title” disruption and comingling of the non-paying dealer's receivables and assets. Two commenters further asserted that the proposed timeline could allow unpaid sellers to collude with non-paying dealers, allowing those dealers to operate illegally for up to 45 days from the date of the original transgression, and also allowing competitors to unknowingly sell livestock to offending dealers.

AMS notes that notification timeframes are based on the date of the transaction for which payment is not received. Later transactions do not extend the filing timeframe for earlier transactions. The proposed notification

¹ *In re Gotham Provision Co.*, 669 F.2d 1000, 1005 (5th Cir. 1982).

timeframes are statutory and have been established by Congress, and AMS cannot issue regulations that would conflict with the statute; as stated above, the proposed notification requirements are in accord with those currently in place in § 203.15 relating to the packer and live poultry dealer trusts. Accordingly, AMS is making no changes to the proposed rule based on these comments.

In connection with the list of registered dealers on PSD's website, two commenters suggested PSD also should be required to report trust claim notifications against dealers so all industry participants can verify not only the registration and bonding status of dealers, but also their status regarding trust claims. The commenters expressed concern about PSD's ability to maintain and publish such lists in a timely manner. Further, commenters suggested the proposed notification timelines and a lack of reliable disclosure about dealer payment defaults potentially harms other market participants. Commenters asserted there must be transparency and disclosure about dealers so that industry participants can make appropriate decisions with respect to their perceived risk.

PSD is prohibited under 9 CFR 201.96—Unauthorized disclosure of business information prohibited—from publicizing any facts or information regarding dealers' businesses without their consent. However, PSD acts quickly to initiate investigations when it receives trust notifications. PSD reviews packers', dealers', and live poultry dealers' records and determines whether other sellers have not been paid. As appropriate, PSD notifies other unpaid sellers that they may need to file trust notifications to protect their interests. Accordingly, AMS is making no changes to the proposed regulations based on these comments.

Dealers

The Packers and Stockyards regulations currently require livestock dealers to register with PSD. PSD maintains and publishes the list of registered dealers on its website. One commenter pointed out that regardless of their compliance with the registration requirement, any individual engaging in the business of buying and selling livestock in commerce is a dealer, and that sellers thus retain their statutory trust rights even when a buyer fails to register as a dealer. Another commenter disagreed, saying that the trust should only be enforceable against regulated livestock dealers identified and disclosed by PSD. According to this commenter, a seller engaging in

livestock trade with an unidentified and unregulated livestock buyer, or "alleged dealer," should assume the risk of doing so when there are alternative methods of marketing livestock in a secure manner, such as through a regulated dealer or livestock market. A third commenter asserted that the proposed rule could cause many buyers to unknowingly be classified as dealers (who ostensibly do not fit the definition of "dealer" under the Act).

Section 301(d) of the Act (7 U.S.C. 201) defines the term *dealer*—as used in the Act—to mean "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." The courts have held that if someone is not a *market agency*,² and is engaged in the business of buying and selling in commerce livestock, their activities fall within the provision of sec. 301(d) of the Act, and that to hold otherwise would be to ignore completely the definition of a *dealer* as prescribed by Congress.³ Further, sec. 318(a)(1) of the Act (7 U.S.C. 217b) specifies that "[a]ll livestock purchased by a dealer in cash sales and all inventories of, or receivables or proceeds from, such livestock sales shall be held by such dealer in trust for the benefit of all unpaid cash sellers of such livestock until full payment has been received by such unpaid cash sellers." Only dealers whose average annual purchases of livestock do not exceed \$100,000 are exempt from the dealer trust provisions (sec. 318(a)(2)).

AMS notes that the statutory trust provisions do not differentiate between registered and unregistered dealers, nor between sales to registered and unregistered dealers. AMS believes that if the regulations were to exclude unregistered dealers from trust applicability, it could entice some dealers to not register, and thereby put more sellers at risk. Accordingly, AMS is making no changes to the rule as proposed based on these comments.

One commenter objected to the definition of a *dealer* as one with purchases exceeding \$100,000, finding

² The term *market agency* is defined in sec. 307(c) of the Act (7 U.S.C. 201) to mean "any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services." The term includes "any person who engages in the buying or selling of livestock, on a commission or other fee basis, through the use of online, video, or other electronic methods when handling or providing the means to handle receivables or proceeds from such buying or selling, so long as such person's annual average of online, video, or electronic sales of livestock, on a commission or other fee basis, exceeds \$250,000."

³ *U.S. v. Kelly*, 106 F.Supp 394 (E.D. Okla., 1952).

the definition to be too broad and unenforceable from a regulatory standpoint. AMS clarifies that the \$100,000 threshold does not alter the statutory definition of *dealer*, as discussed above. The \$100,000 average annual purchases threshold, which is established by Congress in the amended statute, identifies which dealers are subject to the provisions of the trust and must comply with the requirement to obtain credit sales trust waiver acknowledgements from sellers. PSD is able to determine a dealer's average annual purchase amount using information provided by dealers in their annual reports, filed pursuant to the requirements of 9 CFR 201.97. PSD is also able to extrapolate average annual purchases for new dealers, or those who have not filed recent reports, using current year-to-date purchase information. The \$100,000 average annual purchases threshold was established by Congress when the dealer trust was enacted, and AMS has no authority to alter or amend the statutory provision. Moreover, for the reasons cited, AMS believes the proposed requirement to be reasonably enforceable. Accordingly, AMS is making no change to the proposed regulation based on this comment.

Regulatory Burden

One commenter concurred with AMS's assessment of the reporting and recordkeeping burden related to compliance with these proposed requirements, agreeing that completing each acknowledgement would take one half hour or less and that the need for such acknowledgements would likely be infrequent. The commenter observed that the required credit sales acknowledgment is consistent with existing requirements related to the packer trust. AMS notes that these requirements intentionally mirror the packer trust provisions because the industry is already familiar with the process. AMS made no changes to the proposed rule based on these comments.

Another commenter stated that AMS grossly underestimated the financial impact of the trust itself on small businesses operating as livestock sellers, markets, producers, and/or dealers. The commenter suggested AMS has not considered costs to sellers related to offering credit terms. The commenter asserted that livestock marketing agencies would be forced by dealers to extend credit and would incur additional interest costs to secure lines of credit to cover their custodial accounts. The commenter speculated further that other industry participants, such as lenders and government

agencies, would incur massive legal, interest, and administrative costs.

AMS notes that the scope of the proposed rule is confined to provisions related to making timely trust claim notifications and requiring dealers to obtain credit sales trust waiver acknowledgements from sellers. AMS's cost/benefit and Regulatory Flexibility analyses, which were published in the proposed rule, evaluated only the potential burdens, costs, and benefits of effectuating the proposed provisions. Thus, comments related to the burden of effectuating the statutory trust itself—which as noted above, has already been established by Congress with the enactment of the statute—are outside the scope of the proposed rule, and AMS is making no changes to the rule as proposed based on these comments.

Trust Provisions and Enforcement

AMS notes that the Act regulates the business activities of livestock dealers. The trust was created to protect livestock sellers doing business with dealers. The trust is specifically intended to keep inventories of livestock and the proceeds therefrom in trust so that livestock sellers are paid.

Prior to implementing the trust, Congress instructed USDA to conduct a study on the feasibility of a dealer trust. The study, released on February 4, 2020, included input from the industry and lenders that Congress later considered when amending the Act to establish the livestock dealer statutory trust.⁴ Congressional establishment of the dealer statutory trust through amendment of the Packers and Stockyards Act became effective December 27, 2020. The provisions of the proposed rule are preliminary steps to trust enforcement and include the regulations AMS deemed necessary to begin trust administration. The proposed provisions are intended to help sellers understand the conditions under which they can preserve their trust rights, and to help both sellers and dealers engaged in credit transactions understand the conditions of credit sales as they relate to trust benefits.

Three commenters expressed concern with regard to the establishment of the livestock dealer statutory trust, as well as other existing provisions of the amended Act and the regulations, such as prompt payment requirements, “clear title” of cleared livestock transactions, and definition of the term *dealer*. One commenter asserted that the trust was

established by Congress without any meaningful or robust discussion with industry participants, who felt there was already ample protection available in the marketplace for livestock sellers operating within the guidelines of prompt payment rules. One commenter suggested that AMS suspend implementation of the proposed rule, so that AMS can conduct outreach to the affected industry and lenders, to mitigate possible unintended consequences (purportedly of the trust itself), including lower prices to producers. As noted above, USDA conducted a study which included input from the industry and lenders, that Congress later considered when amending the Act.

Comments about the establishment and merits of the trust itself, about provisions of the amended Act, or about other existing regulations are outside the scope of the proposed rule of May 5, 2022. Congress created the trust to protect livestock sellers doing business with dealers; the trust is specifically intended to keep inventories of livestock and the proceeds therefrom in trust so that livestock sellers are paid. AMS has no authority to alter or amend the statutory provisions that Congress has enacted for these purposes. Accordingly, AMS is making no changes to the rule as proposed based on those comments.

One commenter suggested that a new program to be instituted by the Federal Reserve will make it possible to transact instant interbank payments for livestock purchases.⁵ The commenter stated that the proposed rule does not discuss use of an instant payment system in lieu of the dealer trust itself, nor its potential impact on information collection. The sole purpose of this rule is to delineate the process for sellers to preserve their dealer trust rights. Congress created the trust to protect livestock sellers doing business with dealers; the trust is specifically intended to keep inventories of livestock and the proceeds therefrom in trust so that livestock sellers are paid. The manner of payment is not addressed in the amendment to the statute. AMS has no authority to alter or amend the statutory provisions that Congress has enacted. Accordingly, AMS is making no changes to the rule as proposed based on those comments.

One commenter asserted that trust provisions conflict with Uniform Commercial Code (UCC) provisions regarding “clear title” on livestock

transactions and lenders' liens and security interest in livestock. The application of the UCC to the statute and its operation, if any, and the question of “clear title,” cannot be addressed by AMS in this rulemaking. Congress created the trust to protect livestock sellers from non-payment; the trust is specifically intended to keep inventories of livestock and the proceeds therefrom in trust so that livestock sellers are paid. AMS has no authority to alter or amend the statutory provisions that Congress has enacted for these purposes.

The commenter further questioned whether competing buyers under UCC and trust provisions would be in a truly competitive bidding process or level playing field at public markets, because in the commenter's opinion, the trust creates a lien that interferes with clear title, and treats different classes of buyers differently. Congress, by statute, granted livestock sellers trust rights for their protection; this attendant rule to the statute only provides instructions for sellers who desire to preserve the benefit of the statutory livestock dealer trust. As stated previously, AMS cannot address what Congress has already established as the statutory trust.

One commenter expressed the opinion that according to the text of the statute, the non-paying dealer would be the trustee of the trust created under the Act. AMS notes that the statute also includes authority for USDA to replace the dealer with another person as trustee to better protect livestock sellers.

Two commenters expressed concerns about the mechanics of enforcing a dealer trust claim and the U.S. Department of Agriculture's (USDA) ability to enforce trust claims. One commenter further expressed belief that the trust and the proposed regulations may disrupt livestock markets and undermine current industry efforts to “establish true price discovery,” thereby damaging livestock producers who “are already languishing under current market conditions.” This comment appears to take issue with the establishment of the trust itself (and *not* the current proposed rule), which AMS cannot address. The same commenter stated there may be substantial dealer trust enforcement issues with regard to livestock transactions between members inside and outside of tribal nations. The commenter asserted that USDA has not met its burden of proof with regard to the impact and enforcement of the trust on Indian tribal nations.

The scope of the proposed rule regarding the trust already enacted by Congress is confined to provisions related to making timely trust claim

⁴ Report Pursuant to Section 12103 of the Agriculture Improvement Act of 2018: Study to Determine the Feasibility of Establishing a Livestock Dealer Statutory Trust (*usda.gov*); accessed August 2, 2022.

⁵ https://www.federalreserve.gov/paymentsystems/fednow_about.htm; accessed August 2, 2022.

notifications and requiring dealers to obtain credit sales trust waiver acknowledgements from sellers. Comments related to the existence of the statutory trust itself, or any burden of effectuating the trust are outside the scope of the proposed rule, and AMS is making no changes to the rule as proposed based on comments relating to the establishment of the trust. With regard to trust enforcement in tribal nations and without, AMS agrees that trust enforcement is important. In the development of the proposed rule, AMS determined that the proposed rule would be unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. While AMS has not yet addressed the procedure for enforcement of the dealer statutory trust itself, AMS plans to engage in future rulemaking to establish regulations for trust enforcement, and AMS intends to work with USDA's Office of Tribal Relations and with tribal governments in the development of future trust enforcement regulations to ensure those rules address concerns such as those raised by the commenter. Forthcoming trust enforcement regulations would provide for consideration and consultation regarding trust enforcement inside and outside tribal nations.

One commenter noted that USDA's enforcement role in the dealer trust appears to be greater than its role in enforcement of the packer trust, and encouraged USDA to prioritize the establishment of dealer trust enforcement procedures so the agency is prepared to act immediately when a default occurs. AMS acknowledges that trust enforcement procedures should be established, and assures commenters that we are working on trust enforcement regulations to be proposed in the future. In that regard, AMS will endeavor to create trust enforcement regulations that provide for the most efficient enforcement response. In the meantime, PSD responds quickly to all complaints of nonpayment for livestock in order to notify sellers of their right to file trust claims and bond claims. Where appropriate, PSD brings enforcement action against violators, which could result in civil penalties and/or suspension of registration.

Comment Period Extension

The proposed rule provided a 30-day comment period for public input about the proposals. One commenter submitted two requests for an extension

of the public comment period. One request simply asked for additional time to file comments. The other asked for a 90-day comment period.

As explained above, the provisions of the proposed rule, while very narrow in scope, are necessary to the administration of the dealer statutory trust. They mirror the provisions related to making timely trust claim notifications under the existing packer and live poultry dealer trusts, and they mirror provisions requiring packers to obtain credit sales trust waiver acknowledgements under the packer trust. AMS believes the 30-day comment period provided was sufficient to obtain input about these relatively non-controversial proposals. Accordingly, AMS denied the requests for an extended comment period.

Regulatory Analyses

Executive Orders 12866 and 13563

AMS is issuing this final rule in conformance with Executive Orders (E.O.) 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

AMS believes that the livestock industry is best served by revising the existing regulation at 9 CFR 203.15 that addresses preserving packer and poultry trust benefits under the Act to include provisions related to the new livestock dealer trust. The industry is already familiar with the notification process. AMS anticipates that additional costs or the adoption of new practices related to compliance with this final rule will be minimal. Livestock sellers can use the instructions in this final rule to file notice most efficiently with dealers and AMS of their intent to preserve trust benefits. However, this final rule also provides flexibility because the revisions allow that any written notification to dealers and the Secretary within the prescribed timeframes that the seller has not received full payment for livestock will meet the statutory requirement. Furthermore, AMS believes that including the statutory definition of "cash sale" in § 203.15 can help sellers better understand the conditions under which they can preserve their trust benefits.

Regarding revisions to § 201.200, AMS believes that both buyers and sellers benefit when livestock dealers with more than \$100,000 average annual purchases are required to obtain written acknowledgment from sellers that trust benefits do not extend to livestock purchases under credit terms, and to maintain all records related to such sales, including the written acknowledgement. Obtaining the written acknowledgement, as well as providing the seller with a copy of the written agreement and maintaining pertinent records, demonstrates that both parties understand the conditions of credit sales as they relate to dealer trust benefits. AMS does not expect this final rule to provide any environmental, public health, or safety benefits.

This final rule does not meet the criteria of a significant regulatory action under E.O. 12866 as supplemented by E.O. 13563. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this action on small business entities.

The final rule affects dealers that purchase more than \$100,000 in cattle, hogs, sheep, goats, horses, or mules annually. It also affects livestock producers, other dealers, and livestock auctions from which the dealers purchased livestock.

The Small Business Administration (SBA) defines small businesses by their North American Industry Classification System (NAICS) codes. Livestock dealers and livestock auctions would be classified as NAICS code 424520—Livestock Merchant Wholesalers, which includes all livestock dealers except dealers in horses and mules, and code 424590—Other Farm Product Raw Material Merchant Wholesalers.⁶ For both classifications, SBA defined a small business as one with 100 employees or fewer.⁷

Livestock dealers, including livestock auctions, are required to register and file annual reports with AMS. In 2017 and 2018, 3,015 livestock dealers purchased more than \$100,000 in livestock for

⁶ Office of the President, OMB. "North American Industry Classification System United States, 2017," pp. 336–337. https://www.census.gov/naics/reference_files_tools/2017_NAICS_Manual.pdf.

⁷ "Table of Small Business Size Standards Matched to North American Industry Classification System Codes," Small Business Administration, effective August 19, 2019, p. 24. https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf.

their own account or for the account of others.⁸ Livestock dealers do not disclose the number of employees in their annual reports, but based on its familiarity with the industry, AMS estimates at most three or four firms had more than 100 employees. At least 99.8 percent would be small businesses under the SBA definition.

Producers selling livestock would be classified as NAICS codes: 12111—Beef Cattle Ranching and Farming, 112210—Hog and Pig Farming, 112410—Sheep Farming, 112420—Goat Farming, and 112920—Horses and Other Equine Production. For each producer classification, SBA defined a small business as one with \$1 million or less in annual receipts.⁹

The 2017 Census of Agriculture categorizes cattle producers, hog producers, sheep and lamb producers, and horse and mule producers by the size of their operation. The Census of Agriculture tables categorize producers' sales by number of head not the value of their receipts, but data from the tables enable AMS to make a rough estimate of the number of producers that would qualify as small businesses as defined by SBA.

Census of Agriculture tables indicate that 711,827 farms reported sales of cattle or calves in 2017, of which 704,776 (99 percent) produced fewer than 1,000 head, averaged less than \$1 million in sales, and would be small businesses.¹⁰ Of the 64,871 hog farms reporting sales, the 57,084 farms (88 percent) that produced fewer than 5,000 head would qualify as small businesses.¹¹ Of the 101,387 farms producing sheep and lambs, 101,280 (99.9 percent) would qualify as small businesses.¹² The Census of Agriculture reported 74,227 farms that sold horses. Of those, 74,065 (99.8 percent) sold fewer than 50 horses, averaged less than \$1 million in sales, and would be considered small businesses. All the 10,435 farms that sold donkeys or mules

were small businesses.¹³ The Census did not have sales information for goat producers.

More than 99 percent of the cattle, sheep and lamb, horse, and mule producers were small businesses. Hog production was more concentrated, with only 88 percent qualifying as small businesses. As group, these livestock producers were about 98.5 percent small businesses.

The final rule includes two new provisions that affect small businesses: (1) The rule outlines how sellers can comply with the statutory requirement of providing written notification to dealers and to the Secretary if they wish to preserve their rights to the dealer trust, and (2) the rule requires dealers to obtain written acknowledgement from the seller that the seller waives their rights to the trust with respect to each particular sale under a credit agreement.

The costs of filing a trust claim would only apply to livestock sellers. There are few requirements. The cost would be the value of the time required to write and send the notification. AMS expects writing and sending the notification would require no more than a half hour of a manager's time. The U.S. Bureau of Labor Statistics estimated the average hourly wage for farmers, ranchers, and other agricultural managers to be \$36.93.¹⁴ If it takes one half hour to file the claim, filing the claim would cost \$18.47.

In a review of dealer bond claims filed with AMS from October 2013 through June 2019, AMS found claims against 82 dealers from 184 claimants.¹⁵ If sellers file trust claims at a similar rate as they have filed bond claims in the past, AMS could expect 14.5 incidents in which one or more sellers makes a valid claim against a dealer's trust each year, with an average of 2.25 claimants for each trust incident, or 33 claimants per year. At a cost of \$18.47 for each claim, AMS expects annual costs to the industry to be \$609.51. Since nearly all livestock producers and livestock dealers who might sell livestock to other dealers are small business entities, AMS expects that nearly all of the claimants would be small businesses.

The cost of obtaining a written waiver acknowledgement from the seller would

only apply to livestock dealers. AMS provides sample wording for the acknowledgment and expects that obtaining written acknowledgment from the seller would take no more than a half hour of a dealer's time, or \$18.47 for each acknowledgement.

AMS has no data on the number of dealers that purchase livestock with credit agreements, or the number of trust waiver acknowledgements dealers obtain from sellers and maintain. AMS's experience has been that the number of sellers acknowledging they waive their trust rights is relatively small. Sellers are reluctant to extend credit because they would be required to give up their rights to file trust claims or they have not had the financial resources to extend credit. With packer trusts, packers typically have not created separate trust waiver acknowledgements for each transaction. Instead, the waiver acknowledgments tend to cover a number of transactions over a period of time, limiting the number of written trust waivers required.

Regarding dealer trusts, AMS expects that relatively few sellers would enter into credit agreements requiring trust waiver acknowledgments. However, if a dealer must obtain waiver acknowledgments according to § 201.200, AMS expects that the dealer would limit the number of waiver acknowledgments by having a single waiver acknowledgment cover a number of transactions over a period of time. AMS estimates that at most, ten percent (302) of the 3,015 dealers that average annual purchases of more than \$100,000 in livestock would have credit agreements that require trust waiver acknowledgements. Dealers that purchase livestock with credit agreements may also purchase other livestock through cash sales, for which they are not required to obtain trust waiver acknowledgements from sellers. AMS estimates that each dealer that purchases livestock with credit and obtains trust waivers from sellers will only do so with an average of five customers in a year. That amounts to a total cost of \$27,890 for all of the expected trust waivers (302 dealers × 5 waivers/dealer × \$18.47/waiver).

The costs would not be spread uniformly across dealers. Dealers that do not enter into credit agreements would have no costs. Only the estimated ten percent of dealers that purchase livestock under a credit agreement with the seller would need trust waiver acknowledgments. The cost would average \$92 for each dealer that purchases livestock with a credit agreement, which is about 0.1 percent of the minimum amount (\$100,000) of

⁸ USDA, AMS. "Report Pursuant to Section 12103 of the Agriculture Improvement Act of 2018: Study to Determine the Feasibility of Establishing a Livestock Dealer Statutory Trust." December 20, 2019, p. 39. <https://www.ams.usda.gov/sites/default/files/media/LivestockDealerStatutoryTrustSenttoCongress.pdf>.

⁹ "Table of Small Business Size Standards Matched to North American Industry Classification System Codes," Small Business Administration, effective August 19, 2019, pp. 2–3.

¹⁰ USDA, National Agricultural Statistics Service (NASS). "2017 Census of Agriculture: United States Summary and State Data" Volume 1. April 2019, p. 23. https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1_Chapter_1_US/usv1.pdf.

¹¹ *Ibid.*, p. 24.

¹² *Ibid.*, p. 25.

¹³ *Ibid.*, p. 26.

¹⁴ Department of Labor (USDOL), Bureau of Labor Statistics (BLS). Occupational Employment Statistics. "Occupational Employment and Wages, May 2020. 11–9013 Farmers, Ranchers, and Other Agricultural Managers." <https://www.bls.gov/oes/current/oes119013.htm#nat>.

¹⁵ USDA, AMS. "Report Pursuant to Section 12103 of the Agriculture Improvement Act of 2018: Study to Determine the Feasibility of Establishing a Livestock Dealer Statutory Trust." December 20, 2019, p. 70.

average annual livestock purchases that makes a dealer responsible for obtaining waiver acknowledgments from credit sellers. Costs would likely be correlated with the size of the dealer: smaller dealers that purchase livestock on credit from fewer sellers would have fewer trust waiver acknowledgments.

AMS expects total marginal costs for the two provisions to be \$28,599. Small businesses would be responsible for nearly all of the costs. In 2017 and 2018, livestock dealers that purchased more than \$100,000 in a year purchased a yearly total of \$27.065 billion in livestock.¹⁶ Compared to the amount of business that livestock dealers conduct, an annual cost of \$28,599 is 0.00011 percent of total dealer livestock purchases. Accordingly, AMS has determined that this action would not have a significant negative economic impact on a substantial number of these small business entities.

One comment submitted in response to the proposed rule suggested that AMS grossly underestimated the financial impacts of the dealer statutory trust on small businesses operating as livestock sellers, markets, producers, and/or dealers. The commenter asserted that, in light of statutory trust provisions, dealers will force sellers to extend credit to dealers, incurring additional interest costs to secure lines of credit to cover their custodial accounts, which AMS did not consider. The commenter estimated this additional interest cost alone could range between \$30,000 and \$60,000 annually per market, or between \$40 million and \$50 million collectively. The commenter identified other industry participants that could be financially impacted by the trust, citing legal fees, interest fees on unsettled notes, and extensive administrative costs to industry participants and government agencies. Finally, the commenter urged USDA to submit to a more extensive rulemaking process that incorporates the input and cooperation of the impacted businesses.

AMS acknowledges that the general impacts and costs related to establishment of the dealer statutory trust were not considered in the initial Regulatory Flexibility analysis performed in conjunction with the proposed rule, nor should they have been. AMS's cost/benefit and Regulatory Flexibility analyses, which were published in the proposed rule, properly evaluated only the potential burdens, costs, and benefits of

effectuating these proposed provisions that provide instructions for livestock sellers who desire to preserve their interest in the statutory livestock dealer trust under the Packers and Stockyards Act. Impacts related to the existence or establishment of the statutory trust itself are outside the scope of the proposed rule. Accordingly, AMS has made no changes to the proposed rule, nor to the analysis, based on this comment. AMS's analysis focused on the impacts of the proposed rule's provisions on small business entities, as was appropriate. Some of the commenter's observations and projections may be applicable to future rulemaking about trust enforcement. We encourage the commenter and all other interested parties to participate in that effort.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the information collection requirements under the Packers and Stockyards regulations have been approved previously by OMB and assigned OMB No. 0581-0308. Changes to those requirements are necessary in connection with this final rule.

Title: Preserving Trust Benefits Under the Packers and Stockyards Act.

OMB Number: 0581-0336.

Expiration Date of Approval: 3 years from approval.

Type of Request: Intent to seek approval to conduct a new information collection.

Abstract: The Packers and Stockyards Act, 1921 (Act) (7 U.S.C. 181 *et seq.*), was recently amended by the addition of section 318 (7 U.S.C. 217b), establishing a statutory trust for the benefit of unpaid cash sellers of livestock. Under the amended Act, livestock dealers whose average annual purchases of livestock exceed \$100,000 must hold all inventories of and receivables and proceeds from livestock purchased in cash sales in trust for the benefit of all unpaid cash sellers of that livestock until the cash sellers have been paid in full.

Under the new statutory trust provisions, livestock sellers lose their interest in the trust unless they notify livestock dealers and the Secretary of Agriculture (Secretary) in writing that payment has not been received. Such notice must be provided within 30 days of the final date when payment was due or within 15 days of notice that a dealer's payment instrument has been dishonored. The statute further provides that trust provisions apply only to cash sales, which are defined in the statute as sales in which the seller does not expressly extend credit to the buyer.

Thus, livestock sellers have no claim against the trust if they have extended credit to the buyer.

AMS seeks approval for a new information collection related to the livestock dealer trust to implement new regulatory requirements. Livestock dealers who purchase livestock under credit terms and whose average annual purchases of livestock exceed \$100,000 must obtain written acknowledgments from sellers that trust benefits do not pertain to credit sales. Dealers must provide copies of the acknowledgments to sellers and must retain the acknowledgments for two years after the expiration of the subject credit agreements. Additionally, a livestock seller who has not received payment in full for cash livestock sales must notify both the dealer and the Secretary of Agriculture in writing and within specified timeframes that the seller has not received full payment and intends to preserve their interest in the dealer trust. Providing such notice to the Secretary will enable USDA to initiate enforcement investigations and further actions as necessary.

Authority:

- In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and

- The Packers and Stockyards Act, 1921 (7 U.S.C. 181 *et seq.*), as amended.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 to 30 minutes.

Respondents: Livestock dealers and sellers.

Estimated Number of Potential Respondents: 335.

Estimated Total Potential Annual Responses: 1,845.

Maximum Estimated Total Annual Burden on All Respondents: 847 hours.

A 60-day public comment period regarding the information collection related to this rule was imbedded in the proposed rule that was published on May 5, 2022 (87 FR 26695). The comment period closed July 5, 2022. AMS received one comment referencing the estimated information collection burden on regulated entities. The commenter supported the proposed requirement to obtain credit sales trust waiver acknowledgments and concurred with AMS's estimate of the amount of time to do so and the likely infrequency of needing to do so. The commenter said the requirement protects sellers by ensuring they are well informed that they are giving up their trust rights when extending credit to a dealer. The commenter stated also that the statutory trust is an important tool for collecting funds in the event of a default, and producers should not be

¹⁶ USDA, AMS, "Report Pursuant to Section 12103 of the Agriculture Improvement Act of 2018: Study to Determine the Feasibility of Establishing a Livestock Dealer Statutory Trust." December 20, 2019, p. 33.

put in a position to waive this protection without notice. The commenter observed that the burden of creating the acknowledgement is low, as the language for dealers to use in the document is provided in the regulation. Finally, the commenter recognized that the requirement is consistent with the existing regulation for extending credit to packers and waiving packer statutory trust protections. AMS made no changes to the information collection requirements of the proposed rule based on this comment.

Upon approval by OMB, this information collection will be merged with the information collection currently approved for the Packers and Stockyards Division.

Reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Should additional changes become necessary, they would be submitted to OMB for approval.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this final rule as not a major rule as defined by 5 U.S.C. 804(2).

E-Government Act

USDA is committed to complying with the E-Government Act (44 U.S.C. 3601 *et seq.*) by promoting the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

This final rule has been reviewed under E.O. 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. In the development of the proposed rule, AMS determined that the proposed rule would be unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

One comment submitted in response to the proposed rule suggested that AMS had not met its burden of proof with regard to the impact and enforcement implications of dealer trust regulations on livestock sales transactions between tribal and non-tribal industry participants. AMS clarifies that neither the proposed rule nor this final rule

addresses the impacts or enforcement of the dealer statutory trust itself. AMS plans to engage in future rulemaking to establish regulations for trust enforcement regulations. AMS intends to work with USDA's Office of Tribal Relations and with Tribal governments in the development of future trust enforcement regulations to ensure those rules address concerns such as those raised by the commenter. However, AMS continues to believe that the provisions of the May 5, 2022, proposed rule, as well as this final rule, are unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Executive Order 12988

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to judicial challenge to the provisions of this rule.

Additional regulations pertaining to the new livestock dealer trust will be considered in a separate rulemaking action.

List of Subjects

9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

9 CFR Part 203

Reporting and recordkeeping requirements, Stockyards.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 9 CFR chapter II as follows:

PART 201—ADMINISTERING THE PACKERS AND STOCKYARDS ACT

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 181–229c.

■ 2. Amend § 201.200 by:

- a. Revising the section heading;
- b. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively;
- c. Adding new paragraph (b);
- d. Revising newly redesignated paragraph (c); and
- e. Removing the parenthetical authority at the end of the section.

The revisions and addition read as follows:

§ 201.200 Sale of livestock on credit.

* * * * *

(b) No dealer whose average annual purchases of livestock exceed \$100,000 shall purchase livestock on credit unless:

(1) Before purchasing livestock on credit, the dealer obtains from the seller a written acknowledgement that includes the information described in this paragraph (b)(1).

(i) The following statement:

On this date I am entering into a written agreement for the sale of livestock on credit to _____, a dealer, and I understand that in doing so I will have no rights under the trust provisions of section 318 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 217b), with respect to any such credit sale.

(ii) A statement about whether the credit sales agreement covers a single sale; covers multiple sales and remains in effect through a certain date and states the date; or remains in effect until canceled in writing by either party.

(iii) The date the seller signed the agreement.

(iv) The seller's signature.

(2) The dealer retains the written acknowledgment, together with all other documents, if any, setting forth the terms of credit sales on which the purchaser and seller have agreed, and the dealer retains a copy thereof, in their records for such time as is required by any law, or by written notice served on the dealer by the Administrator, but not less than two calendar years from the date of expiration of the written agreement referred to in the acknowledgment.

(3) The dealer provides a copy of the acknowledgment to the seller.

(c) Purchasing livestock for which payment is to be made by a draft which is not a check shall constitute purchasing such livestock on credit within the meaning of paragraphs (a) and (b) of this section. (See also § 201.43(b)(1).)

* * * * *

PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT

■ 3. The authority citation for part 203 continues to read as follows:

Authority: 7 CFR 2.22 and 2.81.

■ 4. Revise § 203.15 to read as follows:

§ 203.15 Trust benefits under sections 206, 207, and 318 of the Packers and Stockyards Act.

(a) Within the times specified under sections 206(b), 207(d), and 318(b) of

the Act, any livestock seller, live poultry seller or grower, to preserve their interest in the statutory trust, must give written notice to the appropriate packer, live poultry dealer, or livestock dealer and file such notice with the Secretary within the prescribed time by letter, fax, email, or other electronic transmission. The written notice should provide:

- (1) Notification to preserve trust benefits;
- (2) Identification of packer, live poultry dealer, or livestock dealer;
- (3) Identification of seller or poultry grower;
- (4) Date of the transaction;
- (5) Date of seller's or poultry grower's receipt of notice that payment instrument has been dishonored (if applicable); and
- (6) Amount of money due; and to make certain that a copy of such letter, fax, email, or other electronic transmission is filed with a PSD regional office or with the PSD headquarters office within the prescribed time.

(b) While the information in paragraphs (a)(1) through (6) of this section is desirable, any written notice which informs the packer, live poultry dealer, or livestock dealer, and the Secretary that the packer, live poultry dealer, or livestock dealer has failed to pay is sufficient to meet the statutory requirement in paragraph (a) of this section if it is given within the prescribed time.

(c) For purposes of administering statutory trusts under the Act, a *cash sale* means a sale in which the seller does not expressly extend credit to the buyer.

(Approved by the Office of Management and Budget under control number 0581-0308)

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023-13418 Filed 6-22-23; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA-2022-1212]

Changes to Surveillance and Broadcast Services

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notification of changes to surveillance services.

SUMMARY: This document announces termination of the Mode-S Traffic Information Service (TIS) at FAA terminal Mode-S radar sites. The FAA is replacing legacy terminal Mode-S radars via the Mode-S Beacon Replacement System (MSBRS) program, or may remove legacy terminal Mode-S radars as part of other ongoing activities. As each legacy terminal Mode-S Radar is replaced or removed, the FAA will no longer provide Mode-S TIS to capable transponders from that location. This change does not affect existing Traffic Information Service—Broadcast (TIS-B), Automatic Dependent Surveillance—Rebroadcast (ADS-R), or Automatic Dependent Surveillance—Same Link Rebroadcast (ADS-SLR) services currently provided to aircraft with a properly functioning Automatic Dependent Surveillance—Broadcast (ADS-B) system.

DATES: Effective June 23, 2023.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this document, contact: Michael Freie, Technical Advisor, Surveillance Services, AJM-4, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; telephone: 202-528-2337; email: michael.freie@faa.gov.

SUPPLEMENTARY INFORMATION:

Executive Summary

In 2018, the FAA performed an assessment of the safety impacts on general aviation owners and operators (from here on referred to as “the GA Community”) from the termination of Mode-S Traffic Information Service (TIS). The purpose of this work was to communicate information on the removal of Mode-S TIS from the National Airspace System (NAS) through user outreach and engaging with non-governmental organizations (e.g., Aircraft Electronics Association (AEA), Aircraft Owner and Pilots Association (AOPA), Experimental Aircraft Association (EAA), and General Aviation Manufacturers Association (GAMA)). Taking into consideration the results of the FAA study and the benefits from the ADS-B In traffic services available in the NAS, the FAA determined that removal of Mode-S TIS had little to no significant adverse safety impact on the GA Community. Therefore, beginning in 2024, Mode-S TIS will terminate at each radar location as current Mode-S radars are replaced by the Mode-S Beacon Replacement System (MSBRS) program, or as legacy terminal Mode-S radars are removed as part of other ongoing activities. The GA

Community should no longer rely on reception of Mode-S TIS information from FAA capable radars.

I. Background

In 2000, FAA implemented Mode-S Traffic Information System (TIS) via Mode-S radar data-link functionality. Mode-S TIS has also been referred to informally as TIS-A by some in industry. Mode-S TIS was implemented by FAA in response to an NTSB recommendation suggesting improvement of situational awareness information for the general aviation (GA) community not equipped with a traffic alert and collision avoidance system (TCAS). Reception of Mode-S TIS information was not a functionality that was required for Mode-S transponders. To this day, a very limited set of transponders are known to be capable of receiving and processing Mode-S TIS information from FAA terminal radars.

In May 2010, the FAA published 14 CFR 91.225 and 91.227, requiring aircraft to be equipped with Automatic Dependent Surveillance—Broadcast (ADS-B) Out equipment by 1 January 2020 in order to operate in certain U.S. airspace. ADS-B was identified as the backbone for the future of the FAA's Next Generation (NextGen) programs. From 2010 through 2020, the FAA funded deployment of approximately 700 ADS-B radio stations across the U.S. to provide improved surveillance coverage across the NAS. Along with improving surveillance coverage, the FAA implemented functionality into ADS-B radio stations geared at providing appropriately equipped GA aircraft with enhanced situational awareness through both Traffic Information Services—Broadcast (TIS-B) and Automatic Dependent Surveillance—Rebroadcast (ADS-R).¹ In 2016, FAA funded the addition of Automatic Dependent Surveillance—Same Link Rebroadcast (ADS-SLR) service at the busiest U.S. airports with a surface surveillance system.²

In the decades following the initial Mode-S TIS deployment, the FAA implemented improved systems for provisioning information on proximate aircraft to GA pilots through the use of TIS-B, ADS-R, and ADS-SLR services. These new services expand beyond the

¹ More information on TIS-B and ADS-R can be found at the FAA's NEXTGEN ADS-B website: <https://www.faa.gov/nextgen/programs/adsb>.

² FAA has two surface surveillance systems: ASSC (Airport Surface Surveillance Capability) and ASDE-X (Airport Surface Detection Equipment, Model X). See <https://www.faa.gov/nextgen/programs/adsb/atc/assc> and https://www.faa.gov/air_traffic/technology/asde-x.