

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580-AB05

Market Agency, Dealer, and Packer Bonds

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The United States Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is reviewing how it calculates the reasonable bond required to be posted by each market agency, dealer, and certain packers (bonded entities) under the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181, *et seq.*) (P&S Act or Act). We are initiating this review to determine what alternatives, if any, exist for revising the P&S Act regulations (9 CFR part 201) to better protect the financial interests of livestock sellers and consignors without exceeding a reasonable bond amount for bonded entities. We are seeking public comment and information on several identified alternative revisions to the regulations and the issues that we are considering in this review.

DATES: Written or electronic comments received by March 23, 2009 will be considered.

ADDRESSES: You may submit your written or electronic comments to:

- Market Agency, Dealer and Packer Bond Comments, c/o Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643-S, Washington, DC 20250-3604.
- E-Mail comments to comments.gipsa@usda.gov.
- Fax: (202) 690-2173
- Internet: Go to <http://www.regulation.gov> and follow the on-

line instruction for submitting comments.

Instructions: All comments will become a matter of public record and should be identified as "Market Agency, Dealer and Packer Bond Comments," making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call the GIPSA Management Support Services staff at (202) 720-7486 to make an appointment to read comments.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720-7363, s.brett.offutt@usda.gov.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking is issued under authority of section 407 of the P&S Act (7 U.S.C. 228(a)).

GIPSA enforces the Packers and Stockyards Act. Under authority granted the Secretary of Agriculture (Secretary) and delegated to us, we are authorized (7 U.S.C. 228) to make those regulations necessary to carry out the provisions of the Act.

A statutory provision that supplements the P&S Act (7 U.S.C. 204) authorizes the Secretary to require reasonable bonds from market agencies, packers and dealers, with an exemption for packers whose average annual livestock purchases are less than \$500,000. The bonds are intended to secure the performance of the bonded entities' monetary obligations to livestock sellers and consignors. Entities required to be bonded may fulfill this requirement by filing a surety bond issued by a surety company which is currently approved by the United States Treasury Department for bonds executed to the United States; or in whole or partial substitution for a surety bond, a trust agreement governing one or more irrevocable, transferable, standby letters of credit issued by a Federally-insured bank or institution and physically received and retained by a named trustee; or a trust fund agreement governing funds deposited or invested in fully negotiable obligations of the United States or Federally-insured deposits or accounts in the name of and readily convertible to currency by a trustee (9 CFR 201.27).

The trustee named on a bond or bond equivalent (trust agreement or trust fund agreement) must be a financially responsible, disinterested person satisfactory to the GIPSA Administrator (9 CFR 201.32).

How Do Bonds Secure a Bonded Entity's Obligations to Livestock Sellers and Consignors?

A bonded entity fails to meet its monetary obligations to livestock sellers or consignors when it fails to pay for livestock within the time and manner specified in the P&S Act and regulations. Payment is usually due to the seller or consignor by the close of the next business day after the sale or purchase of livestock.

A bond or bond equivalent allows any person damaged by failure of the bonded entity to comply with any condition clause of the bond (see 9 CFR 201.31) to file a claim for damages against the bond, even if the person or persons are not named on the bond (9 CFR 201.33). Once we become aware of non-payment, we notify and instruct potential claimants of the proper procedures for filing valid claims against the bond. All claims for damages must be filed in writing with either the surety, the trustee, or the GIPSA Administrator within 60 days after the date of the transaction on which the claim is based. Under the P&S Act and regulations, a claimant may not file a lawsuit in U.S. District Court to collect damages owed by a bonded entity within the first 120 days, or more than 547 days from the date of the transaction on which the claim is based; otherwise, the claimant will lose eligibility to receive funds from the bond (9 CFR 210.33).

Upon receipt of the first claim against a bond, the surety on the bond or the trustee on the bond equivalent is required to terminate the bond or bond equivalent and collect any funds covered by the bond or bond equivalent up to its face amount. Once the period for filing claims has expired, the surety or the trustee is responsible for determining 1) if the claims involved transactions covered by the bond or bond equivalent, and 2) if the claims were filed timely. Claims that meet both tests are eligible to receive a pro-rata share of the proceeds from the bond or bond equivalent up to its face amount. The surety or the trustee is responsible

for distributing the proceeds accordingly. The proceeds from the bond may not be used to pay fees, salaries, or expenses for legal representation of the surety or the bonded entity.

Purpose of This Advance Notice of Proposed Rulemaking (ANPR) and the Alternatives Under Consideration

Section 201.30 of the regulations (9 CFR 201.30) describes the current formulas we use to calculate the required bond amount for each bonded market agency, packer, and dealer. We have found that the bond amounts based on the current formulas, last updated in 1983, frequently do not cover the total amount of money that is owed to livestock sellers and consignors when a bonded entity fails.

In 2006, approximately 5,407 dealers and market agencies, and 295 packers were bonded under the P&S Act. From 1997 to 2007, there was an average of 10 dealer, 5 market agency, and 4 packer business failures per year. During the same time period, payments from bonds or bond equivalents to livestock sellers and consignors averaged 15 percent of the amount of money owed when a dealer operation failed, 29 percent of the debt when a market agency failed, and 21 percent of the debt when a packer failed. Based on this data, the bond formulas in section 201.30 of the P&S Act regulations (9 CFR 201.30) often do not provide sufficient financial coverage of the full monetary obligations of market agencies, dealers, and packers to livestock sellers and consignors.

We considered different ways to increase the percentage of debt recovered by unpaid livestock sellers and consignors from the bonds of delinquent bonded entities. One option we considered was to establish a livestock indemnity fund similar to one currently in existence in a province of Canada. However, it was determined that we lack the statutory authority to pursue that option. Therefore, we turned our focus to other options. We believe that in order to better protect the financial interests of livestock sellers and consignors, the bond calculation formulas in section 201.30 of the P&S regulations (9 CFR 210.30) must be revised.

Through this ANPR, we are soliciting public comment and information on several alternatives that we have identified for calculating bond amounts required for bonded entities that are reasonable as stated in 7 U.S.C. 204. We invite comments from livestock sellers and consignors; insurance companies and banks that issue bonds and bond equivalents; other governmental entities

that regulate market agencies, dealers, and packers at the State, regional or local level; market agencies, dealers, and packers subject to the bond requirement; and other interested persons or organizations.

What You Should Consider When Commenting on the Alternatives

In order for us to evaluate which alternative(s) would best secure obligations to livestock sellers and consignors without exceeding a reasonable amount of bond coverage for the bonded entities, please consider the following questions when commenting:

1. Which alternative, if any, do you prefer and why?
2. How would you recommend that we implement your preferred alternative?
3. What are the benefits and relative costs of each alternative? Do the benefits outweigh the costs and, if so, why?
4. What would be the impact of each alternative on small or new businesses in this industry?
5. What would be the impact of each alternative on large or more established businesses in this industry?
6. Is there a benefit to combining one or more of these alternatives and, if so, which ones?
7. What are the relative costs of combining one or more of these alternatives?
8. What would be the impact of combining one or more of these alternatives on small or new businesses in this industry?
9. What would be the impact of combining one or more of these alternatives on large or more established businesses?
10. Are there other alternatives that we should consider and, if so, what are they?

Alternative 1—Adding Risk Factors

One alternative we have identified involves adding a risk factor to the formulas used to calculate the reasonable bond coverage amount. We believe that the addition of a risk factor to the formulas would be one way to better protect livestock sellers and consignors. If we implement this alternative, we would require bonded entities at higher risk of failing to carry higher bonds than similar entities with a lower risk of failing. We may need to collect additional information, not now collected, to assess the risk factor. The risk factor would function in a manner similar to those used by insurance companies to calculate the rate a person pays for automobile or home owners' insurance. We could apply the risk factor to all bonded entities; to bonded

entities whose overall risk exceeds a certain threshold; to those who have previously demonstrated problems with non-payment and/or insolvency; or to some combination of the above options.

Alternative 2—Revise Existing Factors in Current Formulas

Another alternative would be to revise the factors in the current formulas to increase the resulting bond amount. Bond amounts are currently calculated using the following factors:

1. The total dollar value of livestock sold (for a market agency selling livestock on commission) or the total dollar value of livestock purchased (by a market agency buying on commission, a dealer, or a packer, or by all persons for whom a market agency acting as a clearing agent served as a clearor) during the preceding business year, or substantial part of that business year, in which the bonded entity operated.

2. The number of days on which livestock was sold, not to exceed 130 (for a market agency selling livestock on commission) or half the number of days in any business year, not to exceed 130 (for a market agency buying on commission, a dealer, a market agency acting as a clearing agency, or a packer).

3. The result of dividing factor 1 by factor 2 for a market agency selling livestock on commission is the average sales per sale day (until the number of days on which livestock were sold exceeds 130). The results for market agencies buying on commission, dealers, or packers is the average purchases for 2 business days.

4. If the average sales per sale day or the average purchases for 2 business days exceeds a specific threshold amount (\$50,000 for market agencies selling livestock on commission, or \$75,000 for market agencies buying on commission and dealers), the amount of bond coverage need not exceed the threshold plus 10 percent, raised to the next \$5,000 multiple.

5. Otherwise, bond coverage must be the next multiple of \$5,000 above the average sales or purchase volume for 2 business days.

6. The minimum bond required is \$10,000, unless a higher amount is required under State law.

We are seeking comment on which of these factors or combination of factors should be revised and in what way.

Alternative 3—Change Bond Calculation After Mergers/Acquisitions

A third alternative would change how bonds are calculated when market agencies and dealers merge or are acquired by another entity. Under the current formulas, the required bond

amount decreases for the larger merged entity due to the threshold and percent discount in factor 4 (discussed in alternative 2). To remedy this, we could change that factor as discussed in alternative 2. Or, we could require that the bond posted by the merged entity equal the combination of the amount that would have been required of each individual entity involved in the merger or acquisition.

Other Alternatives

We also invite the submission of suggestions on other alternatives to replace or supplement these proposed changes in the bond formulas because reasonable bonds alone that are posted by market agencies, packers and dealers may not ensure that the financial interests of livestock sellers and consignors are protected. We expect that any revision to the formulas for calculating bond amounts will increase the cost to market agencies, dealers, and packers to maintain the determined reasonable bond coverage.

Executive Order 12866 and Regulatory Flexibility Act

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

E-Government Act Compliance

GIPSA is committed to complying with the E-Government Act, to promote 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.

Terry D. Van Doren,

Administrator, Grain Inspection, Packers and Stockyard Administration.

[FR Doc. E8-30515 Filed 12-22-08; 8:45 am]

BILLING CODE 3410-KD-P

DEPARTMENT OF ENERGY

10 CFR Part 452

RIN 1904-AB73

Production Incentives for Cellulosic Biofuels; Reverse Auction Procedures and Standards

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking (NPR) and opportunity for comment.

SUMMARY: The Department of Energy (DOE) today publishes a proposed rule

to establish the procedures and standards for reverse auctions of production incentives for cellulosic biofuels pursuant to section 942 of the Energy Policy Act of 2005 (EPAct 2005).

DATES: Public comment on this proposed rule will be accepted until January 22, 2009.

ADDRESSES: You may submit comments, identified by RIN 1904-AB73, by any of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *E-mail to EPAct942@go.doe.gov.* Include RIN 1904-AB73 in the subject line of the e-mail. Please include the full body of your comments in the text of the message or as an attachment.

3. *Mail:* Address written comments to James Spaeth, U.S. Department of Energy, 1617 Cole Blvd., Golden, CO 80401.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information Act regulations at 10 CFR 1004.11.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

You may obtain copies of comments submitted in response to this notice of proposed rulemaking by contacting Mr. James Spaeth.

FOR FURTHER INFORMATION CONTACT: Mr. James Spaeth, U.S. Department of Energy, 1617 Cole Blvd., Golden, CO 80401; (303) 275-4771;

jim.spaeth@go.doe.gov; or Mr. Edward Myers, Office of the General Counsel, U.S. Department of Energy, Mailstop GC-72, Room 6B-256, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-3397 or edward.myers@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Proposed Rule
- III. Regulatory Review
- IV. Approval by the Office of the Secretary

I. Background

Section 942 of the Energy Policy Act of 2005, Public Law No. 109-58 (August 8, 2005), requires the Secretary of Energy (Secretary), in consultation with

the Secretary of Agriculture, the Secretary of Defense, and the Administrator of the Environmental Protection Agency, to establish an incentive program for the production of cellulosic biofuels and to implement that program by means of a "reverse auction." Section 942(a) states that the purposes of the program are to: "(1) Accelerate deployment and commercialization of biofuels; (2) deliver the first 1 billion gallons of annual cellulosic biofuel production by 2015; (3) ensure biofuels produced after 2015 are cost competitive with gasoline and diesel; and (4) ensure that small feedstock producers and rural small businesses are full participants in the development of the cellulosic biofuels industry." In order to achieve these purposes, the Secretary is to award production incentives on a per gallon basis to eligible entities by means of a reverse auction. Under section 942, the first reverse auction is required annually until the earlier of the first year that annual production of cellulosic biofuels in the United States reaches 1 billion gallons or 10 years after enactment of EPAct 2005, *i.e.*, August 8, 2015.

However, pursuant to section 202 of the Energy Independence and Security Act of 2007 (Pub. L. 110-140) (EISA), the Administrator of the Environmental Protection Agency is required to issue regulations that implement certain Renewable Fuel Standards, including regulations to ensure that transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains at least 1 billion gallons of cellulosic biofuel by calendar year 2013. Consequently, if the Renewable Fuel Standard for cellulosic biofuel under EISA is achieved, the last reverse auction under section 942 of EPAct 2005 would occur in 2013.

II. Discussion of Proposed Rule

A. Overview

The proposed rule would establish procedures for the reverse auction and standards for making production incentive awards. The eligibility standards include both pre-auction requirements which must be met prior to an entity's participation in a reverse auction under section 942 and several post-auction standards which must be met as a condition of receiving an award. The post-auction standards are especially necessary if the Nation is to achieve the long-term goals of section 942, including delivery of the first one billion gallons of annual cellulosic biofuel production by 2015, and