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Contact: Chelsea Good

Vice President of Government and Industry Affairs

cgood@lmaweb.com

(816) 891-0502

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USDA Report Affirms Feasibility of Dealer Trust

A Dealer Statutory Trust would improve the recovery of livestock sellers in a dealer payment default while also allowing commerce to continue as usual, according to a U.S. Department of Agriculture (USDA) report released December 20.

In the 2018 Farm Bill, Congress instructed USDA to examine the feasibility of establishing a livestock Dealer Statutory Trust and provide a report within one year. Based on its analysis of industry data, public input, and experience with the livestock industry, USDA finds that it would be feasible to implement a livestock Dealer Statutory Trust.

Under current law, farmers, ranchers, and livestock auctions have been devastated when livestock dealers default on payment. The sellers often do not have the ability to get the livestock back for which they were not paid and recover little from the dealer's bond. While the Eastern Livestock default, which cost livestock sellers tens of millions of dollars, is the best-known example of this, the USDA report analyzes 82 additional dealer defaults occurring from October 1, 2013 – June 30, 2019.

A Dealer Statutory Trust would give unpaid sellers of livestock the legal right to reclaim livestock or, if they have been resold, proceeds from livestock in the unfortunate event of a livestock dealer payment default. The USDA report finds existing statutory trusts in other segments of agriculture (sales of livestock to packers as well as poultry, fruit, and vegetables sales) are effective in improving financial recoveries and similar results could be expected under a livestock Dealer Statutory Trust.

“We appreciate the in-depth analysis of USDA on this important issue,” said Livestock Marketing Association President Tom Frey. “These findings will be helpful as we work with Congress in 2020 to get livestock auctions and producers the increased certainty and predictability of payment they deserve.”

Creation of a Dealer Trust is supported by the livestock industry, including the Livestock Marketing Association, National Cattlemen’s Beef Association, United States Cattlemen’s Association, American Sheep Industry Association, and American Farm Bureau Federation. Prior to the 2018 Farm Bill calling for the USDA report, the bipartisan Securing All Livestock Equitably (SALE) Act, which would have created a Dealer Statutory Trust, was introduced in the House and Senate.

Additional key findings in the USDA report include:

- A Dealer Statutory Trust could improve sellers' chances of obtaining full recoveries.
- Under a Dealer Statutory Trust, livestock purchase payments made to sellers within 90 days before a dealer files bankruptcy would not be considered preferential transfers and could not be reclaimed from sellers.
- Establishment of a livestock Dealer Statutory Trust would likely have little effect on buyer and seller behavior in livestock markets. In general, commerce would continue as usual.
- Implementation of a livestock Dealer Statutory Trust would be unlikely to significantly impact credit availability or lender behavior.

For more information about Dealer Statutory Trust, contact Livestock Marketing Association Vice President of Government and Industry Affairs Chelsea Good at cgood@lmaweb.com or 816-305-9540.

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