



United States
Department of
Agriculture

Grain Inspection,
Packers and Stockyards
Administration

75 Spring St., Suite 230
Atlanta, GA 30303-3308
404-562-5840
Fax 404 562-5848

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TO: Alan R. Christian, Deputy Administrator

FROM: Elkin W. Parker, Regional Director ERO

SUBJECT: Reply to MAR, May 6 – June 30, 2010

The Management Accountability Review highlighted several areas in which PSU could improve. Changes and procedures have been implemented as listed below in the respective SOP's. However, I disagree with the statement that the lack of attention and necessary corrective action in this area could cause potential harm to the industry – especially in RO-6: Financial Instrument Termination/Expiration. Letters were sent timely and the information was entered in AMS, the information was not entered in the ECM folder and MART is saying that this could cause potential harm to the industry.

RO1: Registration and Bonding

SOP Checklist #1: “If new registrant, did the PSU staff send the Standard Packet and include POC information?” (Page 6)

ECM #42324 – Voluntary application; mailed NOD for Bond

- Folder 42324 is Involuntary – MAR shows as Voluntary
- Application for Registration was received and when bond was not received in a couple of weeks, and NOD was sent – the NOD did not list the POC information
- Task to return bond for correction should have been done in ECM, but was not.

SOP Checklist #2: If amended, supplemental, reactivated, or limited, did the PSU staff send appropriate paperwork to the entity within five business days or receipt to collect the necessary information?”

- ECM #43062 – Letter to Trustee not dated – Fore – did not date letter to trustee
- ECM #43064 – Bond effective date not correct – Fore – MART is correct – bond effective date is May 20, 2009 – rider reference effective date as May 30, 2009
- ECM #43096 – Unable to determine; only one document in folder – Fore – MART is correct, there is not enough information in the file to determine and there are no notes in the folder
- ECM #22307 – Letters do not appear to have been mailed; no date stamp – Thomas - all documents were date stamped except one – the application for registration

- ECM #25392 – Correction letter not mailed for each incorrect document – Fore – signature of trustee was missing on rider – MART is correct that LIE did not use “correction task” to send rider/letter to trustee for signature (correction). MART is not correct in saying that there were multiple correction letters to send.
- ECM #33917 – Correction letter not mailed – Ainsworth – MART is correct – correction requests were not completed using the “correction task” in ECM. However, there were adequate notes in the folder
- ECM #33163 – Correction letter not mailed – Ainsworth - MART is correct – correction requests were not completed using the “correction task” in ECM. However, there were adequate notes in the folder.

SOP Checklist #3: “If paperwork is correct, did the PSU staff input information into PAS? Is documentation available showing appropriate letter was sent?”

- ECM #40062 – Bond missing condition – no correction letter mailed – Ainsworth – MART is not correct – the surety company did not enter the clause numbers but they did cross out all the clauses that did not apply – this has been a common practice for over 40 years. In fact the instructions state to mark out all clauses that do not apply.
- ECM #41343 – NOD mailed after due date & Bond Riders incorrect with no correction letter mailed – Fore – task to mail NOD was 3/10/10 – it was mailed on 3/11/10. MART is correct, the correction requests were not completed using the “correction task” in ECM. However, there were adequate notes in the folder
- ECM #42584 – TFA not correct – Ainsworth - MART is incorrect – the TFA is correct the only thing missing was the signature of the trustee and that was added to the folder on 4/27/10.
- ECM #24039 – Unable to determine; no notes and folder are closed. MART is incorrect – this folder was to send a packer inquiry – task was completed, packer inquiry was received – it was under \$500,000 – therefore, folder was closed. Notes are in the folder

PAS Checklist #2: “If market agency, dealer, or packer with volume over \$500,000 is financial instrument tab complete?” Only one instance found -

- ECM #24039 – Packer Inquiry lists amount under \$500,000 – MART is incorrect – the checklist states if volume is over \$500,000 financial tab to be completed – MART even recognize the volume was under \$500,000. Even though I feel MART was incorrect, I do believe it would be a good idea to enter volume regardless of amount.

PAS Checklist #3: “Entity paperwork included in ECM documentation folder” – two instances were found in which ERO failed to include entity paperwork in ECM documentation folder:

- ECM #43096 – Unable to determine; only one document in folder. Fore - MART is correct
- ECM #33917 – Unable to determine; folder is closed before all complete information received. –Ainsworth – MART in incorrect – all documentation is in the folder.

MART Recommendations:

I agree with and will implement a checklist for LIE’s to use to ensure relevant data is in folder.

I agree with updating PAS to handle multiple correction letter tasks.

I agree with and will implement LIE’s completing notes to provide a clear documentation trail.

Overall, I feel MART highlighted areas where PSU can improve. However, I disagree with the statement that the lack of attention and necessary corrective action in this area could cause potential harm to the industry.

RO-2 Investigations

1. RO-2: Investigations

Significant issues were found in the length of time it took to complete investigations and with the documentation uploaded into ECM. There is no doubt that some investigations exceeded the L1 and L2 target dates. The instructions given to the ERO is to investigate every complaint and to conduct a face-to-face interview of all complainants. These instructions were given after the SOP Performance Objective was in place.

It takes significant amount of time to investigate every complaint and time to conduct the face-to-face interviews and obtain the affidavits that are requested by the management team. The ERO has a significant number of older investigations relating to poultry complaints and these types of complaints may be complicated and time consuming to investigate. Complaints are received and assigned to agents. Communication between the Business Practice Unit Supervisor and the RA Unit Supervisors is ongoing, the complaints are reviewed, and depending on the type of complaint, its priority of investigation is determined. At times, recently filed complaints are investigated over complaints that are significantly older due to the type of complaint.

We are making progress on the older complaints, but there are still a significant number, primarily in the poultry industry, that will not be completed within the targeted timeline. The hiring of a dedicated poultry investigator who is based in Mississippi will help in the investigation process, as he will be sent to several geographic areas to work on complaints. This past fiscal year, we employed a team concept to investigate major complaints. While the team concept was good in theory and provided resources to an investigation, I am not sure the investigations were completed significantly faster. However, the team approach was needed to train those employees not familiar with poultry investigations. The supervisors also need to monitor the workflow of the agents and push for a timely completion of the activities before starting on another project, but that also brings forth another set of problems in that the Resident Agent Unit is supposed to work multiple tasks at any given time.

As far as the documentation that is uploaded into ECM goes, I believe our agents do a credible job of obtaining and supplying the needed documents. One item that we were cited for was the lack of the synopsis and investigation reports to close out investigations. Many times the agents used the notes section to make their reports, especially when the task involved obtaining a delinquent report, obtaining a delinquent scale test, or obtaining a bond or bond increase. When the documents were received, the agents would make the notations in the notes section that the requested documents had been received. Recently I notified the RA South group that reach and every investigation must have a document

(memo or synopsis) uploaded to support the closing of the activity. I have also instructed the RA South group to follow the document guidelines in the modules for uploading into ECM.

As far as the proper completion of the ECM and PAS data for the species and violations found, ECM and PAS should be enhanced to make these required fields before the activity can be closed. Currently, some of the data is entered into ECM and some is entered into AMS. The supervisor generally does not check to ensure the data in AMS is entered correctly as the workflow tasks requires the agents to complete this step.

The naming conventions have been addressed with all agents and samples provided as to how the naming convention should be entered in ECM.

SOP Performance Objective (2):

ECM #25088 – This folder was properly opened as Involuntary, however it is a voluntary registration with no indication that the person is operating yet. This exposes a problem with the ECM system – there needs to be a third category besides involuntary and voluntary. We can seldom use the Voluntary designation as we cannot afford to lose these people in the system – they must be registered and bonded – eventually - but not necessarily right now. The notes on this registration are very good considering the situation. And the notes show that much of the time this folder was open involved correcting documents, another system problem. I see that the Marketing Specialist should have made the first call sooner than the October 19 calls by the LIE (my guide lines are within a week). And there is a gap between November 19 and January 12 where there is no evidence of a call. However remember that this person was not operating. The Investigation for this registration was basically over on January 25 or February 18, but the Marketing Specialist left it open until the paperwork was perfected, an extra month.

ECM #20328 – A Marketing Specialist had this until it became obvious that the person was not going to get registered and bonded without a visit. There are many excellent notes, showing a lot of resistance. The Marketing Specialist should have made the first call sooner than the July 28 date, and followed up sooner than August 24. The Marketing Specialist turned it over to a Resident Agent after trying repeatedly for 100+ days.

ECM #15167 – On April 14, before this even became an investigation, there was already a conversation between a Marketing Specialist and the applicant where he said he was only back grounding cattle. I should have never assigned this folder to the Marketing Specialist as the Resident Agent started it and had already said he would investigate. I now look at the R&B folder to see if folders like this should go directly to the RAs. It was November before the RA was able to get to the market to verify that the applicant was not under our jurisdiction.

ECM #16939 – This is a complaint investigation folder. I held it and did not assign it for 1.5 months as I had no one to investigate it. There was also the bankruptcy controversy. The investigation started probably in late August. This was the Investigators first case file by himself and his first in the new streamline and ECM system. I am okay with the length of time this case file took at this point. This does reveal another problem with the system. There needs to be two timelines – the amount of time it takes to assign and start the investigation, then the amount of time it take to complete it. The first time involves staffing issues and priorities, and should not be blamed on the investigator. The second time should be adjustable by the Supervisor based on many factors such as complexity, location, staff, training, resistance, other duties, unforeseen circumstances, etc, etc.

SOP Performance Objective (3):

ECM #22831 – This was officially assigned to the office Economist while the Resident Agent gathered information. There was never an analysis by the Economist as the complaint was withdrawn to the RA. This one probably could have been closed earlier, but the RA may have been working on other investigations.

The MAR audit team probably did not look at anything besides the days “late”, but they should have. They should have done a full investigation of every note and related folder, and talked to the people involved to see if the “late” was justified or not.

RO-2: Investigations

SOP Checklist RO-2, Step 7.a:

ECM #3237 – This is not even EROs, it’s WRO (Texas)

2. RO-3: Regulatory Activities

The only substantive finding in this section was the occasional activity in which the agent failed to properly complete the Exit Conference and Findings Tab. While I think this is completed the majority of the time, additional guidance and instructions will be provided to the agents to make sure that this tab is completed. The RA Supervisor will check this by checking out the excel workbook and signing the approval box on the findings tab.

The naming conventions have been addressed with all agents and samples provided as to how the naming convention should be entered in ECM.

RO-3: Regulatory Activities

SOP Checklist RO-3 Step 4:

ECM #41143 – Someone on the MAR team is not looking at the modules. Look again, it is there.

ECM #33933 – Same thing, look again, it is there.

3. RO-4: Enforcement

The two major issues found in this section were the close reason was not completed in all instances in AMS and failure to file the naming conventions.

The AMS system should be enhanced to require a check to determine if the close reason field has been completed. Additional instructions will be provided to the RA South group.

The naming conventions have been addressed with all agents and samples provided as to how the naming convention should be entered in ECM.

SOP Performance Objective (1): “Send NOV with approval signature within one business day of receipt”

ECM #26712 – NOV was approved and signed by the Supervisor on 10/7/09 and sent on 10/9/09; a difference of 2 days. MART is correct – however, notes in folder show that NOV was sent on 10/8/09 but the task wasn’t listed as completed in ECM folder until next day.

4. RO-5: Bond and Trust Claims

The RA South Group will be given further instructions on the proper completion of the Claims Spreadsheet. Instructions will also be provided on how to initiate a request for the mailing of bond and trust claim letters to potential claimants.

RO-5: Bond/Trust Claim

The ERO obtained a red rating; minor improvements are suggested. The ERO results in this area stronger in SBP Activity Performance and weakest in SOP Performance Objectives and PAS Compliance. Although the ERO rated yellow, this area can use improvement to avoid becoming red.

Findings

SOP Performance Objective (1): “Send Certified Bond/Trust Letter with approval signature within one business day of receipt to Surety or Trustee”

- A total of five samples were reviewed. Of the five, two instances were found in which the ERO failed to send the claims letter within 1 day. See RO-5 Supporting Documentation for more details
 - ECM #34796, letter was more than one day late; for #34567, the claim spreadsheet does not indicate whether the letter was sent to the surety and letter was not provided to validate

ECM #34,796 – Brothers Quality Meats – TRUST CLAIM – Trust claim was received in MRO on January 10, 2010 and forwarded to ERO January 11, 2010. ERO sent letter to the Trustee, which is the packer, on January 11, 2010. This is in compliance with the SOP. A letter was sent to the financial institution on January 15, 2010. The financial institution is neither the surety nor the trustee. (There was not a packer bond nor was there an irrevocable standby letter of credit, therefore we could not notify the surety or the trustee)

ECM# None – Brothers Quality Meats – BOND CLAIM – Brothers Quality Meats was operating without a bond at the time of the failure to pay for livestock. No bond claim was filed because no bond existed. Subsequent investigation file alleged operating without bond or bond equivalent.

ECM #34,567 – David Mosner – BOND CLAIM – Letter was sent to potential claimant on November 24, 2009 informing them of their bond claim rights. Potential claimant was paid in full on December 1, 2009. No bond claim was ever filed. Therefore the SOP does not require that a bond/trust letter be sent.

SBP Goal 2, Objective 1, Activity 1: “100% of Bond and trust claim forms are forwarded to unpaid sellers within 10 business days”

- A total of four samples were reviewed. All four instances were in compliance with sending bond and trust claim form to unpaid sellers within 10 business days.

SOP Checklist, RO-5 Step 4.a: “For claims received, did the PSU stamp the claim form with date of receipt?”

- A total of four samples were reviewed. Of the four, two instances were found in which the ERO failed date stamp the claim with date of receipt.
 - ECM #34567 and #14537, initial claim form not provided. There are instances where the date stamp differs from the fax date. Also, there are instances where PAS entries for claims are entered either by the claimant or the registrant who the claim is filed against.

ECM #34,567 – David Mosner – BOND CLAIM – Letter was sent to potential claimant on November 24, 2009 informing them of their bond claim rights. Potential claimant was paid in full on December 1, 2009. No bond claim was ever filed. Therefore we could not date stamp what did not exist.

ECM#14,537 – Albert Vander Schaaf – This is registration and bonding process ECM located in Chino, CA with WRO. Reviewer documentation refers to “Preston Farmers Market, Inc.” Preston Farmers Market was a complainant against Paul Larew under ECM #35,066. Letter was sent to potential claimant, Preston Farmers Market, on December 11, 2009 informing them of their bond claim rights. Potential claimant was paid in full on December 31, 2009. No bond claim was ever filed. Therefore we could not date stamp what did not exist.

SOP Checklist, RO-5 Step 4.b: “The Claims Spreadsheet is updated to accurately reflect receipt of claims within appropriate timeframes (60, 30 or 15 days)”

- A total of four samples were reviewed. Of the four, three instances were found in which the ERO failed to update the Claims Spreadsheet to accurately reflect receipt of claims within the appropriate timeframes.
 - ECM #34567, #42105, and #14537, claim spreadsheets are not complete. The claim spreadsheet is not being updated to reflect the most current status of a bond claim (e.g., missing initial claim date, date letter sent to surety or trustee, information carried over from a previous worksheet)

ECM #34,567 – David Mosner – BOND CLAIM – Letter was sent to potential claimant on November 24, 2009 informing them of their bond claim rights. Potential claimant was paid in full on December 1, 2009. No bond claim was ever filed. Therefore it was not possible to update a Claim Spreadsheet and complete it.

ECM#42,105 – Gary Thompson – BOND CLAIM – Bond claim was received on February 12, 2010. The Claims Spreadsheet was not updated for receipt of the bond claim.

ECM#14,537 – Albert Vander Schaaf – This is registration and bonding process ECM located in Chino, CA with WRO. Reviewer documentation refers to “Preston Farmers Market, Inc.” Preston Farmers Market was a complainant against Paul Larew under ECM #35,066. Letter was sent to potential claimant, Preston Farmers Market, on December 11, 2009 informing them of their bond claim rights. Potential claimant was paid in full on December 31, 2009. No bond claim was ever filed. Therefore it was not possible to update a Claim Spreadsheet and complete it. (How did this WRO registration get in our review?)

PAS Checklist #1: “For bond claims, was claim analysis attached?”

- A total of four samples were reviewed. Of the four, one instance was found in which the ERO failed to attach the claim analysis.
 - ECM #14537, no bond claim folder

ECM#14,537 – Albert Vander Schaaf – This is registration and bonding process ECM located in Chino, CA with WRO. Reviewer documentation refers to “Preston Farmers Market, Inc.” Preston Farmers Market was a complainant against Paul Larew under ECM #35,066. Letter was sent to potential claimant, Preston Farmers Market, on December 11, 2009 informing them of their bond claim rights. Potential claimant was paid in full on December 31, 2009. No bond claim was ever file. (How did this WRO registration get in our review?)

PAS Checklist #2: “Was starting and primary factor identified?”

- A total of four samples were reviewed. Of the four, one instance as found in which the ERO failed to identify the starting and primary factor.
 - ECM #14537, no bond claim folder

ECM#14,537 – Albert Vander Schaaf – This is registration and bonding process ECM located in Chino, CA with WRO. Reviewer documentation refers to “Preston Farmers Market, Inc.” Preston Farmers Market was a complainant against Paul Larew under

ECM #35,066. Letter was sent to potential claimant, Preston Farmers Market, on December 11, 2009 informing them of their bond claim rights. Potential claimant was paid in full on December 31, 2009. No bond claim was ever filed. For ECM#35,066 the "Starting Factor" and "Primary Reason" was filled out. (How did this WRO registration get in our review?)

PAS Checklist #3: "Is the file naming convention correct?"

- A total of four samples were reviewed. In all four instances, the ERO failed to use the correct naming convention.

ERO Concurs with this finding.

RO-6: Financial Instrument Termination/Expiration

I agree with the findings of MART – the information identified as missing is referring to the ECM folder. An email was sent to the LIE's on 9-3-10 instructing them to begin completing this information effective immediately. Steve and I will begin doing random checks to ensure information is completed. I do not agree with MART in that the lack of completing this information could cause potential harm to the industry. All termination and LOC renewal letters were sent timely and the information was entered/updated in the AMS side.

I agree that having the system prompt the user for the information before closing is a good idea. I would also suggest that when a folder is created by the system, that the information be populated into the folder as it is already in AMS.

RO-7: Scale Test Reports

Overall I agree with the MAR recommendations. Effective immediately, the Program Assistants are keeping spreadsheets lists of SW-2 letters that are sent and received. After 15 days, they will scan the list and email it to me. In accordance with RO-7, I will notify the BPU Supervisor via email of the tests that have not been received. This will continue until the new SOP for scales is implemented.

In reference to Performance Objective (1): "Send Notification of Default (SW2) with approval signature within one business day of discovering the report is late". We are sending the batch letters every other week using the same schedule as WRO and MRO.

There were several minor issues cited in this section, but I believe the major issue is the lack of use of the SW-3 letters when scale tests are submitted but the test shows the device not to be accurate. The ERO has an informal process in which a member of the BPU will contact the subject entity to determine if the scale has been tested and found to be accurate. In almost all instances, the scale has been tested and found to be accurate so a SW-3 letter was not sent. Procedures should be followed to send out these SW-3 letters.

Another issue is the inability to track the SW-2 scale letters to accurately determine which scales are delinquent for testing. Members of the PSU informally track the SW-2 letters and when a scale test is not received, they notify the BPU Supervisor or the RA Supervisor, and an agent is assigned.

The scale test procedures are being formalized into an ECM workflow and this should correct the problems.

Summary:

Overall, it has been shown that some of the findings on the MAR are accurate and some are not accurate; and that the ERO was not as deficient as previously indicated. With that said, there is room for improvement on the ability to conduct timely investigation, submitting documents, and ECM/AMS data entry.

I will use the MAR report as a tool to improve the way we manage our Packers and Stockyard Program. I plan to do the following:

- Require that my Unit Supervisors review the MAR report, and my notes concerning the report.
- I will hold a meeting with my Unit Supervisors next week; and we will continue to have meetings each month concerning our Standard Operating Procedures, Strategic Business Plan, and the Packers and Stockyards Automated System.
- I will hold a meeting with my employees and go over the MAR Report. In addition, I will give instructions for improvement.
- Since the MAR report revealed the ECM number of the problem areas, we will determine the employees that are not following the proper procedures and offer training where needed.
- I will form an internal audit team of unit supervisors to audit our internal procedures on a monthly basis, and identify non compliance.
- I will hold employees responsible when they fail to do their job correctly.
- If the employee does not improve, appropriate actions will be taken.
- I realize that some investigations will require more time, and others may be top priority, therefore, this will be considered during our review.