

Survey of States (Chart 2 of 2)
 Grain and Commodity Related Laws and Programs

State	Inspections Required	Check-off funds, other fees and contributions	Other Merchandising Activities	Other Issues/Comments
Alabama		N.A.		
Alaska				
Arizona				
Arkansas				
California	None	None	None	<p>There is a similarity between inspection certificates issued through a Farm Services Agency (FSA) program and inspection certificates issued through the Grain Inspection, Packers and Stockyards Administration (GIPSA) program. The two types of inspection certificates are so similar in format and style that an inexperienced buyer or seller of grain may be misled and believe that FSA certificates represent an “official” certificate issued by a GIPSA cooperator. This creates significant problems in the event there are quality disputes.</p> <p>There are two unrelated grain inspection programs administered by the USDA. One system is the official grain inspection program of which CDFA is a part; and, the other system is a warehouse inspection system. The official grain inspection program is administered by GIPSA while the warehouse inspection system is administered by the FSA.</p> <p>A solution to the problem is to</p>

<p>California (continued)</p>				<p>alter the appearance of the FSA certificate and add language to the face of the certificate so that it cannot be confused with or represented as a GIPSA inspection certificate.</p>
<p>Colorado</p>	<p>---Commodity warehouses are examined by department personnel at a minimum of once annually, but a warehouse may be examined on a more frequent basis as determined by the level of risk involved with the warehouse. ---Grain Dealers are examined only when a need, a request or concern occur</p>	<p>---Wheat Marketing Order ---Corn Marketing Order ---Dry Bean Marketing Order ---Sunflower Marketing Order</p>	<p>Commodities in Colorado are required to be purchased over a certified scale. With the preemption of all weighing activities, it is unclear as to the regulatory authority of the Department's Weights & Measures Division, and the associated rules and regulations.</p>	<p>---The federally licensed warehouses are concerned that this preemption is a prelude to federal grain dealer regulations, which may give state licensed warehouses a competitive edge. ---There is concern by both state and federally licensed warehousemen that grain merchandising will be subject to different standards and what is allowable for one is not for the other and vice-versa. ---In the Supreme Court case that the USDA is citing (Rice vs. Santa Fe) as their authority to regulate grain merchandising. In doing so, the USDA has implied that the Supreme Court has given them sole authority over grain merchandising at federally licensed grain warehouses. The Court ruled in the USDA's favor on 9 of 11 points and for the states on the remainder. This brings up the issue as to where the line is drawn between the USDA's authority and that of the states. ---In Colorado certain violations of the Commodity Handler's Act fall within the scope of the Colorado criminal statutes. Our concern is whether a federal rule can preempt a state's criminal code,</p>

Colorado (continued)				<i>and if it can how can we prosecute a state licensee for a violation of something that is now legal for others (federally licensed) to engage in?</i>
Delaware	<i>Every commercial grain elevator, grain storage facility, and grain warehouse shall be certified by the Delaware Department of Agriculture to ensure that it meets minimum standards. Grain testing equipment and Inspector certification are inspected on a yearly basis.</i>	<i>Delaware does not collect check-off fees. All Grain Inspectors employed by grain mills are licensed by the State and charged a \$10.00 fee. Weigh Master fees are \$25.00.</i>		<i>Enforcement of the U.S. Warehouse Act of 2000 has the potential to negatively impact Delaware producers in several ways. The four grain mills with Federal licenses process all of the soybeans grown in the state, primarily for poultry feed. In 2000, cash receipts for soybeans were \$38.3 million. The value of the poultry industry was \$557.4 million. If licensing were to pass from State to Federal jurisdiction, all soybean producers in Delaware would lose their current avenue for timely and efficient dispute resolution. Delaware Department of Agriculture currently conducts weekly inspections of all grain mills, a system that is highly satisfactory to both producers and mill owners.</i>
Georgia	Examinations described in item 3 cover inspections by warehouse examiners for quality of product stored. Other inspections include: ---Comprehensive testing by State inspectors to certify scales and moisture meters. ---Inspections and sampling of Seed Dealer stock – periodically, random sampling. ---Inspections of records by State auditors for compliance with check-off rules for payments.	Cotton commission funds Peanut commission funds Soybean commission funds Corn commission funds Canola commission funds	Peanuts are not subject to the Georgia Dealers in Agricultural products law. However, IF peanuts were at some future time made subject to it, it could have a serious impact on the ability of peanut farmers to recover from failure to pay.	

<p>Idaho</p>	<p>Idaho State Department of Agriculture's Weight and Measures inspects warehouse scales and the department has set a goal that all warehouse scales are inspected annually.</p>	<p>Wheat Commission Tax Barley Commission Tax Pea and Lentil Commission Tax Bean Commission Tax Rapeseed and Canola Commission Tax Commodity Indemnity Fund Seed Indemnity Fund</p>	<p>Idaho State Department of Agriculture Weights and Measures scale inspections to assure accurate scales. Also Seed Dealers as regulated by the Idaho Pure Seed Law. ISDA will not have the ability to enter and inspect seed to assure that it is labeled in accordance to the Idaho Pure Seed Law.</p>	<p>---Federal Surety Bonds only cover storage obligation. These bonds should be available for non-performance for commodity transferred. ---No Commodity Indemnity Fund assessments are collected and remitted to ISDA for CCC forfeited grain; however, the USDA withholds the commission taxes. ---Federal exams are not made available to the Idaho State Department of Agriculture. Because of this we are blind as to storage obligation and shortages that may occur. ---We have concerns that U.S. licensed warehouses may have unlicensed storage that Federal exams are not considering in their exams. Idaho Indemnity Funds are liable for commodity received and or stored in unlicensed areas.</p>
<p>Illinois</p>	<p>All licensees are examined at least once each calendar year. Examination Procedures --Take physical inventory and check quality of grain --Perform various record spot checks to determine accuracy --Reconcile storage obligations, contracts, payables, receivables, bank accounts, long/short position, and working capital position --Check for 90% liquid position to cover Price Later Contract Obligations --Determine compliance with all provisions of Grain Code.</p>	<p>--License fees --Examination fees --Grain Dealers pay an assessment into insurance fund --Grain Warehouses pay an assessment into insurance fund --Violators of Grain Code --Pay monetary penalties into Illinois Grain Insurance Fund --Post collateral for violating Grain Code.</p>	<p>Illinois regulates flat price risk. Each grain dealer has a bushel limit on the amount they can be long or short in the market. Illinois regulates the use of Price Later Contracts. Printing is controlled and restricted to authorized printers. A grain dealer is required to maintain 90% of the value of outstanding contracts in liquid assets. Illinois monitors working capital position and requires a positive working capital position at all times.</p>	<p>Illinois would like to continue to provide USDA/FSA with valuable information collected on state licensed/UGRSA warehouses and would like to be reimbursed a portion of our costs. Illinois would also like to discuss providing this information for federally licensed warehouses. Some of the benefits of this information sharing are: --Provide extra revenue to states --Allow USDA to avoid duplicating state efforts --Keep USDA staff costs low</p>

<p>Illinois (continued)</p>				<p>--Reduce examination burden on state and federal licensed warehouses --Keep federal licensing fees, user fees, examination fees, etc. at a lower lever for existing federal licensed warehouses. --Discuss state authority to conduct moisture meter and scale inspections</p>
<p>Indiana</p>	<p>Grain Moisture Meter Law – Grain moisture meters used in commercial trade must be inspected and tested at least annually.</p> <p>Indiana licensed grain buyers and warehousemen are required to have their scales used for commercial transactions inspected at least annually.</p>	<p>Indiana has established a producer funded grain indemnity fund. The producers of grain are charged a producer premium equal to two-tenths percent (0.2%) of the price on all marketed grain that is sold in Indiana until the fund reaches \$10,000,000. Collections cease when the fund reaches \$10,000,000 and do not continue unless the fund balance drops below \$5,000,000. This is a voluntary producer fund only; only producers who have not requested a refund of premium are afforded coverage.</p> <p>Without oversight of merchandising in federal warehouses the fund’s exposure to risk could be drastically increased. Indiana’s indemnity fund and grain dealer law was created in response to the failure of Merchant’s Grain, a federal warehouse, which cost Indiana producers for over \$5,000,000.</p>		<p>Uniformity between states – States should work together in the development and application of uniform regulations that address business rules, specifically regarding contract language and reporting requirements of regulated firms.</p> <p>Electronic Warehouse Receipts – USDA and States should work together to define an electronic file standard and business rules for electronic warehouse receipts. Standardization of the electronic file and business rules would facilitate trade by allowing industry software providers to incorporate the standards and allow electronic postings from industry software packages to providers.</p> <p>Electronic audit uniformity – USDA and States could work together to develop an Electronic Data Interchange for electronic audits. This would allow regulators using computerized auditing packages to share audit information electronically. This could lead</p>

<p>Indiana (continued)</p>				<p>to co-operative auditing State to State and State to USDA giving the regulators the ability to combine audit information on firms operating in multiple states.</p>
<p>Iowa</p>	<p>See response to previous column.</p>	<p>The fees that would be impacted by the final rule would be: 1) Grain dealer license fees that Federal warehouse pay. 2) If the grain indemnity fund would have to start assessing the 1/4¢ on grain purchases, the federally licensed warehouse would have to remit the 1/4¢ assessment to the Department and pay an annual indemnity fund fee of \$250.00 or \$500.00. The fees to Weights and Measurement for checking scales and moisture meter devices.</p>	<p>No protection to the producer when they sell their grain to a Federally licensed warehouse that does not hold a grain dealer license.</p>	
<p>Kansas</p>	<p>No Grain Dealers law in Kansas.</p>	<p>Environmental Remediation Fund – This assessment is collected once a year from every state and federal licensed facility. The assessment is .005 cents per bushel of licensed capacity. The fund establishes a linked deposit loan program to pay certain costs related to remediation of certain releases of certain chemicals. State Grain Commodity Check-offs – The independent commodity boards (corn, grain sorghum, soybeans, and wheat) have instituted a check off program whereby the state collects a portion of the settlement from the producer through the facility. These</p>	<p>Voidable sale of grain to warehouseman; insufficient funds check -- In the event that a producer was issued a check for grain by an elevator and that check failed for insufficient funds, the warehouseman is required void that sale and list the grain back as an open storage obligation. Deferred Payment or Pricing Contract Requirements – The warehouse is required to have printed on every deferred pricing contract the following message : <i>“THIS CONTRACT CONSTITUTES A VOLUNTARY EXTENSION OF CREDIT BY THE SELLER TO THE PUBLIC</i></p>	<p>This rule could also impact the UCC. These are state laws that impact commercial transactions. Merchandizing grain is a commercial transaction and each state’s UCC laws are somewhat different. What about the state’s Weights & Measures laws? These impact the process of the merchandizing or commercial transaction.</p>

Kansas (continued)		funds are deposited into the commodity board's account and are used for research and other related expenses.	<i>WAREHOUSEMAN AND IS NOT PROTECTED BY THE SURETY BOND OF THE PUBLIC WAREHOUSEMAN.</i>	
Louisiana	Basically the same as the previous column.	All of our assessments are collected at the first point of sale of all grain sold in the state of Louisiana. This program is self funded and without the fees this program would most likely be eliminated.	Our grain grading program, which inspects all the grain on the Mississippi River, could be in jeopardy if we do not have the funds to continue our grain grading program.	
Maryland	Approximately 70 scales and 120 moisture meters are inspected annually for accuracy. Scale tickets are reviewed during inspection.	License fees for Grain Dealers, registration fees for scales and registration fees for moisture meters are collected by our agency.		
Minnesota	See 3 rd column in chart 1	It is unclear whether the federal preemption will have an impact on commodity and promotion council check-offs. In Minnesota, the check-off fees are collected by the councils, not the state. Minnesota has 12 promotion councils, six of which apply to grain or dry edible beans.		<p>From Minnesota's perspective, our concerns are that producers who sell grain to federal grain elevators will lose the benefit of: Outside review of credit sales contracts (price later, deferred payment) and State review of the grain buying practices of elevators. These reviews determine if the purchases are correctly documented; that contracts fully disclose a seller's risk; and that payment is made in a timely manner.</p> <p>A second concern would be that if USDA's interpretation is allowed to stand, there may be a migration of state licensed elevators to the federal license. This would mean: the move of many grain buyers to an unlicensed status (resulting in less protection for producers) the loss of tremendous amounts</p>

<p>Minnesota (continued)</p>				<p>of fee revenue. Since Minnesota's grain buyer and warehouse licensing program is fully fee funded, this loss of revenue could result in loss of effectiveness or even the financial ability to operate.</p> <p>In Minnesota, since the State-Federal Cooperative agreement for the examination of grain elevators ended in 1998, warehouse examiners employed by USDA have been going to state licensed grain storage elevators on the pretext of reviewing elevator records concerning federally owned or federal loan guarantee grain, but also include a sales pitch for the federal warehouse program in their visit. USDA and Commodity Credit Corporation (CCC) could get this information from us if they ask (and were willing to pay something for it).</p> <p>These extra examinations of state licensed elevators by federal examiners: duplicate exams we perform; disrupt the daily routines of the elevator staff; take two or even three times longer than state examiners to perform same tasks; and often occur within days of state exams. While federal warehouse examiners are doing examinations of state licensed elevators, we are aware of several federally licensed Minnesota elevators that have gone uninspected. Some of</p>
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<p>Minnesota (continued)</p>				<p>those federal elevators have asked us to perform grain measures and grain quality examinations.</p> <p>Minnesota's primary concern is that producers will lose protections provided by Minnesota's grain buyer's law if the federal preemption prevails.</p>
<p>Mississippi</p>	<p>Same as the previous column.</p>	<p>No fees (such as examination fees) are collected from warehouses.</p> <p>The only check-off funds are the national Soybean assessments and the state Rice assessment.</p>		<p>Mississippi is concerned that the rule would impact verification of moisture meters and truck scales.</p>
<p>Missouri</p>	<p>Warehouse and Dealers are statutorily required to be examined/audits at least once every twelve months. However, based on risk analysis approach these examined/audits may be conducted every six months or three months depending upon the financial standing and audit history. Additionally, check-off audits are conducted on behalf of the soybean and corn merchandising councils.</p> <p>An audit/examination would consist of a compilation of all outstanding grain obligations, conducting an inventory audit to verify sufficient grain stocks to cover outstanding grain obligations, and an intensive record review and audit tests to verify accurate and complete records. Further an exam/audit</p>	<p><i>Soybean SPARC which is 1/2 of 1% of the market value of soybeans merchandised.</i></p> <p><i>Corn Growers Check-off which is 1/2 cent per bushel of corn merchandised.</i></p> <p><i>Rice Growers Check-off which is 2 cents per bushel of rice merchandised.</i></p> <p><i>All check-off fees are collected from the first purchaser of these commodities.</i></p>	<p>Scale inspection and moisture meter certification.</p>	<p><i>A pilot project between USDA, FSA, WED and the state of Missouri should be developed, so that Missouri could provide exams/audits at USWA licensed facilities. These exams could be completed by the state while conducting dealer/merchandising exams at USWA facilities with a state dealer license. This would provide substantial savings to the industry and eliminate duplicative examinations by both the USDA and the state of Missouri.</i></p>

Missouri (continued)	would include computing and monitoring the marketing open position and speculative position of the licensee.			
Montana	<p>The department may audit the premises and records of any commodity dealer or warehouse licensed by the department. Including all books, accounts, records, and papers relating to agricultural commodity transactions within the Montana. If it is believed that a person is doing business as a commodity dealer without a license, the department may inspect the books, papers, and records of the person that pertain to agricultural commodity purchases.</p> <p>Audits are conducted on a routine basis, approximately one-third of licensed facilities per year or when a complaint is received regarding the operation of a warehouse facility.</p>	Wheat and Barley Committee marketing and research check off. Alfalfa seed research and marketing check off		
New Jersey				
Nebraska	Grain warehouse examinations are done once each twelve months. Additional examinations are conducted if deemed necessary. We measure the grain, audit the warehouse receipts and open storage accounts, check for proper insurance coverage, check the daily position record for posting and oversold positions, check accounts from previous exams, check the disposition of five checks and	No check-off funds or other fees are collected by the Public Service Commission.	No other merchandising activities are conducted by the Public Service Commission.	While it appears this rule does not directly impact Nebraska at this time, we support the retraction of this rule, or if needed, amendment to the U.S. Warehouse Act, because of its immediate effect on other states and the potential that it could work against any future action in the state of Nebraska on this subject.

<p>Nebraska (continued)</p>	<p>check scale ticket disposition from delivery to settlement. We also check storage charges for accuracy.</p> <p>Grain dealer examinations are not conducted unless a problem arises.</p>			
<p>North Dakota</p>	<p>The state does not inspect licensees that are inspected by federal inspectors (either federally licensed facilities or state licensed facilities with a UGRSA agreement).</p> <p>All other licensees are inspected by the state – approx. once per year.</p>	<p>None at the present time but an indemnity fund check-off for credit-sales is being contemplated.</p> <p>All other check-offs are for commodity promotions and would presumably not be impacted.</p>	<p>Certification of scales.</p> <p>Responding to farmer complaints concerning licensee operations and practices.</p> <p>Representing farmer interests in insolvency proceedings.</p>	<p>Grain merchandising activities at federally licensed facilities must be regulated so farmers are to be adequately protected from unreasonable practices and in case of licensee insolvency.</p> <p>If the USDA intends to take over this function:</p> <ul style="list-style-type: none"> ---Bonding requirements must be increases substantially. ---Rules must be adopted to fully protect all non-credit sale farmers in case of licensee insolvency, including the payment of interest from the date of insolvency until the time that final payments are made. ---States must be allowed to collect fees on credit-sale contracts issued by federal warehouses and to provide corresponding protections to those patrons. ---USDA must voluntarily subject itself to oversight / review prior to distributing funds in insolvency proceedings. <p>USDA must increase its staff and prove to be responsive to farmer complaints concerning licensee operations and practices.</p>

North Dakota (continued)				---The goal must be to provide a seamless system whereby farmers have similar levels of protection, regardless of whether the firm that they are dealing with has a federal or a state license.
Oklahoma	Inspections are safety and cleanliness, books and storage spaces, chemical storage and grain contamination, plus overall facility condition. All inspections are conducted at the time of the audit and are performed with the manager of the facility. Oklahoma has no grain dealer law.	Our Commodity Storage Indemnity Fund could be at risk because of the federal preemption. If we have failures and the fund drops below minimum and we must start the assessment again. Federal Houses would not have to participate and that could affect how we pay our producers.		Check into getting the cooperative agreement resurrected.
Ohio		Ohio has an indemnity fund which is a ½ cent per bushel assessment on grain at time of delivery. We have not collected the fund since Dec. 31, 1985 because the fund is at the cap.	Ohio has a grain grading certification program which requires minimal training for those applying quality grades or discounts to grain. The Feds have grain grading certificates but require no training only the payment of a fee. The USWA only covers warehousing and this was the original purpose however today farmers rarely take the grain back and therefore sell it which becomes merchandising. Producers should have a right to know the grade of their grain before unloading so they can take it home if they are not satisfied. Ohio's grain grading laws enforce this aspect.	
Oregon				Currently, the federal rules do not allow the acceptance of state audits and inspections. This has not always been the case. Having this acceptance would appear to be more cost

Oregon (continued)				effective for the industry and the Fed.'s
Pennsylvania	No inspections required	No check off or other fees collected.	No other merchandising activities	None at this time
South Carolina	Each warehouse must be inspected, the inventory taken, and the records checked at least once in every three months.	Assessments for our grain producers guaranty fund or warehouse guaranty fund would be impacted if either of these funds fell below their minimum and had to be reinstated and facilities chose to be federally licensed. Presently collecting a grain dealers guaranty fund assessment and a check-off on soybeans under a marketing order. Both could be impacted if facilities chose to be federally licensed.	Inspection of scales and grain moisture meters under our weights and measures law could be impacted if facilities chose to be federally licensed.	
South Dakota	The commission performs annual on-site inspections at federal grain warehouses that hold a state grain dealers license, state public grain warehouses that either hold or do not hold a state grain dealers license, and grain dealers that have private storage facilities on-site. The commission also performs additional on-site inspections at the above mentioned entities if their financial statements meet our minimum requirements but are weak in comparison to industry averages and/or prior history of the entity. If the commission received a complaint or inquiry about an entity that could not be resolved via telephone and/or fax, we would perform an on-site inspection to resolve the	The Wheat Commission, the Soybean Research and Promotion Council, the South Dakota Corn Utilization Council and the South Dakota Oilseeds Council may be impacted by the final rule.	Inspection of Scales--A representative of the division of commercial inspection and regulation may at any time without notice enter any public warehouse in this state and test and seal any weighing scale and measure used in conducting warehouse business.	

<p>South Dakota (continued)</p>	<p>matter. A typical inspection would consist of the following: 1. Review the warehouse receipts to ensure that they are issued and accounted for properly, cancelled properly, all accounted for, current, approved rates are being charged, and that they balance with the daily position record (applicable to state public grain warehouses only). 2. Review grain bank accounts to ensure that the entity has accounted for all the grain that has been brought in and taken out, and that they balance with the daily position record (applicable to state public grain warehouses only). 3. Review open storage grain records to ensure that it is all accounted for properly, under 30 days, and that they balance with the daily position record (applicable to state public grain warehouses only). 4. Review scale tickets to ensure that they are in the proper format, issued properly and filed properly. 5. Review voluntary credit sale contracts to ensure that they are properly filled out, all accounted for, cancelled properly, in the proper format, and that they balance with the daily position record. 6. Review accounts payable related to grain to ensure that it is accounted for properly, is being paid for in a timely manner, and that they balance with the daily position record. 7. Ensure that previous inspection problems or</p>			
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<p>South Dakota (continued)</p>	<p>concerns have been complied with, if applicable. 8. A representative sample would be taken of scale tickets to verify that the entity is recording the transactions in the proper manner in its records from delivery through final disposition. This will also indicate the payment patterns for grain purchased. 9. Perform checkoff audits as contracted for. 10. Review the current financial statements and Commodity Credit Corporation report, verify that the proper licenses are displayed, and review the current line of credit and amounts outstanding against it.</p>			
<p>Tennessee</p>	<p>Our audits are considered to include inspection activity. Audits are annual. Federal warehouses are not audited or inspected.</p>	<p>Grain indemnity fund requires collection of assessments on producers by Federal warehouses and remittance to the State. This was effective from Sept. 1990 thru March 1997 but is presently not required.</p> <p>Soybean Promotion check-offs are still required.</p>	<p>Weights and Measures scale checks.</p> <p>Moisture meter checking. Sanitary inspection of facilities</p> <p>Product sampling for mycotoxins relative to food safety and animal health</p>	<p>Will current SPARC check-offs be affected (soybean check-off prg)</p> <p>Will any future Grain Indemnity fund collections and remittances by federal warehouses be affected?</p> <p>It would be desirable to have a clear definition of “merchandising activities”</p>
<p>Utah</p>	<p>Inspections may be performed at random or unannounced intervals.</p>	<p>None at the present time.</p>		
<p>Washington</p>	<p>Audits are not required by the state. However, currently the state is conducting one compliance audit at each state licensed grain dealer.</p> <p>A grain dealer audit consists of a verification that purchase</p>	<p>None at this time.</p>		

