

## Issues Related to U.S. Warehouse Act and Regulations

- **FSA and GIPSA Certificates Too Similar** - There is a similarity between inspection certificates issued through the 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. (CA)
- **Where is the Line of Authority?** - 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.
- **Is there Preemption of State Criminal Statutes?** - 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, 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?
- **Timely and Efficient Dispute Resolution** - 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. 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.
- **Bond Coverage** - Federal Surety Bonds only cover storage obligation. These bonds should be available for non-performance for commodity transferred.
- **Withholding of Commission Taxes by USDA** - No Commodity Indemnity Fund assessments are collected and remitted to ISDA for CCC forfeited grain; however, the USDA withholds the commission taxes. (ID)
- **Availability of Federal Exam Information** - 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.

- **Unlicensed Storage** - There are 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.
- **Reimbursement** - 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 costs.
- **States Providing Information to USDA** - 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
  - Reduce examination burden on state and federal licensed warehouses
  - Keep federal licensing fees, user fees, examination fees, etc. at a lower level for existing federal licensed warehouses.
- **Moisture and Scale Inspections** - Discuss state authority to conduct moisture meter and scale inspections. What about the state's Weights & Measures laws? These impact the process of the merchandizing or commercial transaction.
- **Uniformity Among States on Business Rules** – 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.
- **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.
- **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 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.
- **Uniform Commercial Code** - 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.
- **Review of Credit Sales Contracts** - 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.

- **Loss of Revenue to States** - Another 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 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.
- **USDA Communications with State Licensed Grain Elevators** - 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).
- **Federal Examiners Conduct Exams at State Licensed Elevators** - 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 those federal elevators have asked us to perform grain measures and grain quality examinations.
- **Producer Protection - Primary concern is that producers will lose protections provided by Minnesota's grain buyer's law if the federal preemption prevails.**
- **Moisture Meters and Truck Scales** - Mississippi is concerned that the rule would impact verification of moisture meters and truck scales.
- **Proposed Pilot Project** - A pilot project between USDA, FSA, WED and the state of Missouri could 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.
- **Impact on Future Actions by States** - 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.

If the USDA intends to take over this function:

---**Bonding requirements** must be increased 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**.

---**USDA must increase its staff** and prove to be responsive to farmer complaints concerning licensee operations and practices.

---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.

- **Cooperative Agreements with States** - Check into getting the cooperative agreement resurrected.
- **Grain Grading Certification** - 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.
- **Acceptance of State Audits and Inspections** - 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 effective for the industry and the federal program.
- **Check off Funds** - Will current SPARC check-offs be affected (soybean check-off program).
- **Impact on State Grain Indemnity Programs** - Will any future Grain Indemnity fund collections and remittances by federal warehouses be affected?
- **Definition of Merchandising Activities** - It would be desirable to have a clear definition of "merchandising activities"
- **Weights and Measures Regulations** - There is concern that this provision may have implications for our weights and measures regulations.