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## Factsheet: Grain Warehouse Laws

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Warehouses are normally involved in the storage of grain and other farm commodities. Depending on the location of the warehouse, it can be licensed with the federal government, the applicable state government, or not licensed at all. This factsheet will explain and discuss the possibilities for warehouse licensing within the United States.

### **What does the United States Warehouse Act Regulate?**

Owners of a warehouse entity always have the choice to become federally licensed, even if the state in which it is located has its own licensing statute and requirements.<sup>1</sup> Warehouses licensed on the federal level fall under the jurisdiction of the [United States Warehouse Act](#) (“USWA”), 7 U.S.C. §§ 241-273.<sup>2</sup> USWA is enforced by the Commodity Operations Division of the Farm Service Agency.

A warehouse application under the USWA is voluntary. By applying for a federal warehouse license, applicants agree to follow certain specific requirements. Like many state warehouse laws, the requirements of the USWA include licensing, auditing, bonding, liquidation, and civil penalties. Licensure under this act provides producers protection for deposits of commodities and ensures financial stability of the warehouse operation.

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<sup>1</sup> Ralph Hinden, Office of General Counsel, Public Hearing of Warehouse (January 23, 2001), [http://www.fsa.usda.gov/Internet/FSA\\_File/uswa2000implementation.pdf](http://www.fsa.usda.gov/Internet/FSA_File/uswa2000implementation.pdf)

<sup>2</sup> Available at: [http://www.fsa.usda.gov/Internet/FSA\\_File/publiclaw106472.pdf](http://www.fsa.usda.gov/Internet/FSA_File/publiclaw106472.pdf)

In order to obtain a license, there is an auditing process, fees, and financial statements must be provided. Any warehouse applying for a license must obtain a bond, to ensure financial assurance. In addition, FSA can liquidate when an entity is discovered to be insolvent the state will take charge of the property, liquidate, and collect grain assets. Any warehouse that fails to comply with the regulations of USWA is subject to civil penalties and suspension of their license.

### **What Warehouse Should a Producer Choose?**

If a producer is trying to decide between a federal and state regulated warehouse, consider which warehouse provides more protection. The USWA provides a uniform standard across state lines.<sup>3</sup> State regulations, however, can vary significantly from place to place. Some states offer limited regulations, whereas other states regulate many different aspects of the operation. To review state regulations, the National Agricultural Law Center has charted each state's requirements. Those requirements, along with the state statutory language, are freely available [here](#).<sup>4</sup>

### **What Form of Regulation Should a Warehouse Choose?**

For a warehouse there are several benefits that the USWA offers. Forty-seven percent of all commercial warehouses have decided to be regulated at a federal level. USWA offers relatively simple rules for warehouses to agree to operate under. Licensing is also continuous with no annual renewal until the warehouse cancels it. It also provides a sense of protection to the producers that use the warehouse. If a warehouse chooses to be regulated under USWA in a state that regulates warehouses, the federal law will preempt the state law for that particular warehouse.<sup>5</sup>

For warehouses located in a state that regulates, they have the option of being regulated by the state or the USWA. There can be several benefits to being regulated under state law. For a warehouse, this would depend greatly on the state that the warehouse is located. Some states regulate less stringently than the USWA (i.e. only regulate auditing and penalties), which may factor into a business's decision. Another benefit is that annual fees may also be cheaper in some states as compared to USWA.<sup>6</sup> For these reasons, it is

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<sup>3</sup> The United States Warehouse Act Fact Sheet, (Farm Service Agency)

[http://www.fsa.usda.gov/Internet/FSA\\_File/whselst2013.pdf](http://www.fsa.usda.gov/Internet/FSA_File/whselst2013.pdf)

<sup>4</sup> Available at: <http://nationalaglawcenter.org/state-compilations/grainsalesstorage/warehouses/>

<sup>5</sup> James Lockhart, *Construction and Application of United States Warehouse Act, 7 U.S.C.A. ss241 to 256, and its Implementing Regulations*, 39 A.L.R. Fed. 2d 417 (2009) (discussing preemption of federal law)

<sup>6</sup> Neil Hamilton & J.W. Looney, *Federal and State Regulation of Grain Warehouses and Grain Warehouse Bankruptcy*, 27 S.D.L. Rev. 334, 355 (1982).

important to be familiar with the state's laws before deciding between state and federal regulation.

Warehouses located in twenty states (including California, North Carolina, and Virginia) can either choose to be regulated under USWA or simply not be regulated at all. A warehouse with this option may make the business decision to forego regulation, however, consideration should also be given to the warehouse's customer base. Choosing to submit to regulation provides a sense of protection for a producer, who knows that warehouse is being monitored and held liable. When given a choice a producer might choose a warehouse that is federally regulated over a warehouse that is not regulated at all, therefore decreasing business for a non-regulated warehouse. Various warehouses in these states have recognized this and have chosen to be federally regulated.

For more information about statutory requirements relevant to grain warehouses, the National Agricultural Law Center has compiled a guide listing specific citations for each state. This information is freely available at <http://nationalaglawcenter.org/state-compilations/grainsalesstorage/>.

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