
33. UNITED STATES WAREHOUSE ACT

Q:\COMP\AGMISC\USWA

33. UNITED STATES WAREHOUSE ACT

[As Amended Through P.L. 110–246, Effective May 22, 2008]

SECTION 1. [7 U.S.C. 241 note] SHORT TITLE.

This Act may be cited as the “United States Warehouse Act”.

SEC. 2. [7 U.S.C. 241] DEFINITIONS.

In this Act:

(1) **AGRICULTURAL PRODUCT.**—The term “agricultural product” means an agricultural commodity, as determined by the Secretary, including a processed product of an agricultural commodity.

(2) **APPROVAL.**—The term “approval” means the consent provided by the Secretary for a person to engage in an activity authorized by this Act.

(3) **DEPARTMENT.**—The term “Department” means the Department of Agriculture.

(4) **ELECTRONIC DOCUMENT.**—The term “electronic document” means a document that is generated, sent, received, or stored by electronic, optical, or similar means, including electronic data interchange, electronic mail, telegram, telex, or telecopy.

(5) **ELECTRONIC RECEIPT.**—The term “electronic receipt” means a receipt that is authorized by the Secretary to be issued or transmitted under this Act in the form of an electronic document.

(6) **HOLDER.**—The term “holder” means a person that has possession in fact or by operation of law of a receipt or any electronic document.

(7) **PERSON.**—The term “person” means—

(A) a person (as defined in section 1 of title 1, United States Code);

(B) a State; and

(C) a political subdivision of a State.

(8) **RECEIPT.**—The term “receipt” means a warehouse receipt issued in accordance with this Act, including an electronic receipt.

(9) **SECRETARY.**—The term “Secretary” means the Secretary of Agriculture.

(10) **WAREHOUSE.**—The term “warehouse” means a structure or other approved storage facility, as determined by the Secretary, in which any agricultural product may be stored or handled for the purposes of interstate or foreign commerce.

(11) **WAREHOUSE OPERATOR.**—The term “warehouse operator” means a person that is lawfully engaged in the business of storing or handling agricultural products.

SEC. 3. [7 U.S.C. 242] POWERS OF SECRETARY.

(a) **IN GENERAL.**—The Secretary shall have exclusive power, jurisdiction, and authority, to the extent that this Act applies, with respect to—

(1) each warehouse operator licensed under this Act;

(2) each person that has obtained an approval to engage in an activity under this Act; and

(3) each person claiming an interest in an agricultural product by means of a document or receipt subject to this Act.

(b) COVERED AGRICULTURAL PRODUCTS.—The Secretary shall specify, after an opportunity for notice and comment, those agricultural products for which a warehouse license may be issued under this Act.

(c) INVESTIGATIONS.—The Secretary may investigate the storing, warehousing, classifying according to grade and otherwise, weighing, and certifying of agricultural products.

(d) INSPECTIONS.—The Secretary may inspect or cause to be inspected any person or warehouse licensed under this Act and any warehouse for which a license is applied for under this Act.

(e) SUITABILITY FOR STORAGE.—The Secretary may determine whether a licensed warehouse, or a warehouse for which a license is applied for under this Act, is suitable for the proper storage of the agricultural product or products stored or proposed for storage in the warehouse.

(f) CLASSIFICATION.—The Secretary may classify a licensed warehouse, or a warehouse for which a license is applied for under this Act, in accordance with the ownership, location, surroundings, capacity, conditions, and other qualities of the warehouse and as to the kinds of licenses issued or that may be issued for the warehouse under this Act.

(g) WAREHOUSE OPERATOR'S DUTIES.—Subject to the other provisions of this Act, the Secretary may prescribe the duties of a warehouse operator operating a warehouse licensed under this Act with respect to the warehouse operator's care of and responsibility for agricultural products stored or handled by the warehouse operator.

(h) SYSTEMS FOR ELECTRONIC CONVEYANCE.—

(1) REGULATIONS GOVERNING ELECTRONIC SYSTEMS.—Except as provided in paragraph (2), the Secretary may promulgate regulations governing one or more electronic systems under which electronic receipts may be issued and transferred and other electronic documents relating to the shipment, payment, and financing of the sale of agricultural products may be issued or transferred.

(2) LIMITATIONS.—The Secretary shall not have the authority under this Act to establish—

(A) one or more central filing systems for the filing of financing statements or the filing of the notice of financing statements; or

(B) rules to determine security interests of persons affected by this Act.

(i) EXAMINATION AND AUDITS.—In addition to the authority provided under subsection (1), on request of the person, State agency, or commodity exchange, the Secretary may conduct an examination, audit, or similar activity with respect to—

(1) any person that is engaged in the business of storing an agricultural product that is subject to this Act;

(2) any State agency that regulates the storage of an agricultural product by such a person; or

(3) any commodity exchange with regulatory authority over the storage of agricultural products that are subject to this Act.

(j) LICENSES FOR OPERATION OF WAREHOUSES.—The Secretary may issue to any warehouse operator a license for the operation of a warehouse in accordance with this Act if—

(1) the Secretary determines that the warehouse is suitable for the proper storage of the agricultural product or products stored or proposed for storage in the warehouse; and

(2) the warehouse operator agrees, as a condition of the license, to comply with this Act (including regulations promulgated under this Act).

(k) LICENSING OF OTHER PERSONS.—

(1) IN GENERAL.—On presentation of satisfactory proof of competency to carry out the activities described in this paragraph, the Secretary may issue to any person a Federal license—

(A) to inspect any agricultural product stored or handled in a warehouse subject to this Act;

(B) to sample such an agricultural product;

(C) to classify such an agricultural product according to condition, grade, or other class and certify the condition, grade, or other class of the agricultural product; or

(D) to weigh such an agricultural product and certify the weight of the agricultural product.

(2) CONDITION.—As a condition of a license issued under paragraph (1), the licensee shall agree to comply with this Act (including regulations promulgated under this Act).

(l) EXAMINATION OF BOOKS, RECORDS, PAPERS, AND ACCOUNTS.—The Secretary may examine and audit, using designated officers, employees, or agents of the Department, all books, records, papers, and accounts relating to activities subject to this Act of—

(1) a warehouse operator operating a warehouse licensed under this Act;

(2) a person operating a system for the electronic recording and transfer of receipts and other documents authorized by the Secretary; or

(3) any other person issuing receipts or electronic documents authorized by the Secretary under this Act.

(m) COOPERATION WITH STATES.—The Secretary may—

(1) cooperate with officers and employees of a State who administer or enforce State laws relating to warehouses, warehouse operators, weighers, graders, inspectors, samplers, or classifiers; and

(2) enter into cooperative agreements with States to perform activities authorized under this Act.

SEC. 4. [7 U.S.C. 243] IMPOSITION AND COLLECTION OF FEES.

(a) IN GENERAL.—The Secretary shall assess persons covered by this Act fees to cover the costs of administering this Act.

(b) RATES.—The fees under this section shall be set at a rate determined by the Secretary.

(c) TREATMENT OF FEES.—All fees collected under this section shall be credited to the account that incurs the costs of administering this Act and shall be available to the Secretary without further appropriation and without fiscal year limitation.

(d) INTEREST.—Funds collected under this section may be deposited in an interest-bearing account with a financial institution, and any interest earned on the account shall be credited under subsection (c).

(e) EFFICIENCIES AND COST EFFECTIVENESS.—

(1) IN GENERAL.—The Secretary shall seek to minimize the fees established under this section by improving efficiencies and reducing costs, including the efficient use of personnel to the extent practicable and consistent with the effective implementation of this Act.

(2) REPORT.—The Secretary shall publish an annual report on the actions taken by the Secretary to comply with paragraph (1).

SEC. 5. [7 U.S.C. 244] QUALITY AND VALUE STANDARDS.

If standards for the evaluation or determination of the quality or value of an agricultural product are not established under another Federal law, the Secretary may establish standards for the evaluation or determination of the quality or value of the agricultural product under this Act.

SEC. 6. [7 U.S.C. 245] BONDING AND OTHER FINANCIAL ASSURANCE REQUIREMENTS.

(a) IN GENERAL.—As a condition of receiving a license or approval under this Act (including regulations promulgated under this Act), the person applying for the license or approval shall execute and file with the Secretary a bond, or provide such other financial assurance as the Secretary determines appropriate, to secure the person's performance of the activities so licensed or approved.

(b) SERVICE OF PROCESS.—To qualify as a suitable bond or other financial assurance under subsection (a), the surety, sureties, or financial institution shall be subject to service of process in suits on the bond or other financial assurance in the State, district, or territory in which the warehouse is located.

(c) ADDITIONAL ASSURANCES.—If the Secretary determines that a previously approved bond or other financial assurance is insufficient, the Secretary may suspend or revoke the license or approval covered by the bond or other financial assurance if the person that filed the bond or other financial assurance does not provide such additional bond or other financial assurance as the Secretary determines appropriate.

(d) THIRD PARTY ACTIONS.—Any person injured by the breach of any obligation arising under this Act for which a bond or other financial assurance has been obtained as required by this section may sue with respect to the bond or other financial assurance in a district court of the United States to recover the damages that the person sustained as a result of the breach.

SEC. 7. [7 U.S.C. 246] MAINTENANCE OF RECORDS.

To facilitate the administration of this Act, the following persons shall maintain such records and make such reports, as the Secretary may by regulation require:

(1) A warehouse operator that is licensed under this Act.

(2) A person operating a system for the electronic recording and transfer of receipts and other documents that are authorized under this Act.

(3) Any other person engaged in the issuance of electronic receipts or the transfer of documents under this Act.

SEC. 8. [7 U.S.C. 247] FAIR TREATMENT IN STORAGE OF AGRICULTURAL PRODUCTS.

(a) IN GENERAL.—Subject to the capacity of a warehouse, a warehouse operator shall deal, in a fair and reasonable manner,

with persons storing, or seeking to store, an agricultural product in the warehouse if the agricultural product—

(1) is of the kind, type, and quality customarily stored or handled in the area in which the warehouse is located;

(2) is tendered to the warehouse operator in a suitable condition for warehousing; and

(3) is tendered in a manner that is consistent with the ordinary and usual course of business.

(b) ALLOCATION.—Nothing in this section prohibits a warehouse operator from entering into an agreement with a depositor of an agricultural product to allocate available storage space.

SEC. 9. [7 U.S.C. 248] COMMINGLING OF AGRICULTURAL PRODUCTS.

(a) IN GENERAL.—A warehouse operator may commingle agricultural products in a manner approved by the Secretary.

(b) LIABILITY.—A warehouse operator shall be severally liable to each depositor or holder for the care and redelivery of the share of the depositor and holder of the commingled agricultural product to the same extent and under the same circumstances as if the agricultural products had been stored separately.

SEC. 10. [7 U.S.C. 249] TRANSFER OF STORED AGRICULTURAL PRODUCTS.

(a) IN GENERAL.—In accordance with regulations promulgated under this Act, a warehouse operator may transfer a stored agricultural product from one warehouse to another warehouse for continued storage.

(b) CONTINUED DUTY.—The warehouse operator from which agricultural products have been transferred under subsection (a) shall deliver to the rightful owner of such products, on request at the original warehouse, such products in the quantity and of the kind, quality, and grade called for by the receipt or other evidence of storage of the owner.

SEC. 11. [7 U.S.C. 250] WAREHOUSE RECEIPTS.

(a) IN GENERAL.—At the request of the depositor of an agricultural product stored or handled in a warehouse licensed under this Act, the warehouse operator shall issue a receipt to the depositor as prescribed by the Secretary.

(b) ACTUAL STORAGE REQUIRED.—A receipt may not be issued under this section for an agricultural product unless the agricultural product is actually stored in the warehouse at the time of the issuance of the receipt.

(c) CONTENTS.—Each receipt issued for an agricultural product stored or handled in a warehouse licensed under this Act shall contain such information, for each agricultural product covered by the receipt, as the Secretary may require by regulation.

(d) PROHIBITION ON ADDITIONAL RECEIPTS OR OTHER DOCUMENTS.—

(1) RECEIPTS.—While a receipt issued under this Act is outstanding and uncanceled by the warehouse operator, an additional receipt may not be issued for the same agricultural product (or any portion of the same agricultural product) represented by the outstanding receipt, except as authorized by the Secretary.

(2) OTHER DOCUMENTS.—If a document is transferred under this section, no duplicate document in any form may be transferred by any person with respect to the same agricultural

product represented by the document, except as authorized by the Secretary.

(e) ELECTRONIC RECEIPTS AND ELECTRONIC DOCUMENTS.—Except as provided in section 3(h)(2), notwithstanding any other provision of Federal or State law:

(1) IN GENERAL.—The Secretary may promulgate regulations that authorize the issuance, recording, and transfer of electronic receipts, and the transfer of other electronic documents, in accordance with this subsection.

(2) ELECTRONIC RECEIPT OR ELECTRONIC DOCUMENT SYSTEMS.—Electronic receipts may be issued, recorded, and transferred, and electronic documents may be transferred, under this subsection with respect to an agricultural product under, a system or systems maintained in one or more locations and approved by the Secretary in accordance with regulations issued under this Act.

(3) TREATMENT OF HOLDER.—Any person designated as the holder of an electronic receipt or other electronic document issued or transferred under this Act shall, for the purpose of perfecting the security interest of the person under Federal or State law and for all other purposes, be considered to be in possession of the receipt or other electronic document.

(4) NONDISCRIMINATION.—An electronic receipt issued, or other electronic document transferred, in accordance with this Act shall not be denied legal effect, validity, or enforceability on the ground that the information is generated, sent, received, or stored by electronic or similar means.

(5) SECURITY INTERESTS.—If more than one security interest exists in the agricultural product that is the subject of an electronic receipt or other electronic document under this Act, the priority of the security interest shall be determined by the applicable Federal or State law.

(6) NO ELECTRONIC RECEIPT REQUIRED.—A person shall not be required to issue in electronic form a receipt or document with respect to an agricultural product.

(7) OPTION FOR NON-FEDERALLY LICENSED WAREHOUSE OPERATORS.—Notwithstanding any other provision of this Act, a warehouse operator not licensed under this Act may, at the option of the warehouse operator and in accordance with regulations established by the Secretary, issue electronic receipts and transfer other electronic documents in accordance with this Act.

(8) APPLICATION TO STATE-LICENSED WAREHOUSE OPERATORS.—This subsection shall not apply to a warehouse operator that is licensed under State law to store agricultural commodities in a warehouse in the State if the warehouse operator elects—

(A) not to issue electronic receipts authorized under this subsection; or

(B) to issue electronic receipts authorized under State law.

SEC. 12. [7 U.S.C. 251] CONDITIONS FOR DELIVERY OF AGRICULTURAL PRODUCTS.

(a) PROMPT DELIVERY.—In the absence of a lawful excuse, a warehouse operator shall, without unnecessary delay, deliver the agricultural product stored or handled in the warehouse on a demand made by—

- (1) the holder of the receipt for the agricultural product; or
- (2) the person that deposited the product, if no receipt has been issued.

(b) PAYMENT TO ACCOMPANY DEMAND.—Prior to delivery of the agricultural product, payment of the accrued charges associated with the storage of the agricultural product, including satisfaction of the warehouseman's lien, shall be made if requested by the warehouse operator.

(c) SURRENDER OF RECEIPT.—When the holder of a receipt requests delivery of an agricultural product covered by the receipt, the holder shall surrender the receipt to the warehouse operator, in the manner prescribed by the Secretary, to obtain the agricultural product.

(d) CANCELLATION OF RECEIPT.—A warehouse operator shall cancel each receipt returned to the warehouse operator upon the delivery of the agricultural product for which the receipt was issued.

SEC. 13. [7 U.S.C. 252] SUSPENSION OR REVOCATION OF LICENSES.

(a) IN GENERAL.—After providing notice and an opportunity for a hearing in accordance with this section, the Secretary may suspend or revoke any license issued, or approval for an activity provided, under this Act—

- (1) for a material violation of, or failure to comply, with any provision of this Act (including regulations promulgated under this Act); or

- (2) on the ground that unreasonable or exorbitant charges have been imposed for services rendered.

(b) TEMPORARY SUSPENSION.—The Secretary may temporarily suspend a license or approval for an activity under this Act prior to an opportunity for a hearing for any violation of, or failure to comply with, any provision of this Act (including regulations promulgated under this Act).

(c) AUTHORITY TO CONDUCT HEARINGS.—The agency within the Department that is responsible for administering regulations promulgated under this Act shall have exclusive authority to conduct any hearing required under this section.

(d) JUDICIAL REVIEW.—

- (1) JURISDICTION.—A final administrative determination issued subsequent to a hearing may be reviewable only in a district court of the United States.

- (2) PROCEDURE.—The review shall be conducted in accordance with the standards set forth in section 706(2) of title 5, United States Code.

SEC. 14. [7 U.S.C. 253] PUBLIC INFORMATION.

(a) IN GENERAL.—The Secretary may release to the public the names, addresses, and locations of all persons—

- (1) that have been licensed under this Act or that have been approved to engage in an activity under this Act; and

- (2) with respect to which a license or approval has been suspended or revoked under section 13, the results of any investigation made or hearing conducted under this Act, including the reasons for the suspension or revocation.

(b) CONFIDENTIALITY.—Except as otherwise provided by law, an officer, employee, or agent of the Department shall not divulge confidential business information obtained during a warehouse examination or other function performed as part of the duties of the officer, employee, or agent under this Act.

SEC. 15. [7 U.S.C. 254] PENALTIES FOR NONCOMPLIANCE.

“If a person fails to comply with any requirement of this Act (including regulations promulgated under this Act), the Secretary may assess, on the record after an opportunity for a hearing, a civil penalty—

(1) of not more than \$25,000 per violation, if an agricultural product is not involved in the violation; or

(2) of not more than 100 percent of the value of the agricultural product, if an agricultural product is involved in the violation.

SEC. 16. [7 U.S.C. 255] JURISDICTION AND ARBITRATION.

(a) **FEDERAL JURISDICTION.**—A district court of the United States shall have exclusive jurisdiction over any action brought under this Act without regard to the amount in controversy or the citizenship of the parties.

(b) **ARBITRATION.**—Nothing in this Act prevents the enforceability of an agreement to arbitrate that would otherwise be enforceable under chapter 1 of title 9, United States Code.

SEC. 17. [7 U.S.C. 256] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.