

FINAL REPORT

REVIEW REGULATIONS AND PROTECTIONS FOR GRAIN DEALERS, DEPOSITORS, SELLERS, AND GRAIN WAREHOUSE OPERATORS STUDY COMMITTEE

January 1991

AUTHORIZATION AND MEMBERSHIP

The Review Regulations and Protections for Grain Dealers, Depositors, Sellers, and Grain Warehouse Operators Study Committee was established by the Legislative Council to review the protections, regulations, and procedures contained in or established pursuant to Iowa Code chapters 542, 543, and 543A and make recommendations toward ensuring that the grain marketing system is as fair, protective, and profitable as possible.

The following members were appointed:

Senator Ken Scott, Co-chairperson
Representative Deo Koenigs, Co-chairperson
Senator Eugene Fraise
Senator Linn Fuhrman
Senator Emil Husak
Senator John Soorholtz
Representative David Hibbard
Representative Ruhl Maulsby
Representative Dolores Mertz
Representative Bob Renken

MEETING DAYS

The Study Committee was authorized three meeting days, but was able to complete its work in two meetings which were held on Monday, July 23, 1990, and Thursday, October 4, 1990.

PRESENTATIONS

The following individuals made presentations to the Study Committee:

1. Mr. Randy Allman, Iowa Feed and Grain Association. Mr. Allman discussed items of interest contained in a summary of items agreed to by the Iowa Feed and Grain Association and the Iowa Institute of Cooperation. (Summary attached)
2. Mr. John Peterson, Chairperson, Grain Supply Committee, Iowa Institute of Cooperation. Mr. Peterson discussed items of interest contained in a summary of items agreed to by the Iowa Institute of Cooperation and the Iowa Feed and Grain Association. (Summary attached)
3. Ms. Donna Gwinn, Bureau Chief, Grain Warehouse Bureau, Department of Agriculture and Land Stewardship. Ms. Gwinn informed the Committee that the Department was in the process of reviewing its rules regulating grain dealers and warehouse operators. She stated that she was unable to comment in detail concerning the industry proposal as she had not seen the document provided to the Committee until the time of the meeting. She also provided information concerning the status of the Grain Indemnity Fund.
4. Ms. Lynette Donner, Legal Counsel, Grain Indemnity Fund Board, Attorney General's Office. Ms. Donner briefly commented on the proposal made by the Iowa Feed and Grain Association and the Iowa Institute of Cooperation.
5. Mr. Fred Tomlinson, Iowa Feed and Grain Association. Mr. Tomlinson discussed the industry proposal and emphasized the importance of persons in the grain industry competing on an equal basis.
6. Mr. Dennis Plummer, Grain Warehouse Bureau, Iowa Department of Agriculture and Land Stewardship. Mr. Plummer indicated the Department's support for the industry proposal. He also discussed several recommendations of the Department including prohibiting a warehouse operator or grain dealer from using credit sale contracts to cover a measured shortage, requiring claims filed against the Grain Indemnity Fund be delivered by certified mail, and providing that when the claim for a loss is determined to be valid by a court on review from a determination of the Grain Indemnity Fund Board, interest on a claim be calculated from the time of denial of the claim.
7. Mr. Stephen Reno, Legal Counsel, Grain Warehouse Bureau, Attorney General's Office. Mr. Reno briefly discussed the industry proposal and voiced support for the proposal.

RECOMMENDATIONS

After careful review of the information presented, the Committee adopted the following recommendations:

1. Require grain dealers to submit unqualified opinions based on audits performed by certified public accountants.
2. License renewal fees should be based on bushels purchased rather than on a dollar volume.
3. A grain dealer must maintain a net worth of 10 cents for each bushel purchased, with a dealer purchasing more than the net worth requirement would allow being charged a rate of one-quarter cent per bushel over the limit. The Committee adopted the one-quarter cent charge as a guideline.
4. A grain dealer must maintain a minimum net worth of 50 cents for each bushel of grain purchased under credit sale contract. The dealer must maintain a current ratio of debts to liabilities.
5. The Department may seek assistance from the Attorney General in prosecuting serious criminal violations. A process for notification of the Attorney General by the Department concerning criminal prosecutions should be established and the Attorney General should be given the authority to prosecute cases if the county attorney fails to take action within a certain period of time.
6. Authorize the Department to impose civil penalties for serious violations which are willfully committed.
7. The Department shall reimburse producers the remaining amount of the producers loss not covered by the Grain Indemnity Fund out of any amount recovered from the failed business. A producer covered by the Fund and eligible for reimbursement under this proposal is barred from filing suit for additional recovery.
8. The scope of the grain dealer law and the Grain Indemnity Fund should not be extended to cover additional buyers of grain, such as feedlots or seed companies.
9. New grain dealers should pay an increased fee to the Fund which reflects contributions previously made by currently licensed dealers.
10. A license should be renewed within three months after the close of the dealer's or operator's fiscal year.
11. A grain dealer or warehouse operator should be prohibited from using a credit sale contract to cover a measured shortage.

SUMMARY OF DISCUSSIONS TO DATE

Iowa Institute of Cooperation & Iowa Grain and Feed Association

A. Items of Consensus Related to a Change in the Law:

1. Audits. All grain dealers should be required to have unqualified opinion (certified) audits. This requirement must be phased in as soon as is reasonably possible because it is the basis for other concepts upon which we've agreed.
2. Basis of License Fees. The initial charge for license renewal should be based on bushels purchased, not on dollar volume. Purchases would be defined as general ledger (actually paid for) grain.
3. Fees and Assessments Based on Risk. License renewal fees would be increased for any grain dealer whose purchases exceed a certain multiple of his net worth. The base figure is 10 cents of net worth for each bushel purchased. This would allow a grain dealer with a net worth of \$100,000 to make purchases during his fiscal year of up to one million bushels of grain (any kind of grain) without being assessed for the additional risk factor. The determination of any overage would be made by the auditor. Fees charged against the overage would go into the General Fund at a rate of 0.25 cent per bushel of overage.
Still under discussion: At such time as the per bushel assessment for the Indemnity Fund may be triggered, such assessments should be based on the level of risk a dealer poses to the Fund. It is suggested that research done by Dr. Roger Ginder at ISU would provide a simple, yet reasonably accurate method of determining the differences in risk.
4. Credit Sale (deferred payment) Contracts. Only those grain dealers with a sound financial position should be allowed to offer credit sale contracts. This determination should be made by requiring a minimum level of net worth and a minimum current ratio of 1:1. The net worth requirement would be 50 cents of net worth for every bushel of grain under credit sale contract. Deficiencies could be covered with bonds or letters of credit for the 1:1 ratio but not for net worth. Credit sale contracts should remain outside the coverage of the Indemnity Fund.
5. Prosecution of Violators. The Warehouse Bureau should have the ability to seek assistance from the Attorney General if the county attorney is either unwilling or unable to prosecute a serious criminal violation.
6. Civil Penalties. The Warehouse Bureau should have the ability to levy civil penalties for serious violations which are willfully committed if a reasonable definition or means of determining what is serious can be established. One method may be a peer review panel that sets guidelines for such determinations.

7. Percentage of Loss Covered by Fund. All claims judged to be valid should only be covered to 75 percent of the amount lost (rather than the current 90 percent), but additional recovery up to 100 percent of the loss would be possible to the extent the Bureau could recover more from the failed business.
8. Activities Covered by Grain Dealer Law and Indemnity Fund. The scope of the law should not be extended to cover additional buyers of grain, such as feedlots or seed companies.
9. Indemnity Fund Lien. The Bureau should have the ability to attach a lien to the assets of a business at the time their license is suspended.
10. New Grain Dealers and the Indemnity Fund. There needs to be a provision in the law to require new grain dealers to pay double the annual fee to the Fund which will give them a more equitable investment compared with those who have already paid in.

B. Items of Consensus on Current Law:

1. Current ratio and net worth minimums should be retained in their present form.
2. Credit sale contracts should remain exempt from Indemnity Fund coverage.
3. Cure period of 24 hours for serious violations needs further study and discussion. Advisory board or peer review panel could assist the bureau in handling appropriately.

C. Items of Consensus on Regulation:

1. Signed acknowledgements used in credit sale contracts will become part of the contract and cease to be separate documents.
2. To the extent that procedures auditors use when conducting unqualified opinion audits will overlap with state inspection procedures, to the extent additional cooperation between federal and state inspectors can be achieved, and to the extent an advisory board or peer review panel can be helpful, the state inspectors will reduce the comprehensiveness of their examination of financially sound grain dealers and increase the attention given to weaker ones.
3. Rules need to have definitions and procedures better spelled out to cover recordkeeping standards.
4. Rules need to clearly state the point at which grain becomes "priced" in regard to Indemnity Fund settlements.