

**§ 735.11**

(b) Immediately upon receipt of their certificate of service licensing or any modification or extension thereof under the Act, the licensee and warehouse operator must jointly post the same, and thereafter, except as otherwise provided in the regulations in this part or as prescribed in the applicable licensing agreement, keep such certificate of licensing conspicuously posted in the office where all or most of the services are done, or in such place as may be designated by DACO.

(c) The provider must post, in a conspicuous place in the principal place of business, any applicable certificate of authorization furnished by DACO that the provider is authorized to offer and provide specific services under the Act.

**§ 735.11 Lost or destroyed certificates of licensing, authorization or agreements.**

FSA will replace lost or destroyed certificates of licensing, certificate of authorization or applicable agreement upon satisfactory proof of loss or destruction. FSA will mark such certificates or agreements as duplicates.

**§ 735.12 Safe keeping of records.**

Each warehouse operator or provider must take necessary precautions to safeguard all records, either paper or electronic format, from destruction.

**§ 735.13 Information of violations.**

Every person licensed or authorized under the Act must immediately furnish DACO any information they may have indicating that any provision of the Act or the regulations in this part has been violated.

**§ 735.14 Bonding and other financial assurance requirements.**

(a) As a condition of receiving a license or authorization under the Act, the person applying for the license or authorization must execute and file with DACO a bond or provide such other financial assurance as DACO determines appropriate to secure the person's compliance with the Act.

(b) Such bond or assurance must be for a period of not less than one year and in such amount as required by DACO.

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(c) Failure to provide for, or renew, a bond or a financial assurance instrument will result in the immediate and automatic revocation of the warehouse operator's license or provider's agreement.

(d) If DACO determines that a previously accepted bond or other financial assurance is insufficient, DACO may immediately suspend or revoke the license or authorization 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 DACO determines appropriate.

(e) To qualify as a suitable bond or other financial assurance, the entity issuing the bond or other financial assurance must be subject to service of process in lawsuits or legal actions on the bond or other financial assurance in the State in which the warehouse is located.

**Subpart B—Warehouse Licensing****§ 735.100 Application.**

(a) An applicant for a license must submit to DACO information and documents determined by DACO to be sufficient to conclude that the applicant can comply with the provisions of the Act. Such documents must include a current review or an audit-level financial statement prepared according to generally accepted accounting standards as defined by the American Institute of Certified Public Accountants. For any entity that is not an individual, a document that establishes proof of the existence of the entity, such as:

(1) For a partnership, an executed partnership agreement; and

(2) For a corporation:

(i) Articles of incorporation certified by the Secretary of State of the applicable State of incorporation;

(ii) Bylaws; and

(iii) Permits to do business; and

(3) For a limited partnership, an executed limited partnership agreement; and

(4) For a limited liability company:

(i) Articles of organization or similar documents; and

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- (ii) Operating agreement or similar agreement.
- (b) The warehouse facilities of an operator licensed under the Act must, as determined by DACO, be:
- (1) Physically and operationally suitable for proper storage of the applicable agricultural product or agricultural products specified in the license;
  - (2) Operated according to generally accepted warehousing activities and practices in the industry for the applicable agricultural product or agricultural products stored in the facility; and
  - (3) Subject to the warehouse operator's control of the facility including all contiguous storage space with respect to such facilities.
- (c) As specified in individual licensing agreements, a warehouse operator must:
- (1) Meet the basic financial requirements determined by DACO; and
  - (2) Meet the net worth requirements determined by DACO;
- (d) In order to obtain a license, the warehouse operator must correct any exceptions made by the warehouse examiner at the time of the original warehouse examination.
- (e) DACO may issue a license for the storage of two or more agricultural products in a single warehouse as provided in the applicable licensing agreements. The amount of the bond or financial assurance, net worth, and inspection and license fees will be determined by DACO in accordance with the licensing agreements applicable to the specific agricultural product, based upon the warehouses' total capacity for storing such product, that would require:
- (1) The largest bond or financial assurance;
  - (2) The greatest amount of net worth; and
  - (3) The greatest amount of fees.
- § 735.101 Financial records and reporting requirements.**
- (a) Warehouse operators must maintain complete, accurate, and current financial records that must be available to DACO for review or audit at DACO's request as may be prescribed in the applicable licensing agreement.
- (b) Warehouse operators must, annually, present a financial statement as may be prescribed in the applicable licensing agreement to DACO.
- § 735.102 Financial assurance requirements.**
- (a) Warehouse operators must file with DACO financial assurances approved by DACO consisting of:
- (1) A warehouse operator's bond; or
  - (2) Obligations that are unconditionally guaranteed as to both interest and principal by the United States, in a sum equal at their par value to the amount of the bond otherwise required to be furnished, together with an irrevocable power of attorney authorizing DACO to collect, sell, assign and transfer such obligations in case of any default in the performance of any of the conditions required in the licensing agreement; or
  - (3) An irrevocable letter of credit issued in the favor of DACO with a term of not less than two years; or
  - (4) A certificate of participation in, and coverage by, an indemnity or insurance fund as approved by DACO, established and maintained by a State, backed by the full faith and credit of the applicable State, which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouse operator under the terms of the Act. If a warehouse operator files a bond or financial assurance in the form of a certification of participation in an indemnity or insurance fund, the certification may only be used to satisfy any deficiencies in assets above the minimum net worth requirement as prescribed in the applicable licensing agreement. A certificate of participation and coverage in this fund must be furnished to DACO annually; or
  - (5) Other alternative instruments and forms of financial assurance approved by DACO as may be prescribed in the applicable licensing agreement.
- (b) The warehouse operator may not withdraw obligations required under this section until one year after license termination or until satisfaction of any claims against the obligations, whichever is later.

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### § 735.103 Amendments to license.

FSA will issue an amended license upon:

- (a) Receipt of forms prescribed and furnished by DACO outlining the requested changes to the license;
- (b) Payment of applicable licensing and examination fees;
- (c) Receipt of bonding or other financial assurance if required in the applicable licensing agreement; and
- (d) Receipt of a report on the examination of the proposed facilities pending inclusion or exclusion, if determined necessary by DACO.

### § 735.104 Insurance requirements.

Each warehouse operator must comply fully with the terms of insurance policies or contracts covering their licensed warehouse and all products stored therein, and must not commit any acts, nor permit others to do anything, that might impair or invalidate such insurance.

### § 735.105 Care of agricultural products.

Each warehouse operator must at all times, including during any period of suspension of their license, exercise such care in regard to stored and non-storage agricultural products in their custody as required in the applicable licensing agreement.

### § 735.106 Excess storage and transferring of agricultural products.

(a) If at any time a warehouse operator stores an agricultural product in a warehouse subject to a license issued under the Act in excess of the warehouse capacity for which it is licensed, such warehouse operator must immediately notify DACO of such excess storage and the reason for the storage.

(b) A warehouse operator who desires to transfer stored agricultural products to another warehouse may do so either by physical movement, by other methods as may be provided in the applicable licensing agreement, or as authorized by DACO.

### § 735.107 Warehouse charges and tariffs.

(a) A warehouse operator must not make any unreasonable or exorbitant charge for services rendered.

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(b) A warehouse operator must follow the terms and conditions for each new or revised warehouse tariff or schedule of charges and rates as prescribed in the applicable licensing agreement.

### § 735.108 Inspections and examinations of warehouses.

(a) Warehouse operators must permit any agent of the Department to enter and inspect or examine, on any business day during the usual hours of business, any licensed warehouse, the offices of the warehouse operator, the books, records, papers, and accounts.

(b) Routine and special inspections and examinations will be unannounced.

(c) Warehouse operators must provide safe access to all storage facilities.

(d) Warehouse operators must inform any agent of the Department, upon arrival, of any hazard.

(e) Agents of the Department must accomplish inspections and examinations of warehouses in a manner that is efficient and cost-effective without jeopardizing any inspection and examination integrity.

### § 735.109 Disaster loss to be reported.

If at any time a disaster or loss occurs at or within any licensed warehouse, the warehouse operator must report immediately the occurrence of the disaster or loss and the extent of damage, to DACO.

### § 735.110 Conditions for delivery of agricultural products.

(a) In the absence of a lawful excuse, a warehouse operator will, without unnecessary delay, deliver the agricultural product stored or handled in the warehouse on a demand made by:

(1) The holder of the warehouse receipt for the agricultural product; or

(2) The person that deposited the agricultural product, if no warehouse receipt has been issued.

(b) Prior to delivery of the agricultural product, payment of the accrued charges associated with the storage or handling of the agricultural product, including satisfaction of the warehouse operator's lien, must be made if requested by the warehouse operator.

(c) When the holder of a warehouse receipt requests delivery of an agricultural product covered by the warehouse

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receipt, the holder must surrender the warehouse receipt to the warehouse operator before obtaining the agricultural product.

(d) A warehouse operator must cancel each warehouse receipt surrendered to the warehouse operator upon the delivery of the agricultural product for which the warehouse receipt was issued and in accordance with the applicable licensing agreement.

(e) For the purpose of this part, unless prevented from doing so by force majeure, a warehouse operator will deliver or ship such agricultural products stored or handled in their warehouse as prescribed in the applicable licensing agreement.

**§ 735.111 Fair treatment.**

(a) Contingent upon the capacity of a warehouse, a warehouse operator will deal in a fair and reasonable manner with persons storing, or seeking to store, an agricultural product in the warehouse if the agricultural product is:

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

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

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

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

**§ 735.112 Terminal and futures contract markets.**

(a) DACO may issue service licenses to weigh-masters or their deputies to perform services relating to warehouse receipts that are deliverable in satisfaction of futures contracts in such contract markets or as may be prescribed in any applicable licensing agreement.

(b) DACO may authorize a registrar of warehouse receipts issued for an agricultural product in a warehouse licensed under the Act that operates in any terminal market or in any futures contract market the official designated by officials of the State in which such

market is located if such individual is not:

(1) An owner or employee of the licensed warehouse;

(2) The owner of, or an employee of the owner of, such agricultural product deposited in any such licensed warehouse; or

(3) As may be prescribed in any applicable licensing or provider agreement.

**Subpart C—Inspectors, Samplers, Classifiers, and Weighers****§ 735.200 Service licenses.**

(a) FSA may issue to a person a license for:

(1) Inspection of any agricultural product stored or handled in a warehouse subject to the Act;

(2) Sampling of such an agricultural product;

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

(4) Weighing of such an agricultural product and certify the weight of the agricultural product; or

(5) Performing two or more services specified in paragraphs (a)(1), (a)(2), (a)(3) or (a)(4) of this section.

(b) Each person seeking a license to perform activities described in this section must submit an application on forms furnished by DACO that contain, at a minimum, the following information:

(1) The name, location and license number of the warehouses where the applicant would perform such activities;

(2) A statement from the warehouse operator that the applicant is competent and authorized to perform such activities at specific locations; and

(3) Evidence that the applicant is competent to inspect, sample, classify, according to grade or weigh the agricultural product.

(c) The warehouse operator will promptly notify DACO in writing of any changes with respect to persons authorized to perform such activities at the licensed warehouse.