

DEPARTMENT OF AGRICULTURE**Farm Service Agency****7 CFR Parts 735, 736, 737, 738, 739, 740, 741 and 742****RIN 0560-AG45****Implementation of the United States Warehouse Act****AGENCY:** Farm Service Agency, USDA.**ACTION:** Proposed rule with request for comments.

SUMMARY: The Department of Agriculture (USDA) is proposing a revision of the regulations administering the United States Warehouse Act to implement the provisions of the Grain Standards and Warehouse Improvement Act of 2000 (2000 Act). The 2000 Act, enacted on November 9, 2000, amended the United States Warehouse Act (USWA) in its entirety. The 2000 Act updates Federal warehouse licensing operations, authorizes electronic warehouse receipts for all commodities, and authorizes the Secretary of Agriculture (Secretary) to establish regulations for voluntary systems for other electronic documents related to sales and transfers of agricultural products. Further information about the USWA and copies of the 2000 Act, the official transcript of January 23, 2001's public meeting, and this proposed rule may be found at <http://www.fsa.usda.gov/daco/uswa.htm>.

DATES: Comments concerning this rule must be received on or before October 4, 2001 to be assured of consideration. Comments regarding the information collection requirements of the Paperwork Reduction Act must be received October 4, 2001 to be assured of consideration.

Comments: For complete consideration and evaluation, commenters are asked to include with each of their comments the specific page, subpart, section, sub-section, etc., of the proposed rule. Comments that suggest alternate or replacement language may be considered. Commenters may submit their comments by mail, fax, e-mail or internet to the applicable address below.

ADDRESSES: Comments should be sent to Roger Hinkle, Chief, Licensing Authority Branch, Warehouse and Inventory Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250-0553, telephone (202) 720-2121, FAX (202) 690-3123, e-mail address, USWA@wdc.fsa.usda.gov,

or USWA's internet web page at <http://www.fsa.usda.gov/daco/uswa.htm>. Persons with disabilities who require alternative means for communication of regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Roger Hinkle, (202) 720-7433 or e-mail USWA@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:**Executive Order 12866**

This proposed rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

A Regulatory Impact Analysis (RIA) was prepared. The USWA does not mandate participation by those it regulates; it simply offers warehouse operators and service providers an alternative means for servicing their depositors and other customers. The fees charged USWA users are intended to offset the administration of the Act. The RIA summarized the cost and benefit impact of the rule as follows:

The rule offers current and potential warehouse operators a voluntary means to license warehouses used to store agricultural products. It also uniformly provides for the issuance of warehouse receipts, including electronic warehouse receipts, for agricultural products stored or handled in licensed warehouses, and for other purposes.

Implementation of the USWA and the establishment of associated standards and protocols will help: (1) Maintain the competitiveness in domestic and world markets; (2) improve the prices that producers receive; and (3) eliminate any disruption in commerce.

Copies of the RIA are available upon request at the address listed above.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12612

It has been determined that this proposed rule/activity does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Background

The 2000 Act, enacted on November 9, 2000, provides for the revision of the USWA. The 2000 Act amendments provide for licensing and inspection of warehouses used to store agricultural products, issuance of warehouse receipts, including electronic warehouse receipts, for agricultural products, and for other purposes.

The USWA, originally enacted in 1916, authorized the Secretary to license warehouse operators who stored agricultural products and persons to sample, weigh, inspect and grade agricultural products. The USWA licensing program has always been voluntary and regulated licensees in order to protect depositors.

In 1990, the USWA was amended to direct the Secretary to establish EWRs for the cotton industry. Since the first issuance of EWRs in 1995, the number of banks, cooperatives, gins, merchants and warehouse operators participating in USWA's electronic-based program has more than doubled. The percentage of EWRs issued increased from 45 percent of the 15 million bales in 1995-1996 crop year to more than 95 percent of the 17 million bales in 1999-2000 crop year.

The 2000 Act amendments include several provisions that thoroughly modernize the program and reflect the current technology advancements

within the agricultural marketing systems. The new provisions will make U.S. agriculture more competitive in both domestic and foreign markets through efficiencies and cost savings provided by today's computer technology and information management systems. These new provisions include: (1) Extending the USWA's authority to all agricultural products including a processed product of an agricultural commodity; (2) granting the Secretary the power to establish regulations governing one or more electronic systems under which EWRs or other electronic documents related to the shipment, payment and financing of domestic and foreign agricultural products may be issued or transferred; (3) allowing licensees or providers to provide a bond or other financial assurance as the Secretary determines appropriate; (4) allowing warehouse operators to allocate storage space to a depositor; (5) requiring warehouse operators to issue warehouse receipts only when requested by the depositor; and (6) allowing for arbitration.

The proposed rule redesigns the structure of the warehouse licensing regulations by removing the eight commodity-specific regulations and replacing them with one general regulation. The commodity-specific requirements have been moved to the applicable licensing (See Exhibits A and B for cotton and grain, respectively) or provider agreements. The proposed rule updates and modifies the regulatory language, merges all similar language from the specific commodity regulations and at the same time removing redundancies, but does not substantively changing the program operations. Public comments are requested regarding the new regulatory format, including the consolidation of the specific commodity regulations into one broad, generic regulatory package; and the placement of the specific commodity requirements in the licensing agreements or the provider agreements.

As a result of the merger of all the specific-commodity warehouse regulations into one generic regulation, the cotton flow standard previously codified at 7 CFR part 735.201, is not included in these regulations. The cotton flow standard has been included in the cotton-specific licensing and EWR provider agreements.

The operation of the licensing program for warehouse operators, inspectors, samplers, classifiers, and weighers is not substantively changed by the proposed rule. The proposed general licensing program requirements

are furnished in subparts B and C with the more specific requirements stated in the licensing agreements. Public comments are requested on the continuation of the current licensing program, including any licensing requirements that should be changed.

Section 3(h) of the USWA allows the Secretary to issue regulations governing one or more electronic systems under which EWRs may be issued and transferred and other electronic documents relating to the shipment, payment, and financing of the sale of agricultural products. Previously, EWRs were only authorized for cotton. The authority for electronic conveyance of other business documents (such as grade and weight certificates, phytosanitary certificates, bills of lading, export evidence certificates or letters of credit) is a new authority. The proposed regulation in subparts D and E provides for a system where FSA will establish regulatory guidelines for systems for the electronic conveyance of these and other electronic documents that will authorize and standardize electronic documents and allow their transfer from buyer to seller across state and international boundaries. This new paperless flow of agricultural products from farm gate to end-user will provide savings and efficiencies for America's farmers. Public comments are requested on the system for electronic conveyance as provided in the proposed rule, including the use of service providers, and the involvement of FSA in standardizing the electronic document formats.

The structure will mirror that structure established for cotton EWRs consisting of independent providers who have signed an agreement with FSA. Section 735.300 provides the general warehouse requirements applicable to all warehouse receipts whether paper or electronic for any agricultural product. Requirements specific to EWRs are found in section 735.302. FSA has developed two provider agreements. The EWR provider agreement for EWRs and electronic USWA documents will cover all approved agricultural products (See Exhibit C). Separate addenda will be developed to cover the commodity-specific EWRs (See Exhibit D and E for cotton and grain, respectively). FSA has developed a second provider agreement that will cover all other electronic documents (See Exhibit F). Separate addenda may be developed for each specific document. FSA decided to increase both the net worth and the insurance requirement for providers of EWRs. The net worth requirement was increased from \$25,000 to \$100,000 and

the insurance coverage required was increased to \$4 million. These changes are codified at Section 735.401. Public comments are requested on these increases in financial requirements.

Section 11(e)(4) of the USWA provides that "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." Accordingly, this proposed rule in subpart E sets forth the manner in which a private person may be approved to establish a system that accomplishes these functions. Under the provider agreement for these functions, in addition to other activities, a party will be able to take a paper document relating to the shipment, payment, and financing of the sale of an agricultural product to an approved provider and the provider may generate an identical electronic document for electronic transmission. This aspect of the USWA will allow parties to conduct all aspects of these agricultural transactions in an electronic manner whereas currently, in many instances, necessary documents are in a paper format and must be physically delivered to another party.

Entities involved in transactions which are anticipated to be conducted under such a system are anticipated to be primarily those which are involved in international shipments in which the financing of the sale will be through the use of various commercial instruments including letters of credit issued by foreign entities. The value of the commodity and associated cargo costs involved in these transactions will often exceed \$10 million. Unlike those providers which are authorized to administer an electronic system with respect to warehouse receipts, the providers which are approved by the Secretary to operate this broader system which, encompasses all financial and shipping activities, are authorized to "generate" a document for use by parties to a transaction. Accordingly, the liability of these providers is significantly greater and FSA has determined that the financial net worth requirements for these providers should be significantly greater in order to ensure, in the event there are errors committed by the providers, that affected parties have the ability to recoup any losses which they may incur as a result of the provider's conduct. The financial requirements for providers of other electronic documents are found in Section 735.402 and require a provider to have a net worth of \$10 million and maintain 2 insurance

policies for a total coverage of \$50 million. Public comments are sought regarding the net worth and insurance requirements for the provider of other electronic documents including the reasonableness of the requirements, and alternative levels for consideration.

Section 11(e) also provides that in establishing this electronic document system, the Secretary may act "notwithstanding any other provision of Federal or State law. * * *" In order to provide a uniform system in developing documents for inclusion in this system and to provide for a uniform resolution of disputes that arise in the administration of this system, the proposed rule provides that the law of New York State will govern all transactions entered into with the use of the system except for laws relating to the legal doctrines of the choice of law and determination of venue. FSA has determined that, taking into account the large body of commercial law which has developed in the State of New York, especially laws relating to complex financing agreements involving international transactions which utilize letters of credit, such an approach would: (1) Make clear to all users of the system the law that would be applied regardless of the location of the provider, the location of the various parties to the transaction and the location of the actual activity that is the focus of the transaction; (2) assist in the development of uniform documents by more than one approved provider; and (3) reduce transactional costs as a result of the uniformity in documents, especially in the case of international transactions. Public comments are requested on the decision to use the law of the State of New York to govern all transactions under the electronic system.

The Secretary is authorized to assess and collect fees from Federally-licensed warehouse operators, approved providers and other users of the USWA. The fees are intended to offset the cost of operating the revised USWA. The fee schedule is included as an addendum to the licensing and provider agreement and is available from the Deputy Administrator for Commodity Operations, located in Washington, D.C.

Section 202 of the 2000 Act imposes certain deadlines for the regulations and on the effectiveness of the existing USWA. Final regulations are required to be in place no later than 180 days after the date of enactment. The USWA as it previously existed terminates not later than August 1, 2001. This proposed rule has been issued with a 30-day comment period, and FSA intends to issue the final rule as soon as possible after

comments have been received and evaluated.

Paperwork Reduction Act

Title: 7 CFR 735, United States Warehouse Act.

OMB Control Number: 0560-0120.

Expiration Date: March 31, 2003.

Type of Request: Request for approval of a revised information collection.

Abstract: USDA will collect information from those individuals who voluntarily apply for warehouse licensing under the USWA and meet the minimum requirements for licensing for the applicable agricultural product. The USWA also provides for the voluntary approval and governing of one or more electronic provider systems under which farmers and merchants transfer electronic receipts or documents relating to the shipment, payment, and financing of the sale of agricultural products. Applicants must voluntarily certify that they will abide by the provisions of the USWA.

Information secured voluntarily from interested warehouse operators forms the basis for the issuance, suspension, reinstatement, or revocation of a license.

Likewise, information secured voluntarily from an interested electronic provider forms the basis for approval under the USWA, which allows for the use of electronic warehouse receipts for all agricultural products and the use of other electronic documents.

The provider agreement entered into by a private person and the FSA sets forth the manner in which this person may be approved to establish a system that accomplishes how information is generated, sent, received, or stored by electronic or similar means.

Approved providers must have a signed agreement with FSA, comply with the terms of that agreement, maintain specific financial and bonding requirements, pay user fees, establish and retain contemporaneous records of each EWR entry and access, be liable to the Secretary for issues associated with system failure or malfunction, furnish annual audit level financial statements, and submit to FSA an electronic data processing audits. This audit encompasses the provider's fiscal year and must evidence current computer operations, security, disaster recovery capabilities of the system, and other related systems. Information maintained to accommodate requirements under the provider agreement are considered to be normal operating practices for those private individuals who become approved providers and adds no additional burden to their day-to-day operations.

Estimate of Respondent Burden: The estimated average public reporting burden for the collection of information is 30 minutes per response;

Respondents: Warehouse operators and electronic providers;

Estimated Number of Respondents: 4,600;

Estimated Number of Responses per Respondent: One response per year;

Estimated Annual Number of Responses: 25,937 and

Estimated Total Annual Burden Hours on Respondents: 14,701 hours.

In addition to commenting on the substance of the regulation, the public is invited to comment on the information collection. Proposed topics include the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information technology; or (d) ways to minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques) or other forms of information technology; e.g., permitting electronic submission response. The information collection package may be obtained from Steve Gill, at the address listed below. Comments regarding the information collections may be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, and to Steve Gill, Director, Warehouse and Inventory Division, FSA, USDA, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250-0553.

List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Agricultural commodities, Beans, Cotton, Cottonseeds, Grain, Nuts, Sugar, Surety Bonds, Tobacco, Warehouses, Wool.

For the reasons stated in the preamble, FSA proposes to amend 7 CFR Chapter 700 as follows:

PART 735—COTTON WAREHOUSES

1. Part 735 is revised to read as follows:

PART 735—REGULATIONS FOR THE UNITED STATES WAREHOUSE ACT

Subpart A—General Provisions

- Sec.
 735.1 Applicability.
 735.2 Administration.
 735.3 Definitions.
 735.4 Fees.
 735.5 Penalties.
 735.6 Suspension and revocation.
 735.7 Return of suspended or revoked license or provider agreement.
 735.8 Appeals.
 735.9 Dispute resolution and arbitration of private parties.
 735.10 Posting of license, certificate of approval or other USWA documents.
 735.11 Lost or destroyed licenses or agreements.
 735.12 Safe keeping of records.
 735.13 Information of violations.
 735.14 Bonding and other financial assurance requirements.

Subpart B—WAREHOUSE LICENSING

- 735.100 Application.
 735.101 Financial records and reporting requirements.
 735.102 Financial assurance requirements.
 735.103 Amendments to license.
 735.104 Insurance requirements.
 735.105 Care of agricultural products.
 735.106 Excess storage and transferring of agricultural products.
 735.107 Warehouse charges and tariffs.
 735.108 Inspections and examinations of warehouses.
 735.109 Disaster loss to be reported.
 735.110 Conditions for delivery of agricultural products.
 735.111 Fair treatment.
 735.112 Terminal and futures contract markets

Subpart C—Inspectors, Samplers, Classifiers, and Weighers

- 735.200 Service licenses.
 735.201 Inspection certificate; form.
 735.202 Standards of grades for other agricultural products.

Subpart D—Warehouse Receipts

- 735.300 Warehouse receipt requirements.
 735.301 Notification requirements.
 735.302 Electronic warehouse receipts.

Subpart E—Electronic Providers

- 735.400 Administration.
 735.401 Electronic warehouse receipt and USWA electronic document providers.
 735.402 Providers of other electronic documents.
 735.403 Audits.
 735.404 Fees.
 735.405 Choice of law.

Authority: 7 U.S.C. 241 *et seq.*

Subpart A—General Provisions

§ 735.1 Applicability.

(a) The regulations of this part set forth the terms and conditions under which the Farm Service Agency (FSA) will administer the United States Warehouse Act (the Act). These regulations set forth the standards and the terms and conditions a participant or provider must meet to be eligible for licensing or approval under the Act.

(b) Additional terms and conditions may be set forth in applicable licensing agreements, provider agreements and other documents.

§ 735.2 Administration.

(a) FSA will administer all provisions of the Act under the general direction and supervision of the FSA's Deputy Administrator, Commodity Operations, (DACO), or designee.

(b) DACO may waive or modify program requirements or deadlines in cases where lateness or failure to meet such other requirements does not adversely affect the programs operated under the Act.

§ 735.3 Definitions.

Words used in this part in the singular form will be deemed to import the plural, and vice versa, as the case may demand. For the purposes of this part, unless the context otherwise requires; and will be applicable to the program authorized by this part and will be used in all aspects of administering this program:

Access means the ability when authorized, to read, change, and transfer warehouse receipts or other applicable document information retained in a central filing system.

Agricultural product means an agricultural produced product stored or handled for the purposes of interstate or foreign commerce including a processed product of an agricultural product as determined by DACO.

Approval means the consent provided by DACO for a person to engage in an activity authorized by the Act.

Central filing system (CFS) means an electronic system operated and maintained by a provider approved by DACO where the information relating to warehouse receipts, USWA documents and other electronic documents are recorded and maintained in a transparent, secure, unbiased and anonymous condition.

Control of the facility means ultimate responsibility for the operation and integrity of a facility by ownership, lease, or operating agreement.

Department means the Department of Agriculture.

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.

Electronic warehouse receipt (EWR) means a warehouse receipt that is authorized by DACO to be issued or transmitted under the Act in the form of an electronic document.

Examiner means an individual designated by DACO for the purpose of examining warehouses.

Financial assurance means the surety or other financial obligation approved by DACO that is a condition of receiving a license or approval under the Act.

Force Majeure means severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, act of civil or military, non-availability of transportation facilities, or any other cause beyond the control of the warehouse operator or provider that renders performance impossible.

Holder means a person that has possession in fact or by operation of law of a warehouse receipt or any electronic document.

License means a license issued under the Act by DACO.

Licensing agreement means the document and any amendment to such agreement executed by the warehouse operator and FSA specifying licensing terms and conditions specific to the warehouse operator and the agricultural product licensed to be stored.

Non-stored agricultural product means an agricultural product received temporarily into a warehouse for conditioning, transferring, assembling for shipment, or lots of an agricultural product moving through a warehouse for current merchandising or milling use, against which no warehouse receipts are issued and no storage charges assessed.

Official Standards of the United States means the standards of the quality or condition for an agricultural product, fixed and established under the United States Cotton Standards Act, the United States Grain Standards Act, the Agricultural Marketing Act of 1946, or other applicable official United States Standards.

Other electronic documents means those electronic documents, other than an EWR, related to the shipment, payment or financing of agricultural products that DACO has approved for inclusion in a provider's CFS.

Person means a person as set forth in 1 U.S.C. 1.; a State; and a political subdivision of a State.

Provider means a person that maintains one or more electronic systems that has been approved by DACO.

Provider Agreement means the document and any amendment to such agreement executed by the provider and FSA that sets forth the provider's responsibilities concerning the provider's maintenance of a CFS.

Receipt means a warehouse receipt issued in accordance with the Act,

including an electronic warehouse receipt.

Schedule of fees means the fees charged for services provided under the Act.

Service license means the document and any amendment to such agreement executed by a person licensed under the Act to perform required services such as inspection, sampling, grading, classifying, or weighing services for the licensed warehouse.

Stored agricultural products means all agricultural products received into, stored within, or delivered out of the warehouse which is not classified as a non-storage agricultural product under this part.

User means a person that uses a provider's CFS.

Warehouse means a structure or other approved storage facility, as determined by DACO, in which any agricultural product may be stored or handled.

Warehouse capacity means the maximum quantity of an agricultural product that the warehouse will accommodate when stored in a manner customary to the warehouse as determined by DACO.

Warehouse Operator means a person lawfully engaged in the business of storing or handling agricultural products.

§ 735.4 Fees.

(a) Warehouse operators, licensees, applicants or providers must pay:

(1) An annual fee as provided in the applicable licensing or provider agreement.

(2) Fees that FSA assesses for examinations and audits.

(b) The schedule showing the current fees or any annual fee changes will be provided as an addendum to the applicable licensing or provider agreement or is available at:

(1) DACO's USWA website, or

(2) May be requested at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, D.C. 20250-0550.

(c) At the sole discretion of DACO, these fees may be waived.

§ 735.5 Penalties.

If a person fails to comply with any requirement of the Act, the regulations set forth in this part or any applicable licensing or provider agreement, DACO may assess after an opportunity for a hearing as provided in § 735.8, a civil penalty:

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

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

§ 735.6 Suspension and revocation.

(a) DACO may, after an opportunity for a hearing as provided in § 735.8, suspend or revoke any license or agreement issued under the Act, for any violation of or failure to comply with any provision of the Act, regulations or any applicable licensing or provider agreement.

(b) The reasons for a suspension or revocation under this part include, but are not limited to:

(1) Failure to perform licensed or approved services as provided in this part or in the applicable licensing or provider agreement;

(2) Failure to maintain minimum financial requirements as provided in the applicable licensing or provider agreement; and

(3) Failure to submit a proper annual financial statement within the established time period as provided in the applicable licensing or provider agreement.

§ 735.7 Return of suspended or revoked license or provider agreement.

When a license issued to a warehouse operator or an agreement to a provider ends or is suspended or revoked by DACO, such license and applicable licensing agreement or provider agreement and certificate of approval must be immediately returned to DACO.

§ 735.8 Appeals.

(a) Any person who is subject to an adverse determination made under the Act may appeal the determination by filing a written request with DACO at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, D.C. 20250-0550.

(b) Any person who believes that they have been adversely affected by a determination under this part must seek review with DACO within twenty-one business days of such determination, unless provided with notice by DACO of a different deadline.

(c) Appeals procedure. The appeal process set forth in this part is applicable to all licensees and providers under any provision of the Act, regulations or any applicable licensing agreement as follows:

(1) DACO will notify the person in writing of the nature of the suspension or revocation action.

(2) The person must notify DACO of any appeal to its action within twenty-one business days.

(3) The appeal and request must state whether:

(i) A hearing is requested;

(ii) The person will appear in person at such hearing; or

(iii) Such hearing will be held by telephone.

(4) DACO will provide the person a written acknowledgment of their request to pursue an appeal.

(5) When a person requests an appeal and does not request a hearing DACO will allow that person:

(i) To submit in writing the reasons why they believe DACO's determination to be in error.

(ii) Twenty-one business days from the receipt of the acknowledgment, to file any statements and documents in support of their appeal.

(iii) An additional fifteen business days to respond to any new issues raised by DACO in response to the person's initial submission.

(6) If the person requests to pursue an appeal and requests a hearing, DACO will:

(i) Notify the person of the date of the hearing.

(ii) Determine the location of the hearing, when such a person requests to appear in person.

(iii) Notify the person of the location of the hearing.

(iv) Afford the person twenty-one business days from the receipt of the notification of the scheduling of the hearing to submit any statements and documents in support of the appeal.

(v) Allow the person an additional fifteen days from the date of the hearing to submit any additional material.

(7) Determinations of DACO will be final and no further appeal within USDA will be available except as may be specified in the final determination of DACO.

(8) A person may not initiate an action in any court of competent jurisdiction prior to the exhaustion of the administrative appeal process set forth in this section.

§ 735.9 Dispute resolution and arbitration of private parties.

(a) Any claim for noncompliance or unresolved dispute between a warehouse operator or provider and another party with respect to activities authorized under the Act may be resolved by the parties involved through mutually agreed upon arbitration procedures or as may be prescribed in the applicable licensing agreement. The arbitration procedures must be nondiscriminatory and provide each

party equal access and protection relating to the disputed issue. No arbitration determination or award will affect DACO's authority under this part.

(b) In the event a party requests arbitration assistance from DACO the initiating party will be responsible for all costs incurred by DACO.

§ 735.10 Posting of license, certificate of approval or other USWA documents.

(a) The warehouse operator must post, in a conspicuous place in the principal place where warehouse receipts are issued, a statement approved by DACO that the warehouse operator is an approved licensee under the Act.

(b) Immediately upon receipt of their service license 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, and keep such license conspicuously posted in the office where all or most of the services are done, or in such place as may be designated by FSA.

§ 735.11 Lost or destroyed licenses or agreements.

FSA will replace a lost or destroyed license or agreement upon satisfactory proof of loss or destruction. FSA will mark such license or agreement as a duplicate.

§ 735.12 Safe keeping of records.

Each warehouse operator or provider must store all records, books, and papers pertaining to the licensed warehouse or provider system in a fireproof safe, vault, compartment or other place approved by FSA in which to keep such documents when not in actual use.

§ 735.13 Information of violations.

Every person licensed or approved under the Act must immediately furnish DACO any information which comes to the knowledge of such person that indicates 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 approval under the Act, the person applying for the license or approval 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.

(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 approved bond or other financial assurance is insufficient, DACO may immediately 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 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 suits 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 determine 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, and for any entity that is not an individual, a current copy of each applicable organization document that establishes proof of the existence of the entity, such as:

For a Partnership	Executed partnership agreement.
For a Corporation	(1) Articles of incorporation certified by the secretary of state of the applicable state of incorporation; (2) By-laws; and (3) Declaration of Corporate Principal.
For a Limited Partnership.	(1) Executed limited partnership agreement.
For a Limited Liability Company.	(1) Articles of Organization or similar documents; and (2) 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 practices in the industry for the applicable agricultural product or agricultural products stored in the facility; and

(3) Subject to the control of the warehouse operator 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 storing such product, which 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 guarantee's 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 forms of financial assurance as may be approved by DACO as provided 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.

§ 735.103 Amendments to license.

The 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, which 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 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 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, or by other methods as may be provided in the applicable licensing agreement.

§ 735.107 Warehouse charges and tariffs.

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

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

§ 735.108 Inspections and examinations of warehouses.

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.

§ 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 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 of the agricultural product, including satisfaction of the warehouse operator's lien, if owed, 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 receipt, the holder must surrender the warehouse receipt to the warehouse operator, in the manner prescribed by DACO, to obtain the agricultural product.

(d) A warehouse operator must cancel each warehouse receipt returned to the warehouse operator upon the delivery of the agricultural product for which the warehouse receipt was issued.

(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 or provider 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—

(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) 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 which are deliverable in satisfaction of futures contracts in such contract markets or as may be prescribed in any applicable licensing agreement.

(b) DACO may approve, as registrar of warehouse receipts issued for an agricultural product in a warehouse licensed under the Act which 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 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), (2), (3) or (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 which 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 authorized to perform such activities at these locations; and
- (3) Evidence that the applicant is competent to inspect, sample, classify, according to grade or weigh the agricultural product;

§ 735.201 Inspection certificate; form.

Each inspection certificate issued under the Act by a licensee to perform such services must be on a form prescribed by DACO.

§ 735.202 Standards of grades for other agricultural products.

Official standards of the United States for any kind, class or grade of an agricultural product to be inspected must be used if such standards exist. Until official standards of the United States are fixed and established for the kind of agricultural product to be inspected, the kind, class and grade of the agricultural product must be stated, subject to the approval of DACO. If such standards do not exist for such an agricultural product, the following will be used:

- (a) State standards established in the State in which the warehouse is located,
- (b) In the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the agricultural product trade generally in the locality in which the warehouse is located, or

(c) In the absence of the standards set forth in paragraphs (a) and (b) of this section, in accordance with any standards approved for the purpose by DACO.

Subpart D—Warehouse Receipts**§ 735.300 Warehouse receipt requirements.**

- (a) Warehouse receipts may be:
 - (1) Negotiable or non-negotiable; and
 - (2) In a paper or electronic format, which besides complying with the requirements of the Act, must be in a format approved by DACO.
- (b) At the request of a depositor of an agricultural product stored or handled in a warehouse licensed under the Act, the warehouse operator:
 - (1) Will issue a warehouse receipt to the depositor;
 - (2) May not issue a warehouse receipt for an agricultural product unless the agricultural product is actually stored in their warehouse at the time of issuance;
 - (3) May not issue a warehouse receipt until the quality, condition and weight of such an agricultural product is ascertained by a licensed inspector and weigher;
 - (4) May not directly or indirectly compel or attempt to compel the depositor to request the issuance of a warehouse receipt omitting the statement of quality or condition;
 - (5) Must, when issuing a warehouse receipt and purposely omits any information for which a blank or field is provided in the form, notate the blank to show such intent;
 - (6) May not deliver any portion of an agricultural product for which they have issued a negotiable warehouse receipt until the warehouse receipt has been returned to them and canceled;
 - (7) May not deliver an agricultural product for which they have issued a non-negotiable warehouse receipt until such warehouse receipt has been returned or the depositor or the depositor's agent has provided a written order for the agricultural product and the warehouse receipt upon final delivery; and
 - (8) Must deliver, upon proper presentation of a warehouse receipt for any agricultural product, and payment or tender of all advances and charges, to the depositor or lawful holder of such warehouse receipt the agricultural product of such identity, quantity, quality and condition as set forth in such warehouse receipt.
- (c) In the case of a lost or destroyed warehouse receipt, a new warehouse receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the

original warehouse receipt may be issued.

§ 735.301 Notification requirements.

Warehouse operators must file with DACO the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouse operator, and will promptly notify DACO of any changes with respect to persons authorized to sign.

§ 735.302 Electronic warehouse receipts.

(a) Warehouse operators licensed under the Act have the option of issuing Electronic Warehouse Receipts (EWRs) instead of paper warehouse receipts for the agricultural product stored in their warehouse. Warehouse operators licensed under the Act must:

- (1) Only issue EWRs through a provider whom FSA has approved;
 - (2) Inform DACO of the identity of their provider, when they are a first time user of EWRs, 60 calendar days in advance of issuing an EWR through that provider. DACO may waive or modify this 60-day requirement as set forth in § 735.2(b);
 - (3) Before issuing an EWR, request and receive from FSA a range of consecutive warehouse receipt numbers which the warehouse will use consecutively for issuing their EWRs;
 - (4) When using an approved provider, issue all warehouse receipts initially as EWRs;
 - (5) Cancel an EWR only when they are the holder of the warehouse receipt;
 - (6) Correct information on the EWR only with written notification to the provider;
 - (7) Receive written approval from FSA at least 30 calendar days before changing providers. Upon approval they may request their current provider to transfer their EWR data from its Central Filing System (CFS) to the CFS of the approved provider whom they select. Warehouse operators may only change providers once a year; and
 - (8) Notify all holders of EWRs by inclusion in the CFS at least 30 calendar days before changing providers, unless otherwise required or allowed by FSA.
- (b) An EWR establishes the same rights and obligations with respect to an agricultural product as a paper warehouse receipt, and possesses the following attributes:
- (1) The person identified as the 'holder' of an EWR will be entitled to the same rights and privileges as the holder of a paper warehouse receipt;
 - (2) Only the current holder of the EWR may transfer the EWR to a new holder;
 - (3) The identity of the holder must be included as additional information for every EWR;

(4) An EWR may only designate one entity as a holder at any one time;

(5) An EWR may not be issued for a specific identity-preserved or commingled agricultural product lot if another warehouse receipt representing the same specific identity-preserved or commingled lot of the agricultural product is outstanding. No two warehouse receipts issued by a warehouse operator may have the same warehouse receipt number or represent the same agricultural product lot;

(6) An EWR may only be issued to replace a paper warehouse receipt if requested by the current holder of the paper warehouse receipt;

(7) Holders and warehouse operators may authorize any other user of their provider to act on their behalf with respect to their activities with this provider. This authorization must be in writing, and acknowledged and retained by the provider; and

(8) A depositor or current EWR holder may request a paper warehouse receipt in lieu of an EWR.

(c) A warehouse operator not licensed under the Act may, at the option of the warehouse operator, issue EWRs in accordance with this subpart, except this option does not apply to a warehouse operator that is licensed under State law to store agricultural products in a warehouse if the warehouse operator elects to issue an EWR under State law.

Subpart E—Electronic Providers

§ 735.400 Administration

This subpart sets forth the regulations under which DACO may approve one or more electronic systems under which:

(a) Electronic documents relating to the shipment, payment, and financing of the sale of agricultural products may be issued or transferred; or

(b) Electronic receipts may be issued and transferred.

§ 735.401 Electronic warehouse receipt and USWA electronic document providers.

(a) Application for a provider agreement to establish a system to issue and transfer EWR's and USWA electronic document's may be made to FSA upon forms prescribed and furnished by DACO. Each provider operating pursuant to this section must meet the following requirements:

(1) Have and maintain a net worth of at least \$100,000;

(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Maximum deductible amounts will be prescribed in the applicable provider agreement. Each policy must have a

minimum coverage of \$4 million. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation;

(3) Meet any additional financial requirements as set forth in the applicable provider agreement.

(4) Pay user fees annually to FSA, as set and announced annually by FSA prior to April 1 of each calendar year.

(b) The provider agreement will contain, but not be limited to, the following basic elements:

(1) Minimum document and warehouse receipt requirements;

(2) Liability;

(3) Transfer of records;

(4) Records;

(5) Conflict of interest requirements;

(6) USDA common electronic information requirements;

(7) Terms of insurance policies or assurances;

(8) Provider's integrity statement;

(9) Security audits; and

(10) Submission, approval, use and retention of documents.

(c) DACO may suspend or terminate a provider's agreement for cause at any time.

(1) Hearings and appeals will be conducted in accordance with procedures as set forth in §§ 735.6 and 735.8.

(2) Suspended or terminated providers may not execute any function pertaining to USWA documents or EWRs during the pendency of any appeal or subsequent to this appeal if the appeal is denied except as authorized by DACO.

(3) The provider or DACO may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to termination.

(d) Each provider agreement will be automatically renewed annually on April 30th as long as the provider complies with the terms contained in the provider agreement, the regulations in this subpart and the Act.

§ 735.402 Providers of other electronic documents.

(a) Application for a provider agreement to establish a system to issue and transfer other electronic documents may be made to FSA upon forms prescribed and furnished by DACO. Each provider operating pursuant to this section must meet the following requirements:

(1) Have and maintain a net worth of at least \$10 million;

(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Maximum deductible amounts will be

prescribed in the applicable provider agreement. Each policy must have a minimum coverage of \$25 million. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation;

(3) Meet any additional financial requirements as set forth in the applicable provider agreement; and

(4) Pay user fees annually to FSA, as set and announced annually by FSA prior to April 1 of each calendar year.

(b) The provider agreement will contain, but not be limited to, the following basic elements:

(1) Minimum document requirements;

(2) Liability;

(3) Transfer of records;

(4) Records;

(5) Conflict of interest requirements;

(6) USDA common electronic information requirements;

(7) Terms of insurance policies or assurances;

(8) Provider's integrity statement;

(9) Security audits; and

(10) Approval, use and retention of documents.

(c) DACO may suspend or terminate a provider's agreement for cause at any time.

(1) Hearings and appeals will be conducted in accordance with procedures as set forth in §§ 735.6 and 735.8.

(2) Suspended or terminated providers may not execute any function pertaining to any electronic document during the pendency of any appeal or subsequent to this appeal if the appeal is denied except as authorized by DACO.

(3) The provider or DACO may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to termination.

(d) Each provider agreement will be automatically renewed annually on April 30th as long as the provider complies with the terms contained in the provider agreement, the regulations in this subpart and the Act.

(e) In addition to audits prescribed in this section the provider must submit a copy of any audit, examination or investigative report prepared by any Federal governmental regulatory agency with respect to the provider including agencies such as, but not limited to, the Comptroller of the Currency, Department of the Treasury, the Federal Trade Commission, and the Commodity Futures Trading Commission.

§ 735.403 Audits.

(a) No later than 120 days following the end of the provider's fiscal year, the provider approved under §§ 735.401

and 735.402 must submit to FSA an annual audit level financial statement and an electronic data processing audit that meets the minimum requirements as provided in the applicable provider agreement. The electronic data processing audit will be used by DACO to evaluate current computer operations, security, disaster recovery capabilities of the system, and compatibility with other systems approved by DACO.

(b) Each provider will grant the Department unlimited, free access at any time to all records under the provider's control relating to activities conducted under this part and as specified in the applicable provider agreement.

§ 735.404 Fees.

(a) A provider approved under §§ 735.401 or 735.402 must furnish FSA with copies of its current schedule of fees for all services and charges as they become effective.

(b) Fees charged any user by the provider must be in effect for a minimum period of one year.

(c) Providers must furnish the FSA and all users a 60-calendar day advance notice of their intent to change any fee.

§ 735.405 Choice of law.

All disputes arising under any transaction conducted through the use of a provider approved under § 735.402 shall be determined by the application of the laws of New York State except that the laws of New York relating to the legal doctrines of the choice of law and determination of venue shall not be applicable.

2. Parts 736 through 742 are removed and reserved.

Note: The following exhibits A through F are being published for informational purposes and they will not become part of the codified regulations.

Signed at Washington, D.C., on August 24, 2001.

Carolyn B. Cooksie,

Acting Administrator, Farm Service Agency.

Exhibit A—Draft

License Number _____

Effective _____

Licensing Agreement for Cotton

Contents

I. Definitions

II. Financials

- A. Financial Requirements
- B. Financial Reporting
- C. Accepting Other Financial Statements
- D. Special Cases: Assets and Liabilities
- E. Financial Special Conditions—Public Debt Obligations

III. Financial Assurance

- A. Financial Assurance Requirements Computation
- B. Financial Assurance Acceptable Forms
- IV. Duties of Warehouse Operator
 - A. General
 - B. Insurance
 - C. Records to be kept in a Safe Place
 - D. Scales and Weighing
 - E. Warehouse Charges
 - F. Business Hours
 - G. System of Accounts
 - H. Excess Storage and Transferring Cotton
 - I. Reports Required
 - J. Inspections, Examinations of Warehouse
 - K. Arrangement of Stored Cotton
 - L. Removal of Cotton from Storage
 - M. Drawing of Samples
 - N. Warehouse Receipts
- V. Paper Warehouse Receipts
 - A. Issuance
 - B. Form
 - C. Persons Authorized to Sign Warehouse Receipts
 - D. Copies of Warehouse Receipts
 - E. Printing of Warehouse Receipts
 - F. Return of Warehouse Receipts Prior to Delivery
 - G. Balance Warehouse Receipts
 - H. Lost or Destroyed Warehouse Receipts
- VI. Service Licenses
 - A. The Applicant
 - B. Examination of Application
 - C. Classification Certificates
 - D. Weight Certificates
 - E. Classification and Weight Certificates
 - F. Duties of Sampler, Classifier and Weigher
- VII. Cotton Classification
 - A. Official Cotton Standards of the United States
 - B. Access to the Cotton Standards
- VIII. Fees

Licensing Agreement for Cotton

As a condition of licensing under the United States Warehouse Act (the Act), the warehouse operator agrees to the conditions set forth in this agreement and the regulations found at 7 CFR 735:

I. Definitions

Current assets. Assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

Current liabilities. Those financial obligations which are expected to be satisfied during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

Licensed sampler, classifier and weigher. A person licensed under the Act to sample, classify and/or weigh and certificate the grade or other class and weight of cotton stored at a cotton warehouse licensed under the Act.

Net Worth. When liabilities are subtracted from allowable assets, it is the balance amount. In determining allowable assets, credit may be given for

appraisal of real property less improvements and for the appraisal of insurable property such as buildings, machinery, equipment, and merchandise inventory only to the extent that such property is protected by insurance against loss or damage by fire, lightning, and other risk. Such insurance must be in the form of lawful insurance policies issued by insurance companies authorized to do such business and subject to service of process in the State in which the warehouse is located. The Farm Service Agency will determine what assets are allowable and under what conditions appraisals may be used.

II. Financials

A. Financial Requirements

1. The warehouse operator agrees to have and maintain:

a. Total net worth of at least the amount obtained by multiplying \$10.00 by the maximum number of bales that the warehouse accommodates when stored in the manner customary to the warehouse as determined by the Farm Service Agency; however, no person may be licensed or remain licensed as a warehouse operator unless that person has allowable net worth of at least \$25,000.00 (Any deficiency in net worth above the \$25,000.00 minimum may be supplied by an increase in the amount of the financial assurance). The maximum total allowable net worth required need not exceed \$250,000.00.

b. Total allowable current assets equal to or exceeding total current liabilities or evidence acceptable to the Farm Service Agency that funds will be and remain available to meet current obligations.

2. If a warehouse operator is licensed or is applying for licenses to operate two or more warehouses, the maximum capacity of all licensed warehouses, as determined by the Farm Service Agency, will be the capacity considered in determining whether the warehouse operator meets the net worth requirements.

B. Financial Reporting

1. The warehouse operator agrees to provide annually, within 90 days of the fiscal year end, or more frequently if required, to the Farm Service Agency, financial statements from the warehouse operators records prepared according to generally accepted accounting principles. The Farm Service Agency may grant one 30 day extension to provide a financial statement.

2. These financial statements must include but not be limited to:

- a. Balance sheet,

- b. Statement of income (profit and loss),
- c. Statement of retained earnings, and
- d. Statement of cash flows.

3. An authorized representative for the warehouse operator must certify under penalty of perjury that the statements, as prepared, accurately reflect the financial condition of the warehouse operator as of the date designated and fairly represent the results of operations for the period designated.

4. The warehouse operator must have the financial statements required audited or reviewed by a certified public accountant or an independent public accountant. Audits and reviews by independent certified public accountants and independent public accountants must be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on this statement, must be furnished along with the financial statements. The Farm Service Agency may also require an on-site examination and an audit by an authorized officer or agent of the United States Department of Agriculture and request other pertinent information.

C. Accepting Other Financial Statements

1. Financial statements of a parent company which separately identify the financial position of the warehouse operator as a wholly owned subsidiary and which meet the basic requirements of financial statements, may be accepted by the Farm Service Agency in lieu of the warehouse operator meeting such requirements.

2. Guaranty agreements from a parent company submitted on behalf of a wholly owned subsidiary may be accepted by the Farm Service Agency as meeting the basic requirements of financial statements if the parent company submits a financial statement which meets the financial requirements and financial reporting requirements.

D. Special Cases: Assets and Liabilities

Subject to such terms and conditions as the Farm Service Agency may prescribe and for the purposes of determining allowable assets and liabilities, appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by a warehouse operator to conform with the requirements may be allowed if:

- 1. Prepared by independent appraisers acceptable to the Farm Service Agency, and

- 2. The assets are fully insured against casualty loss.

E. Financial Special Conditions—Public Debt Obligations

The warehouse operator agrees that if they file a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are unconditionally guaranteed as to both interest and principal by the United States:

- 1. The obligation deposited will *not* be considered a part of the warehouse operator's asset.

2. A deficiency in total allowable net worth as computed may be offset by the licensed warehouse operator furnishing acceptable financial assurance for the difference;

3. The deposit may be replaced or continued in the required amount from year to year; and

4. The deposit will not be released until one year after cancellation or revocation of the license that it supports or until satisfaction of any claim against the deposit, whichever is later.

III. Financial Assurance

A. Financial Assurance Requirements Computation

The warehouse operator agrees:

1. To furnish financial assurance computed at the rate of ten dollars (\$10.00) per bale for the maximum number of bales that the warehouse accommodates when stored in the manner customary to the warehouse as determined by the Farm Service, but not less than twenty-five thousand dollars (\$25,000.00) nor more than two hundred fifty thousand dollars (\$250,000.00).

2. When applying for licenses to operate two or more warehouses in the same State, or multiple states, and at the warehouse operator's election, they may provide financial assurance meeting the requirements of the Act and the regulations to cover all these warehouses within the multiple states and the maximum of two hundred fifty thousand dollars (\$250,000.00) of financial assurance will apply for each State covered.

3. In case of a deficiency in net worth above the twenty-five thousand dollars (\$25,000.00) minimum required, to add to the amount of financial assurance determined in accordance with paragraph (1) of this section an amount equal to that deficiency. If a letter of credit is used for the amount of the deficiency, it must be issued for a period of not less than two years to coincide with the period of any deposit of obligations. Any letter of credit must be clean, irrevocable, issued by a

commercial bank payable to the Farm Service Agency by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation. The deposit will not be considered an asset of the company.

4. If the Farm Service Agency finds that conditions exist which warrant requiring additional financial assurance, to add to the amount of financial assurance a further amount to meet such conditions.

B. Financial Assurance—Acceptable Forms

The warehouse operator may offer as financial assurance any of the following:

- 1. A warehouse operators bond, or
- 2. In the form of a deposit with the Farm Service Agency, United States bonds, United States Treasury notes, or other public debt obligations of the United States or obligations that are unconditionally guaranteed as to both interest and principal by the United States, or

3. In the form of a letter of credit issued to the Agency for a period of not less than two years to coincide with the period of any deposit of obligations, or

4. In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Farm Service Agency, established and maintained by a State, backed by the full faith and credit of the applicable State, and 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 and regulations, or

5. Other forms of financial assurance as may be prescribed in the applicable licensing agreement and related addenda deemed acceptable by the Farm Service Agency.

IV. Duties of Warehouse Operator

A. General

The warehouse operator agrees to:

1. At all times exercise such care in regard to cotton in custody as a reasonably careful owner would exercise under the same circumstances and conditions and not handle or store it in a manner that would damage or degrade it.

2. To not differentiate among depositors regarding use of and access to services, except that available storage space may be allocated.

3. If handling non-licensed cotton, to keep it separate in storage from the licensed cotton.

4. Upon acceptance of baled cotton for storage, immediately attach (if not already present) an identification tag of

a quality approved by Farm Service Agency. These tags will contain a number, be attached in an orderly manner and clearly distinguishable from one another.

5. Not accept for storage any bale of cotton that is excessively wet. Fire damaged cotton is not to be stored in contact with cotton that has not been so damaged.

6. Keep the warehouse reasonably clean at all times and free of loose cotton, except in containers separate and apart from other cotton and provide a safe environment in and around the warehouse and provide all necessary assistance in the execution of inspections and examinations by representatives of the Farm Service Agency.

7. Unless prevented from doing so by force majeure, to deliver stored cotton without unnecessary delay. A warehouse operator will be considered to have delivered cotton without unnecessary delay, if for the week in question, the warehouse operator has delivered or staged for scheduled delivery at least 4.5 percent of either their licensed storage capacity or Commodity Credit Corporation-approved storage capacity or other storage capacity as determined by the Farm Service Agency to be in effect during the relevant week of shipment.

8. To resolve any claim for noncompliance with the cotton shipping standard through established industry, professional, or mutually agreed upon arbitration procedures. The arbitration procedures will be nondiscriminatory and provide each person equal access and protection relating to the cotton shipping standard.

9. License all facilities controlled by them at a specific location, unless those facilities are specifically exempted by the Farm Service Agency.

B. Insurance

1. *Requirements.* The warehouse operator agrees to:

a. Secure, in their own name, insurance on stored cotton against loss or damage by fire, lightning, and other risk under forms of policies which automatically attach for the full replacement value of stored cotton, as soon as such cotton is placed in their legal custody, and continue such insurance in effect so long as the cotton remains in their legal custody. The warehouse operator also agrees to keep a general insurance account showing the policy number, issuing company, amount binding, and expiration dates of all insurance policies and in each instance show the property covered by such policies. This insurance will be

lawful policies issued by one or more insurance companies. The warehouse operator must submit such reports to underwriters as may be required under the terms of such policies, and submit copies of such reports to the Farm Service Agency as required.

b. Show, in the tariff to be posted at all delivery points, the conditions under which the cotton will be insured against loss or damage by fire, lightning, and other risk.

c. Require that the warehouse operator's insurance company give 30 days advance notice to the Farm Service Agency of intent to cancel the stock (inventory) coverage.

C. Records To Be Kept in a Safe Place

The warehouse operator agrees to:

1. Provide a fireproof safe, a fireproof vault, or a fireproof compartment in which to keep, when not in use, all records, books, and papers pertaining to the licensed warehouse, including a current warehouse receipt book, copies of warehouse receipts issued, and canceled warehouse receipts or microfilm copies of canceled receipts, except that, with the written consent of the Farm Service Agency, upon a showing by the warehouse operator that it is not practicable to provide such fireproof safe, vault, or compartment, may keep such records, books, and papers in some other place of safety, approved by the Farm Service Agency.

2. Retain each canceled receipt for a period of six years after December 31 of the year in which the warehouse receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouse operator knows to be pending, or as may be required by the Farm Service Agency in particular cases to carry out the purposes of the Act.

3. Arrange canceled warehouse receipts in numerical order and otherwise in such manner as may be directed, for purposes of audit, by authorized officers or agents of the United States Department of Agriculture and the Farm Service Agency.

D. Scales and Weighing

The warehouse operator agrees to:

1. Be equipped with suitable scales in good order, and so arranged that all cotton can be weighed in and out, if required, of the warehouse. The scales in any warehouse must be subject to examination by authorized officers or agents of the United States Department of Agriculture and to disapproval by the Farm Service Agency. If disapproved, any weighing apparatus must not thereafter be used in ascertaining the weight of cotton for the purposes of this

Act, until such disapproval is withdrawn.

2. Weigh, by a weigher licensed under the authority of the United States Warehouse Act, the cotton that comes into the warehouse unless warehouse weights are established at the gin. These weights must be certified by the licensed weigher.

3. Assume full responsibility for the weights established at the gin for warehouse receipt purposes. In order to use these weights, the licensed warehouse must maintain control of the scales used to weigh cotton. They must be inspected and certified as accurate by a State agency or a qualified scale company and a copy of the inspection report must be maintained at the warehouse office for the warehouse examiner's review. The scale must be checked by the warehouse operator for accuracy on a routine basis. Point of origin weights may be used for single bale or lot stored cotton by agreement with the depositor. Any point of origin weights shown on a warehouse receipt will be the official warehouse bale or lot weight. Lot cotton tendered for storage on which a multiple bale warehouse receipt is issued must be maintained so as to preserve its individual and collective identity during storage and shipment, provided that if such lot is broken at the warehouse, for the issuance of new receipts, each bale will be weighed at the warehouse by a licensed weigher before single bale warehouse receipts are issued.

E. Warehouse Charges

The warehouse operator:

1. Must not make any unreasonable or exorbitant charge for services rendered.

2. Must, before a license to conduct a warehouse is granted under the Act, file, with the Farm Service Agency, a copy of their rules and a schedule of charges to be assessed depositors.

3. Must, at or before the beginning of each season, file an amended schedule of charges with Farm Service Agency along with the rules, if any, and of our schedule of charges for the ensuing season. The cotton season will commence not later than September 1 of each year, as the operator of the warehouse will select, and will notify Farm Service Agency in writing not less than 5 days preceding the date selected.

4. Must file an amended schedule, if making changes other than the beginning of the season, showing the contemplated changes will be filed with Farm Service Agency. No increase in the storage rate shown in such an amended schedule will apply to cotton in storage at the time the changes become effective.

5. May demand payment of all accrued charges at the close of each cotton season. If, upon demand, the owner of the cotton refuses to pay such charges at the end of a season, action may be taken to enforce collection of its charges as is permitted by the laws of the State in which the warehouse is located.

F. Business Hours

The warehouse operator agrees to:

1. Be open for the purpose of receiving cotton for storage and delivering cotton out of storage and for settlement purposes every normal business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m. The warehouse operator must post their business hours at the public entrance to the office and to their licensed warehouse.

2. In case the warehouse is not to be kept open as required, state, in the posted notice, the period during which the warehouse is to be closed and the name, the address, and telephone number of the person who will be authorized to receive and deliver cotton stored in the warehouse.

G. System of Accounts

The warehouse operator agrees to:

1. Have and maintain a system of accounts approved for the purpose by the Farm Service Agency. These records must include:

- a. Bale tag numbers,
- b. Distinguishing mark or identifier,
- c. Weight,
- d. Class when required and/or ascertained,
- e. Location in the warehouse,
- f. Date received for storage,
- g. Date delivered out of storage, and
- h. Receipts issued and canceled.

2. Maintain a detailed set of records of money received and disbursed and, if applicable, all insurance policies taken out and canceled on request of each depositor. These records will be maintained accurately and concisely as activity occurs. The warehouse operator must retain these records for a period of six years after December 31 of the year in which they were created, and for such longer period as may be necessary for the purposes of any litigation which the warehouse operator knows to be pending, or as may be required by the Farm Service Agency in particular cases to carry out the purposes of the Act.

H. Excess Storage and Transferring Cotton

The warehouse operator agrees that:

1. If at any time cotton stored in the warehouse exceeds the capacity for which the warehouse is licensed, the

warehouse operator will immediately notify the Farm Service Agency of the fact and the location of excess storage.

2. If they desire to transfer, at their own expense, depositor cotton to another warehouse (receiving), the warehouse operator may do so.

a. The transferring (shipping) warehouse operator's accepted rules or schedule of charges must contain notice that the warehouse operator may transfer cotton according to conditions prescribed by the Farm Service Agency.

b. The warehouse operator must request permission in writing to the Farm Service Agency.

3. For purposes of transferring cotton, a receiving warehouse means a warehouse operated by a warehouse operator who holds an un-suspended, un-revoked cotton license under the Act, or a warehouse operated by a warehouse operator who holds an effective warehouse license for the public storage of cotton issued by a State that has financial, bonding and examination requirements for the benefit of all depositors or, in the case of warehouses operating in a State without licensing authorities, warehouses with an approved Cotton Storage Agreement with the Commodity Credit Corporation.

4. The shipping warehouse operator must transfer all identity-preserved cotton in lots and must list on a Bill of Lading all forwarded bales by receipt number and weight. The receiving warehouse operator will promptly issue a non-negotiable warehouse receipt for each lot of cotton stored and will attach a copy of the corresponding bill of lading to each receipt and return the receipt promptly to the shipping warehouse operator. The receiving warehouse operator will store each such lot intact, and will attach a header card to the lot showing the receipt number, number of bales, and a copy of the Bill of Lading with the individual tag numbers, marks, or identifiers to the stored lot. Such non-negotiable warehouse receipts issued for forwarded cotton will have printed or stamped diagonally in large bold outline letters across the face of the receipt the words: "NOT NEGOTIABLE."

5. The shipping warehouse operator's financial assurance will be increased to consider the addition of the transferred cotton to the licensed capacity of the warehouse with the net asset requirements based on the total of the licensed capacity and the forwarded cotton. The amount of financial assurance need not exceed \$250,000.00 unless necessary to cover a deficiency in net worth. The receiving warehouse operator must not incur storage

obligations that exceed the licensed or approved capacity of the receiving warehouse;

6. The shipping warehouse operator continues to retain storage obligations to the owners of all cotton deposited in the warehouse for storage whether forwarded or retained and is, except as otherwise agreed upon under paragraph (g) of this section.

7. The owner of cotton deposited for storage at the warehouse must make settlement and take delivery at the warehouse where the cotton was first deposited for storage, unless the owner of the cotton, with the consent of both the shipping warehouse operator and the receiving warehouse operator, elects to take delivery at the warehouse to which cotton was transferred under this section.

8. Nothing in this section diminishes the right of the owner of the cotton to receive or the obligation of the warehouse operator of a licensed warehouse from which the product is transferred, to deliver to the owner the same cotton, identity preserved, called for by the warehouse receipt or other evidence of storage;

9. Recording and retention of non-negotiable warehouse receipts received as a result of forwarding cotton under this section will be subject to the requirements for warehouse receipts specified elsewhere in these regulations; and

10. If it is the shipping warehouse operator's obligation by terms of the warehouse receipt or otherwise to insure the cotton subject to the transfer, they must keep such cotton insured in their own name or transfer the cotton only to a warehouse where the cotton is fully insured

11. A receiving warehouse operator must not transfer or offset to another warehouse, in any manner, their obligation to the shipping warehouse operator.

I. Reports Required

The warehouse operator agrees to:

1. When requested by the Farm Service Agency, make such reports, on forms prescribed and furnished for the purpose by the Farm Service Agency, concerning the condition, contents, operation, and business of the warehouse.

2. Keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted.

J. Inspections, Examinations of Warehouse

The warehouse operator agrees to permit any officer or agent of the United States Department of Agriculture, authorized by the Farm Service Agency, to enter and inspect or examine on any business day during the usual hours of business, any warehouse for which they hold a license, the office, the books, records, papers, and accounts relating, and the contents thereof and will furnish that officer or agent the assistance necessary to enable making any inspection or examination.

K. Arrangement of Stored Cotton

The warehouse operator agrees to:

1. Store each bale of cotton for which a receipt under the Act has been issued in a manner acceptable to Farm Service Agency.

2. For cotton tendered for storage, by any one depositor, of the same grade and staple in such quantity that efficiency of operation dictates that such cotton should be stored in a lot or lots without regard to visibility of all tags on all bales within any lot, may store such cotton in lots if each lot originally contained two or more bales. If a negotiable multiple bale receipt is issued each bale entering into a lot must bear an individual bale identification, and must be stored so that the number of bales within the lot may be accurately determined.

3. For lot cotton, an individual lot identification tag showing the lot number and the number of bales in the lot to each lot of cotton will be affixed. An office record showing the bale or tag number, mark, or identifier of each bale in the lot and the location of the lot in the warehouse will be maintained. Each lot will be so arranged as to be readily distinguishable from each and every other lot. When requested by a proper representative of Farm Service Agency engaged in making an examination of the warehouse, stacks or lots of cotton, as the examiner deems necessary to a proper examination, will be torn or broken down at the warehouse operator's expense.

4. Block piling of cotton for which single bale receipts have been or are to be issued is permitted, with the written permission of DACO, provided the warehouse operator is willing to tear or break down the blocks at the request of a representative of the Farm Service Agency when making an examination of the warehouse.

5. Notify the insurance underwriter of block piling and they must have consented to insuring it.

6. To arrange the cotton so as not to obstruct free access and the proper

operation of the sprinkler or other fire protection equipment.

L. Removal of Cotton from Storage

Except as may be permitted by law or the regulations in this part, the warehouse operator must not remove any cotton, from storage, from the licensed warehouse or a part thereof designated in the receipt for such cotton, if by such removal the insurance thereon will be impaired, without first obtaining the consent in writing of the holder of the receipt, and indorsing on such receipt the fact of such removal. Under no other circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, will cotton be removed from the warehouse, and immediately upon any such removal the warehouse operator will notify the Farm Service Agency of such removal and the necessity therefor.

M. Drawing of Samples

The warehouse operator agrees:

1. That persons will be licensed to draw samples from any cotton stored or to be stored in the licensed warehouse if the owner of such cotton or any person having a legal right to have such cotton sampled requests that samples be drawn.

2. When directed by Farm Service Agency, such requests will be in writing.

3. Samplers will perform their duties under its supervision and the samples will be drawn in accordance with Agricultural Marketing Service or other procedures recognized by Farm Service Agency.

4. Each sample will be appropriately marked to show the tag number, mark, or identifier of the bale of cotton from which it was drawn.

N. Warehouse Receipts

1. The warehouse operator when choosing the option to issue Electronic Warehouse Receipts (EWRs) instead of paper warehouse receipts for the agricultural product(s) stored in their warehouse agrees to:

- a. Only issue EWRs through a provider whom the Farm Service Agency has approved.

- b. Receive written approval from the Farm Service Agency at least 30 calendar days before changing providers. Upon approval a warehouse operator may request their current provider to transfer their EWR data from its Central Filing System (CFS) to the CFS of the approved provider whom they select. Warehouse operators must notify all holders of EWRs by inclusion in the CFS at least 30 calendar days before changing providers, unless

otherwise required or allowed by the Agency. Warehouse operators may only change providers once a year.

- c. Cancel EWRs only when they are the holder of the receipt(s).

- d. Correct information on the EWR only with written notification to the provider.

- e. Before issuing EWRs, request and receive from the Farm Service Agency a range of consecutive warehouse receipt numbers which the warehouse operator will use consecutively for issuing their EWRs.

- f. Issue warehouse receipts initially as EWRs.

- g. Inform the Farm Service Agency of the identity of their provider 60 calendar days in advance of issuing EWRs through that provider. The Farm Service Agency may waive or modify this 60-day requirement as set forth under 7 CFR 735.2(b).

2. The warehouse operator will ensure that an issued EWR establishes the same rights and obligations with respect to an agricultural product as a paper warehouse receipt, and possess the following attributes that:

- a. The person identified as the 'holder' of a EWR will be entitled to the same rights and privileges as the holder of a paper warehouse receipt.

- b. Only the current holder of the EWR may transfer the EWR to a new holder.

- c. The identity of the holder must be included as additional information for every EWR.

- d. An EWR will only designate one entity as a holder at any one time.

- e. An EWR will not be issued for a specific identity preserved or a commingled agricultural product lot if another receipt, whether paper or electronic, representing the same specific identity preserved or commingled lot of agricultural product is outstanding. No two warehouse receipts issued by a warehouse operator may have the same receipt number or represent the same agricultural product lot.

- f. An EWR may only be issued to replace a paper receipt if requested by the current holder of the paper warehouse receipt.

- g. Allows a 'holder' the option to authorize any other user of a provider to act on their behalf with respect to their activities with their provider. This authorization must be in writing, acknowledged, and retained by the provider.

- h. Provisions of 7 CFR 735.300(c) will be applicable to lost or destroyed EWRs.

- i. Only the current EWR holder may request a paper warehouse receipt in lieu of a EWR with respect to an agricultural product.

V. Paper Warehouse Receipts

A. Issuance

The warehouse operator agrees to:

1. Issue warehouse receipts for any cotton stored in a warehouse at the request of a depositor.

2. Except when an expiration date authorized by Farm Service Agency is shown on the face of the receipt, every negotiable receipt issued for cotton stored in a licensed warehouse will be effective until surrendered for delivery of the cotton, and every non-negotiable receipt will be effective until surrendered for delivery of the cotton or until all cotton covered by the receipt has been delivered in response to proper delivery orders of the person rightfully entitled to the cotton:

3. Nothing contained in this section will prohibit the warehouse operator from legally selling the cotton when the accrued storage and other charges equals or exceeds the current market value of the cotton.

4. Every negotiable receipt issued for cotton stored in a licensed warehouse will embody within its written or printed terms a statement that the cotton covered by such receipt was classified by a licensed classifier or a board of cotton examiners when such cotton is so classified.

5. Whenever the grade or other class of the cotton is stated in a receipt issued for cotton stored in a licensed warehouse, such grade or other class will be determined by a licensed classifier or a board of cotton examiners upon the basis of a sample drawn, and will be stated in the receipt.

B. Form

1. Every warehouse receipt, whether negotiable or non-negotiable, issued for cotton stored in a licensed warehouse must, in addition to complying with the requirements of section 11 of the Act, embody within its written or printed terms the following:

a. The name of the warehouse operator and the designation, if any, of the warehouse,

b. The warehouse operator's license number,

c. The Commodity Credit Corporation contract code number, if applicable,

d. A statement whether the warehouse operator is incorporated or unincorporated, and if incorporated, under what laws,

e. In the event the relationship existing between the warehouse operator and any depositor is not that of a strictly disinterested custodianship, a statement setting forth the actual relationship,

f. The tag identifier given to each bale of cotton,

g. A statement conspicuously placed, whether or not the cotton is insured, and, if insured, to what extent, by the warehouse operator against loss by fire, lightning, or other risk,

h. A blank space designated for the grade and/or other classification may be stated,

i. The words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.

j. A statement indicating that the weight was determined by a weigher licensed under the Act, except that if at the request of the depositor, the weight is not so determined or if the point of origin weight was determined as permitted, the receipt will contain a statement to that effect.

k. Licensed receipts issued to cover linters will be clearly and conspicuously marked "Linters"

l. If the warehouse operator a receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line will be drawn through such space to show that such omission has been made by the warehouse operator.

m. A warehouse receipt may contain additional information, provided that this information does not interfere with the information required.

2. If the warehouse operator issues a warehouse receipt omitting the statement of grade on request of the depositor, such receipt will have clearly and conspicuously stamped or written in the space provided for the statement of grade the words "Not graded on request of depositor"

3. If the warehouse operator issues a warehouse receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line will be drawn through such space to show that such omission has been made purposely.

C. Persons Authorized to Sign Warehouse Receipts

The warehouse operator must file with the Farm Service Agency, the name and genuine signature of each person authorized to sign warehouse receipts for the warehouse operator, promptly notify Farm Service Agency of any changes as to persons authorized to sign, file the signatures of such persons, and will be bound by such signatures the same as if the warehouse operator, had personally signed the receipt.

D. Copies of Warehouse Receipts

The warehouse operator agrees that at least one copy of all warehouse receipts

must be made and, except skeleton and microfilm copies, have clearly and conspicuously printed or stamped on the face the words "Copy ☐ Not Negotiable".

E. Printing of Warehouse Receipts

The warehouse operator agrees to issue only warehouse receipts that:

1. Are in a form prescribed by the Farm Service Agency.

2. Are on distinctive paper or card stock specified by the Farm Service Agency;

3. Printed by a printer with whom the United States has an agreement and bond for such printing; and

4. On paper and/or card stock tinted with ink in the manner prescribed by the agreement.

F. Return of Warehouse Receipts Prior to Delivery

The warehouse operator agrees to:

1. Not deliver any cotton for which they have issued a negotiable receipt until the receipt has been returned to the warehouse operator and canceled; and

2. Not deliver cotton for which they have issued a non-negotiable receipt until such receipt has been returned, or they have obtained from the holder or agent, a written order and a receipt upon delivery of 90% (ninety percent) of the quantity.

G. Balance Warehouse Receipts

The warehouse operator, upon request of the holder, may issue a warehouse receipt for previously warehouse receipted cotton, the receipt for which has been canceled. The balance warehouse receipt must show the number and issuance date of the original warehouse receipt.

H. Lost or Destroyed Warehouse Receipts

1. The warehouse operator may issue a new warehouse receipt subject to the same terms and conditions, and bearing on its face the number and the date of the original receipt when presented with the case of a lost or destroyed warehouse receipt.

2. Before issuing a replacement warehouse receipt, the warehouse operator must require the holder or other person applying therefore to make and file with the warehouse operator:

a. An affidavit showing that the holder is lawfully entitled to the possession of the original warehouse receipt; that the holder has not negotiated or assigned it; how the original receipt was lost or destroyed; and, if lost, that diligent effort has been made to find the warehouse receipt without success.

b. A bond in an amount double the value, at the time the bond is given, of the agricultural product represented by the lost or destroyed warehouse receipt. This bond will be in a form approved for the purpose by the Farm Service Agency, and will be conditioned to indemnify the warehouse operator against any loss sustained by reason of the issuance of this warehouse receipt. The bond will have as surety a surety company which is authorized to do business, and is subject to administration of process in a suit on the bond, in the State in which the warehouse is located, unless a variance is granted by the Farm Service Agency.

3. Auditing Canceled Warehouse Receipts. The warehouse operator agrees to forward canceled receipts for auditing, as requested, to the Farm Service Agency.

VI. Service Licenses

A. The Applicant

1. The applicant must make application for license to sample, classify and weigh cotton to the Farm Service Agency on forms furnished by the Farm Service Agency. Each application must:

- a. Be signed by the applicant.
- b. Contain or be accompanied by a statement from the warehouse that the applicant is acceptable to such warehouse operator.
- c. If seeking sampling, classification licensing, certification that the applicant can correctly sample, classify cotton in accordance with the Official Standards of the United States.
- d. If seeking weighing licensing, certification that the applicant can correctly weigh cotton.
- e. Furnish such additional information as requested by the Farm Service Agency.

B. Examination of Applicant

As a service license applicant, submit to an examination or test to show ability to properly sample, classify and/or weigh cotton, as the case may be, and also make available for inspection copies of the standards of classification or the weighing apparatus as the case may be, used or to be used.

C. Classification Certificates

1. Each class certificate issued under the Act by a licensed classifier must be in a form approved by the Farm Service Agency, and include the following information within its terms:

- a. The caption "United States Warehouse Act Cotton Class Certificate,"

b. Whether it is an original, a duplicate, or other copy, and that it is not negotiable,

c. The name and location of the warehouse in which the cotton is or is to be stored,

d. The date of the certificate,

e. The consecutive number of the certificate,

f. The location of the cotton at the time of classification,

g. The identification of each bale of cotton by the tag number given to the bale in accordance with this agreement or if there is no such tag number by other marks or numbers,

h. The grade or other class, except length of staple, of each bale covered by the certificate in accordance with the regulations or this agreement, as far as applicable, and the standard or description in accordance with which the classification is made,

i. A blank space designated for the purpose in which the length of staple may be stated,

j. A statement that the certificate is issued by a licensed classifier under the Act, and

k. The signature of the licensed classifier.

2. In addition to the provisions of paragraph 1, the class certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Farm Service Agency is first secured.

3. In lieu of a class certificate in the form prescribed in paragraph 1, Form A memorandums and Form C certificates issued by a board of cotton examiners and class certificates issued by licensed classifiers under the United States Cotton Standards Act shall be deemed sufficient for the purposes of the Act and the regulations in this part, if the samples on which they are based were approximately six ounces in weight, not less than three ounces of which are to be drawn from each side of the bale. Each sample must be representative of the bale from which drawn.

D. Weight Certificates

1. Each weight certificate issued under the Act by a licensed weigher must be in a form approved for the purpose by the Farm Service Agency, and include the following information within its terms:

a. The caption "United States Warehouse Act, Cotton Weight Certificate,"

b. Whether it is an original, a duplicate, or other copy, and that it is not negotiable,

c. The name and location of the warehouse in which the cotton is or is to be stored,

e. The date of the certificate,

f. The consecutive number of the certificate,

g. The location of the cotton at the time of weighing,

h. The identification of each bale of cotton by the tag number given to the bale in accordance with this agreement or if there is no such tag number by other marks or numbers,

i. The gross, or net and tare, weight of the cotton and, if the cotton be excessively wet or otherwise of a condition materially affecting its weight, a statement of such fact to which may be added the weigher's estimate of the number of pounds which should be allowed for such condition,

j. A statement that the certificate is issued by a weigher licensed under the Act, and

k. The signature of the licensed weigher.

2. In addition to the provisions of paragraph 1, the weight certificate may include any other matter not consistent with the Act or the regulations in this part provided the approval of the Farm Service Agency is first secured.

E. Classification and Weight Certificate

The class and weight of any cotton, ascertained by a classifier and a weigher, may be stated on a certificate meeting the combined requirements of subsections C and D: provided the form of the certificate is approved for the purpose by the Farm Service Agency.

F. Duties of Sampler, Classifier and Weigher

Each sampler, classifier and weigher whose license remains in effect must:

1. Without discrimination, as soon as practicable, upon reasonable terms, classify or weigh and certificate the class or weight, respectively, of cotton stored or to be stored in the licensed warehouse to which the license applies, if such cotton is offered under such conditions as permit the proper performance of such functions; except that no class or weight certificate need to be issued when the class or weight so determined is entered on a receipt by the licensed classifier or weigher making the determination.

2. Sample cotton stored or to be stored in a licensed warehouse for which holding a license, in accordance with the standards. No class or weight certificate will be issued under the Act, for cotton not in the custody of a licensed warehouse operator for purposes of storage. Cotton not in the custody of such a warehouse operator for such purpose be sampled by a licensed sampler.

3. Keep their license conspicuously posted where all or most of the classifying is done, and each licensed sampler and/or weigher will keep their license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by a representative of the Farm Service Agency.

4. From time to time, when requested by the Farm Service Agency, make reports, on forms furnished for the purpose by the Farm Service Agency, bearing upon activities as a licensed sampler, classifier and/or weigher.

5. Permit any authorized officer or agent of the United States Department of Agriculture or the Farm Service Agency or their designee to inspect or examine, on any business day during the usual hours of business, their books, papers, records, and accounts relating to the performance of their duties under the Act and, with the consent of the warehouse operator concerned, assist any such officer or agent in the inspection or examination as far as it relates to the performance of the duties of such sampler, classifier or weigher under the Act.

6. Keep for a period of one year, in a place accessible to interested parties, a copy of each certificate issued and file the certificate with the warehouse in which the cotton covered by the certificates is stored.

7. No person will in any way represent themselves to be a sampler, classifier, and/or weigher licensed under the Act unless holding an unsuspended and un-revoked license issued under the Act.

VII. Cotton Classification

A. Official Cotton Standards of the United States

The official cotton standards, established and promulgated under the United States Cotton Standards Act of March 4, 1923, within their scope, are hereby adopted as the official cotton standards for the purposes of the Act and the regulations.

B. Access to the Cotton Standards

The warehouse operator and each licensed classifier will keep themselves provided with, or have access to, a set of practical forms of the official cotton standards of the United States, or such

parts thereof as the Farm Service Agency may deem necessary for use in the locality in which the licensed warehouse is located.

VIII. Fees

The Farm Service Agency is authorized, by the enabling legislation, to assess and collect fees to cover the administration of the program. A schedule showing the current fees or any annual fee changes will be provided as an addendum to the licensing agreement.

The fees for cotton warehouses are detailed in the attached Addendum No.

1. This agreement forms a part of the (License Number) _____ for (Warehouse Operator) _____ at (Licensed Location) _____ and is effective (Date) _____.

Warehouse Operator _____

By _____

Date _____

For the Farm Service Agency. _____

BILLING CODE 3410-05-P

ADDENDUM No. 1: FEES

Fee Table

Schedule of fees charged for services rendered.

United States Warehouse Act ★(effective October 1, 2001)

Fee Table

Cotton	License Action Fee	Service License Fee	Inspection Fee	Annual User Fees		
				Capacities - Range By Functional Unit	CCC Agreement	W/o CCC Agreement
	\$80	\$35	\$80/ 1,000 Bales or Fractional Part Min \$160 Max \$1,600	1 to 20,000 Bales	\$560	\$1,115
				20,001 to 40,000 Bales	730	1,460
				40,001 to 60,000 Bales	895	1,790
				60,001 to 80,000 Bales	1,125	2,245
				80,001 to 100,000 Bales	1,400	2,800
				100,000 to 120,000 Bales	1,680	3,355
				120,001 to 140,000 Bales	1,955	3,915
				140,000 to 160,000 Bales	2,240	4,475
				160,000 + Bales	*2,240	**4,475
					*Plus \$60 per 5,000 bales capacity above 160,000 bales or fraction	**plus \$110 per 5,000 bales capacity above 160,000 bales or fraction

Exhibit B—Draft

License Number _____

Effective _____

Licensing Agreement for Grain*Contents*

I. Definitions

II. Financials

- A. Financial Requirements
- B. Financial Reporting
- C. Accepting Other Financial Statement
- D. Special Cases: Assets and Liabilities
- E. Financial Special Conditions—Public Debt Obligations

III. Financial Assurance

- A. Financial Assurance Requirements—Computation
- B. Financial Assurance—Acceptable Forms

IV. Duties of Warehouse Operator

- A. General
- B. Insurance
- C. Records to be kept in a Safe Place
- D. Scales and Bin Numbers
- E. Warehouse Charges
- F. Business Hours
- G. System of Accounts
- H. Excess Storage and Transferring Grain
- I. Reports Required
- J. Inspections, Examinations of Warehouse
- K. Loading Out Without Weighing
- L. Storage of Identity Preserved Grain
- M. Containerized Grain Storage
- N. Delivery of Fungible Grain
- O. Storage Obligations
- P. Out of Condition and Damaged Grain
- Q. Reconditioning Grain
- R. Warehouse Receipts

I. Paper Warehouse Receipts

- A. Issuance
- B. Form
- C. Persons Authorized to Sign Warehouse Receipts
- D. Copies of Warehouse Receipts
- E. Printing of Warehouse Receipts
- F. Return of Warehouse Receipts Prior to Delivery
- G. Balance Warehouse Receipts
- H. Lost or Destroyed Warehouse Receipts

VI. Service Licenses

- A. Applicant
- B. Examination of Applicant
- C. Inspection Certificate
- D. Weight Certificates
- E. Grade and Weight Certificate
- F. Duties of Inspector and Weigher

VII. Grain Grading

- A. Official Grain Standards of the United States
- B. Standards of Grade for Other Grain

VIII. Grain Appeals

- A. Appeal Procedure
- B. Request for Appeal
- C. Appeal Sampling, Preservation, Delivery and Examination
- D. Freedom of Appeal
- E. Owner Not Compelled to Store Grain

IX Fees

Licensing Agreement for Grain

As a condition of licensing under the United States Warehouse Act (the Act), the warehouse operator agrees to the conditions set forth in this agreement and the regulations found at 7 CFR 735:

I. Definitions

Bin. A bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored.

Current assets. Assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

Current liabilities. Those financial obligations which are expected to be satisfied during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

Dockage. Dockage in grain as defined by the official grain standards of the United States.

Grain. All products commonly classed as grain such as wheat, corn, oats, barley, rye, flaxseed, rough, brown, and milled rice, sunflower seeds, field peas, soybeans, emmer, sorghum, safflower seed, triticale, millet and such other products as are ordinarily stored in grain warehouses, subject to the disapproval of the Farm Service Agency.

Licensed inspector and/or weigher. A person licensed under the Act to sample, inspect and/or weigh grain and certificate the grade and/or weight of grain stored at a grain warehouse licensed under the Act.

Net Worth. When liabilities are subtracted from allowable assets, it is the balance amount. In determining allowable assets, credit may be given for appraisal of real property less improvements and for the appraisal of insurable property such as buildings, machinery, equipment, and merchandise inventory only to the extent that such property is protected by insurance against loss or damage by fire, lightning, and other risk. Such insurance must be in the form of lawful insurance policies issued by insurance companies authorized to do such business and subject to service of process in the State in which the warehouse is located. The Farm Service Agency will determine what assets are allowable and under what conditions appraisals may be used.

Non-storage grain. Grain received temporarily into a warehouse for conditioning, transferring, assembling for shipment, or lots of grain moving through a warehouse for current merchandising or milling use, against which no warehouse receipts are issued and no storage charges assessed. The merchandising or milling stocks held in storage as reserve stocks, or stored for use at an indefinite future date, may not be treated as non-storage grain.

Storage grain. All grain received into, stored in, or delivered out of the

warehouse which is not classified as non-storage.

II. Financials

A. Financial Requirements

1. The warehouse operator agrees to have and maintain:

a. Total net worth of at least the amount obtained by multiplying \$0.25 by the warehouse capacity in bushels; however, no person may be licensed or remain licensed as a warehouse operator unless that person has allowable net worth of at least \$50,000.00 (Any deficiency in net worth above the \$50,000.00 minimum may be supplied by an increase in the amount of the financial assurance).

b. Total allowable current assets equal to or exceeding total current liabilities or evidence acceptable to the Farm Service Agency that funds will be and remain available to meet current obligations.

2. If a warehouse operator is licensed or is applying for licenses to operate two or more warehouses, the maximum capacity of all licensed warehouses, as determined by the Farm Service Agency, will be the capacity considered in determining whether the warehouse operator meets the net worth requirements.

B. Financial Reporting

1. The warehouse operator agrees to provide annually, within 90 days of the fiscal year end, or more frequently if required, to the Farm Service Agency, financial statements from the warehouse operator's records prepared according to generally accepted accounting principles. The Farm Service Agency may grant one 30 day extension to provide a financial statement.

2. These financial statements must include but not be limited to:

- a. Balance sheet,
- b. Statement of income (profit and loss),
- c. Statement of retained earnings, and
- d. Statement of cash flows.

3. An authorized representative for the warehouse operator must certify under penalty of perjury that the statements, as prepared, accurately reflect the financial condition of the warehouse operator as of the date designated and fairly represent the results of operations for the period designated.

4. The warehouse operator must have the financial statements required audited or reviewed by a certified public accountant or an independent public accountant. Audits and reviews by independent certified public accountants and independent public

accountants must be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on this statement, must be furnished along with the financial statements. The Farm Service Agency may also require an on-site examination and an audit by an authorized officer or agent of the United States Department of Agriculture and request other pertinent information.

C. Accepting Other Financial Statements

1. Financial statements of a parent company which separately identify the financial position of the warehouse operator as a wholly owned subsidiary and which meet the basic requirements of financial statements, may be accepted by the Farm Service Agency in lieu of the warehouse operator meeting such requirements.

2. Guaranty agreements from a parent company submitted on behalf of a wholly owned subsidiary may be accepted by the Farm Service Agency as meeting the basic requirements of financial statements if the parent company submits a financial statement which meets the financial requirements and financial reporting requirements.

D. Special Cases: Assets and Liabilities

1. Subject to such terms and conditions as the Farm Service Agency may prescribe and for the purposes of determining allowable assets and liabilities, appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by a warehouse operator to conform with the requirements may be allowed if

a. prepared by independent appraisers acceptable to the Farm Service Agency and

b. the assets are fully insured against casualty loss.

2. All grain purchased from and remaining in-store at another warehouse must be fully paid for and a warehouse receipt issued in the name of the purchasing warehouse operator for such quantity and quality as the warehouse operator's records or assets may state.

E. Financial Special Conditions—Public Debt Obligations

The warehouse operator agrees that if they file a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are unconditionally guaranteed as to both interest and principal by the United States:

1. The obligation deposited will *not* be considered a part of the warehouse operator's assets.

2. A deficiency in total allowable net worth as computed may be offset by the licensed warehouse operator furnishing acceptable financial assurance for the difference.

3. The deposit may be replaced or continued in the required amount from year to year; and

4. The deposit will not be released until one year after cancellation or revocation of the license that it supports or until satisfaction of any claim against the deposit, whichever is later.

III. Financial Assurance

A. Financial Assurance Requirements—Computation

The warehouse operator agrees:

1. To furnish financial assurance computed at the rate of twenty cents (\$0.20) per bushel for the first million bushels of storage space, fifteen cents (\$0.15) for the second million bushels of storage space, and ten cents (\$0.10) for the balance of storage space that the warehouse accommodates when stored in the manner customary to the warehouse as determined by the Farm Service Agency, but not less than fifty thousand dollars (\$50,000.00) nor more than five hundred thousand dollars (\$500,000.00).

2. When applying for licenses to operate two or more warehouses in the same State, or multiple states, and at the warehouse operator's election, they may provide financial assurance meeting the requirements of the Act and the regulations to cover all these warehouses within the multiple states and the maximum of five hundred thousand dollars (\$500,000.00) of financial assurance will apply for each State covered.

3. In case of a deficiency in net worth above the fifty thousand dollars (\$50,000.00) minimum required, to add to the amount of financial assurance determined in accordance with paragraph (1) of this section an amount equal to that deficiency. If a letter of credit is used for the amount of the deficiency, it must be issued for a period of not less than two years to coincide with the period of any deposit of obligations. Any letter of credit must be clean, irrevocable, issued by a commercial bank payable to the Farm Service Agency by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation. The deposit will not be considered an asset of the company.

4. If the Farm Service Agency finds that conditions exist which warrant

requiring additional financial assurance, to add to the amount of financial assurance a further amount to meet such conditions.

B. Financial Assurance—Acceptable Forms

The warehouse operator may offer as financial assurance any of the following:

1. A warehouse operator's bond, or

2. In the form of a deposit with the Farm Service Agency, United States bonds, United States Treasury notes, or other public debt obligations of the United States or obligations that are unconditionally guaranteed as to both interest and principal by the United States, or

3. In the form of a letter of credit issued to the Agency for a period of not less than two years to coincide with the period of any deposit of obligations, or

4. In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Farm Service Agency, established and maintained by a State, backed by the full faith and credit of the applicable State, and 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 and regulations, or

5. Other forms of financial assurance as may be prescribed in the applicable licensing agreement and related addenda deemed acceptable by the Farm Service Agency.

IV. Duties of Warehouse Operator

A. General

The warehouse operator agrees to:

1. At all times exercise such care in regard to grain in custody as a reasonably careful owner would exercise under the same circumstances and conditions.

2. To not differentiate among depositors regarding use of and access to services, except that available storage space may be allocated.

3. Accept all storage and non-storage grain and, at the request of the depositor, deliver out all storage and non-storage grain, other than specially-binned grain, in accordance with the grades of that grain as determined by a person duly licensed to inspect that grain and to certificate the grade and the weight of that grain under the Act and the regulations; or

4. If an appeal from the determination of an inspector has been taken, that grain will be accepted for and delivered out of storage in accordance with the grades as finally determined in the appeal.

5. Keep the warehouse reasonably clean at all times and free from straw, detritus, rubbish, or accumulations of materials that will create a hazard or interfere with the handling of grain and provide a safe environment in and around the warehouse and will provide all necessary assistance in the execution of inspections and examinations by representatives of the Farm Service Agency.

6. Maintain sufficient inventory of grain in licensed storage with respect to quality and quantity as evidenced by the outstanding storage obligations (warehouse receipted and not warehouse receipted) and, in case the grades of stored grain should get out of balance with grades represented by outstanding storage obligations, to effect the necessary corrective actions to regain the quality and quantity equity.

B. Insurance

1. *Requirements.* The warehouse operator agrees to:

a. Secure, in their own name, insurance on stored grain against loss or damage by fire, lightning, and other risk under forms of policies which automatically attach for the full replacement value of stored grain, as soon as such grain is placed in their legal custody, and continue such insurance in effect so long as the grain remains in their legal custody. The warehouse operator also agrees to keep a general insurance account showing the policy number, issuing company, amount binding, and expiration dates of all insurance policies and in each instance show the property covered by such policies. This insurance will be lawful policies issued by one or more insurance companies. The warehouse operator must submit such reports to underwriters as may be required under the terms of such policies, and submit copies of such reports to the Farm Service Agency as required.

b. Show, in the tariff to be posted at all delivery points, the conditions under which the grain will be insured against loss or damage by fire, lightning, and other risk.

c. Require that the warehouse operator's insurance company give 30 days advance notice to the Farm Service Agency of intent to cancel the stock (inventory) coverage.

C. Records To Be Kept in a Safe Place

The warehouse operator agrees to:

1. Provide a fireproof safe, a fireproof vault, or a fireproof compartment in which to keep, when not in use, all records, books, and papers pertaining to the licensed warehouse, including a current warehouse receipt book, copies

of warehouse receipts issued, and canceled warehouse receipts or microfilm copies of canceled receipts, except that, with the written consent of the Farm Service Agency, upon a showing by the warehouse operator that it is not practicable to provide such fireproof safe, vault, or compartment, may keep such records, books, and papers in some other place of safety, approved by the Farm Service Agency.

2. Retain each canceled receipt for a period of six years after December 31 of the year in which the warehouse receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouse operator knows to be pending, or as may be required by the Farm Service Agency in particular cases to carry out the purposes of the Act.

3. Arrange canceled warehouse receipts in numerical order and otherwise in such manner as may be directed, for purposes of audit, by authorized officers or agents of the United States Department of Agriculture and the Farm Service Agency.

D. Scales and Bin Numbers

The warehouse operator agrees to:

1. Be equipped with suitable scales in good order, and so arranged that all grain, whether for storage or for non-storage purposes, can be weighed in and out of the warehouse. The scales in any warehouse must be subject to examination by authorized officers or agents of the United States Department of Agriculture and to disapproval by the Farm Service Agency. If disapproved, any weighing apparatus must not thereafter be used in ascertaining the weight of grain for the purposes of this Act, until such disapproval is withdrawn.

2. Cause both bulk grain bins and compartments for sacked grain of all warehouses licensed under the Act to be identified by means of clearly discernible numbers securely affixed. The series of numbers to be used must be approved by the Farm Service Agency. Bulk grain bins must be numbered so as to be easily identified at the openings on top and also on or near the outlet valves underneath. Compartments must be numbered in such a manner as clearly showing the space covered by each number.

3. Apply for licensing at all facilities controlled by them at a specific location, among which grain may be transferred without weighing, unless those facilities are specifically exempted by the Farm Service Agency. The warehouse operator must not select, randomly, the bins to be licensed unless

specifically exempted by the Farm Service Agency.

E. Warehouse Charges

The warehouse operator must:

1. not make any unreasonable or exorbitant charge for services rendered.

2. before a license to conduct a warehouse is granted under the Act, file, with the Farm Service Agency, a copy of their rules and a schedule of charges to be assessed depositors.

3. before making any change in such rules or schedule of charges, file with the Farm Service Agency a new rule statement or schedule of charges.

4. post conspicuously where the depositor may access it at all delivery points, a copy of the current rules and schedule of charges.

F. Business Hours

The warehouse operator agrees to:

1. be open for the purpose of receiving grain for storage and delivering grain out of storage and for settlement purposes every normal business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m. The warehouse operator must post their business hours at the public entrance to the office and to their licensed warehouse.

2. in case the warehouse is not to be kept open as required, state, in the posted notice, the period during which the warehouse is to be closed and the name, the address, and telephone number of the person who will be authorized to receive and deliver grain stored in the warehouse.

G. System of Accounts

The warehouse operator agrees to:

1. Have and maintain a system of accounts approved for the purpose by the Farm Service Agency. This system of accounts must include an accurate and concise daily position record showing, as activity occurs, the total quantity of each kind and class (and the subclass white club wheat) of grain in licensed space:

a. Total grain unloaded into the warehouse,

b. Total grain loaded out of the warehouse,

c. Total grain adjustments,

d. Total grain remaining in the warehouse at the close of each business day,

e. Total obligations transferred to another warehouse,

f. Total negotiable and non-negotiable warehouse receipts issued, canceled, and balance outstanding,

g. Total increase, decrease, and outstanding un-receipted obligations belonging to others including grain bank,

h. Total grain owned by the warehouse operator for which warehouse receipts have not been issued, and

i. Total grain obligations.

2. Maintain a separate set of records for each depositor showing the kind, class (and the subclass white club wheat), grade, and quantity of grain deposited or redelivered which must include a detailed record of all money received and disbursed and, if applicable, all insurance policies taken out and canceled on request of each depositor. These records will be maintained accurately and concisely as activity occurs. The warehouse operator must retain these records for a period of six years after December 31 of the year in which they were created, and for such longer period as may be necessary for the purposes of any litigation which the warehouse operator knows to be pending, or as may be required by the Farm Service Agency in particular cases to carry out the purposes of the Act.

3. Maintain similar records and information for any non-storage grain handled through the warehouse. Records required with respect to non-storage grain must be retained, as a part of the records of the warehouse, for a period of one year after December 31 of the year in which the lot of non-storage grain is delivered from the warehouse.

H. Excess Storage and Transferring Grain

The warehouse operator agrees that:

1. If at any time grain stored in the warehouse exceeds the capacity for which the warehouse is licensed, the warehouse operator will immediately notify the Farm Service Agency of the fact and the location of excess storage.

2. If they desire to transfer stored grain to another warehouse (receiving), the warehouse operator may do so either by physical movement of the stored grain or by other methods accepted as standard industry practice subject to the following terms and conditions:

a. The transferring (shipping) warehouse operator's accepted rules or schedule of charges must contain notice that the warehouse operator may transfer grain according to conditions prescribed by the Farm Service Agency.

b. The warehouse operator must request permission in writing to the Farm Service Agency.

c. For purposes of transferring grain, a receiving warehouse means a warehouse operated by a warehouse operator who holds an un-suspended, un-revoked grain license under the United States Warehouse Act, or a warehouse operated by a warehouse operator who holds an effective

warehouse license for the public storage of grain issued by a State that has financial, bonding and examination requirements for the benefit of all depositors or, in the case of warehouses operating in a State without licensing authorities, warehouses with approved Uniform Grain and Rice Storage Agreements with the Commodity Credit Corporation.

d. Non-negotiable warehouse receipts must be obtained promptly by the shipping warehouse operator from the receiving warehouse operator for all warehouse receipted or open storage transferred grain. Such warehouse receipts must have printed or stamped in large bold or outline letters diagonally across the face and covering the face from corner to corner the words "NOT NEGOTIABLE". In the case of grain shipped to a warehouse in a State that doesn't allow issuance of non-negotiable warehouse receipts, the receiving warehouse operator will issue an affidavit specifying the kind, class (and the subclass white club wheat), grade and quantity of the grain received from the shipping warehouse operator. These receipts and affidavits are not valid for collateral purposes. They must be retained by the shipping warehouse operator to be presented to and used by authorized officers and agents of the United States Department of Agriculture, and the Farm Service Agency in lieu of an on-site inventory. The grain covered by these warehouse receipts and affidavits is not the property of either the receiving or shipping warehouse operator but held in trust by both solely for the benefit of the depositors whose bailed grain was transferred individually or collectively and which the depositor or the depositor's transferee retains title.

e. The shipping warehouse operator's financial assurance amount must be increased to consider the addition of the transferred grain to the licensed capacity of the warehouse with the net worth requirements based on the total of the licensed capacity and the transferred grain. The receiving warehouse operator must not incur storage obligations that exceed the licensed or approved capacity of their warehouse.

f. The shipping warehouse operator retains storage obligation to the owners of all grain deposited in the warehouse for storage, whether transferred or retained, and is, except as otherwise agreed upon under paragraph (g), required to redeliver the grain upon demand to the depositor or the depositor's transferee at the warehouse where the grain was first deposited for storage.

g. The owner of grain deposited for storage at the warehouse must make settlement and take delivery at the warehouse where the grain was first deposited for storage, unless the owner of the grain, with the consent of both the shipping warehouse operator and the receiving warehouse operator, elects to take delivery at the warehouse to which grain was transferred.

h. Nothing in this agreement will in any way diminish the right of the owner of the grain to receive on delivery, or the obligation of the warehouse operator of a licensed warehouse from which the product is transferred, to deliver to the owner, grain in the quantity, and of the kind, quality, class (and the subclass white club wheat) and grade, called for by the warehouse receipts or other evidence of storage.

i. Recording and retention of non-negotiable warehouse receipts received as a result of transferring grain under this section will be subject to the requirements for warehouse receipts.

j. A receiving warehouse operator must not transfer or offset to another warehouse, in any manner, their obligation to the shipping warehouse operator.

I. Reports Required

The warehouse operator agrees to:

1. When requested by the Farm Service Agency, make such reports, on forms prescribed and furnished for the purpose by the Farm Service Agency, concerning the condition, contents, operation, and business of the warehouse.

2. Keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted.

J. Inspections, Examinations of Warehouse

The warehouse operator agrees to permit any officer or agent of the United States Department of Agriculture, authorized by the Farm Service Agency, to enter and inspect or examine on any business day during the usual hours of business, any warehouse for which they hold a license, the office, the books, records, papers, and accounts relating, and the contents thereof and will furnish that officer or agent the assistance necessary to enable making any inspection or examination.

K. Loading Out Without Weighing

The warehouse operator may:

1. Load out identity-preserved grain without weighing for which the owner has agreed to assume all shortages, provided that the warehouse receipts

covering this grain have been surrendered to the warehouse operator.

2. At the request of the owner, load out fungible grain without weighing. Destination weights are to be obtained and posted as soon as possible. Any interim weight certificate issued by the shipping warehouse operator must clearly show the weight as an estimate.

L. Storage of Identity Preserved Grain

1. The warehouse operator may elect *not* to accept and store identity preserved grain.

2. If electing to accept and store bulk identity-preserved grain, the warehouse operator agrees to:

a. Clearly mark with identification each bag or container.

b. Maintain records that clearly show the location of all identity-preserved grain stored in the warehouse.

M. Containerized Grain Storage

The warehouse operator agrees to keep containerized grain stored in an orderly manner so as to permit easy access to all lots and to facilitate inspecting, sampling, counting and identification of each lot.

N. Delivery of Fungible Grain

The warehouse operator must:

1. Upon proper presentation of a warehouse receipt for any grain, other than identity-preserved grain, and, if requested by the warehouse operator, payment of all accrued charges associated with the storage of the grain, deliver to the depositor or lawful holder of the warehouse receipt, grain in the quantity, and of the kind, quality, class (and the subclass white club wheat) and grade, called for by the warehouse receipts or other evidence of storage; or

2. Upon proper presentation of a warehouse receipt for any identity-preserved grain and, if requested by the warehouse operator, payment of all accrued charges associated with the storage of the grain, deliver to the person lawfully entitled thereto, the identical grain stored in the warehouse.

O. Storage Obligations

The warehouse operator, while authorized to commingle grain in store, is liable to each depositor for the care and delivery of grain stored as if the grain were separately stored. The warehouse operator is free to store in any manner that results in their ability to produce grain, as a bailee for hire, that meets or exceeds the quantity and quality specifications of the warehouse receipt or the original delivery receipt (scale ticket).

P. Out of Condition and Damaged Grain

The warehouse operator may refuse to accept grain offered for storage if its condition is such that it will affect the condition of existing grain in the warehouse unless the warehouse operator chooses to separately bin and condition the grain.

Q. Reconditioning Grain

The warehouse operator agrees to:

1. Immediately notify the owners and the Farm Service Agency when grain is going out of condition and where the warehouse operator is unable to condition the grain and stop the deterioration, and

2. Follow instructions received.

R. Warehouse Receipts

1. The warehouse operator when choosing the option to issue Electronic Warehouse Receipts (EWRs) instead of paper warehouse receipts for the agricultural product(s) stored in their warehouse agrees to:

a. Only issue EWRs through a provider whom the Farm Service Agency has approved.

b. Receive written approval from the Farm Service Agency at least 30 calendar days before changing providers. Upon approval a warehouse operator may request their current provider to transfer their EWR data from its Central Filing System (CFS) to the CFS of the approved provider whom they select. Warehouse operators must notify all holders of EWRs by inclusion in the CFS at least 30 calendar days before changing providers, unless otherwise required or allowed by the Agency. Warehouse operators may only change providers once a year.

c. Cancel EWRs only when they are the holder of the receipt(s)

d. Correct information on the EWR only with written notification to the provider.

e. Before issuing EWRs, request and receive from the Farm Service Agency a range of consecutive warehouse receipt numbers which the warehouse operator will use consecutively for issuing their EWRs.

f. Issue warehouse receipts initially as EWRs.

g. Inform the Farm Service Agency of the identity of their provider 60 calendar days in advance of issuing EWRs through that provider. The Farm Service Agency may waive or modify this 60-day requirement as set forth under 7 CFR 735.2(b).

2. The warehouse operator will ensure that an issued EWR establishes the same rights and obligations with respect to an agricultural product as a paper

warehouse receipt, and possess the following attributes that:

a. The person identified as the 'holder' of a EWR will be entitled to the same rights and privileges as the holder of a paper warehouse receipt.

b. Only the current holder of the EWR may transfer the EWR to a new holder.

c. The identity of the holder must be included as additional information for every EWR.

d. An EWR will only designate one entity as a holder at any one time.

e. An EWR will not be issued for a specific identity preserved or a commingled agricultural product lot if another receipt, whether paper or electronic, representing the same specific identity preserved or commingled lot of agricultural product is outstanding. No two warehouse receipts issued by a warehouse operator may have the same receipt number or represent the same agricultural product lot.

f. An EWR may only be issued to replace a paper receipt if requested by the current holder of the paper warehouse receipt.

g. An EWR allows a "holder" the option to authorize any other user of a provider to act on their behalf with respect to their activities with their provider. This authorization must be in writing, acknowledged, and retained by the provider.

h. Provisions of 7 CFR 735.301(c) will be applicable to lost or destroyed EWRs.

i. Only the current EWR holder may request a paper warehouse receipt in lieu of a EWR with respect to an agricultural product.

V. Paper Warehouse Receipts

A. Issuance

The warehouse operator agrees to:

1. Issue warehouse receipts for any grain stored in a warehouse at the request of a depositor.

2. Prior to issuing any warehouse receipt under the Act, obtain a copy of the original weight certificate, original inspection certificate or original inspection and weight certificate representing the grain. The warehouse operator's records must identify the certificate (s) used as the basis for issuing the receipt and retained for a period of three years after December 31 of the year in which issued. Certificates filed in the office of an independent inspection or weighing agency or with a U. S. Registrar meet this requirement.

B. Form

1. Every warehouse receipt, whether negotiable or non-negotiable, issued for grain stored in a licensed warehouse must, in addition to complying with the

requirements of section 11 of the Act, embody within its written or printed terms the following:

- a. The name of the warehouse operator and the designation, if any, of the warehouse,
 - b. The warehouse operator's license number,
 - c. The Commodity Credit Corporation contract code number, if applicable,
 - d. A statement whether the warehouse operator is incorporated or unincorporated, and if incorporated, under what laws,
 - e. In the event the relationship existing between the warehouse operator and any depositor is not that of a strictly disinterested custodianship, a statement setting forth the actual relationship,
 - f. A statement conspicuously placed, whether or not the grain is insured, and, if insured, to what extent, by the warehouse operator against loss by fire, lightning, or other risk,
 - g. The net weight, including dockage, if any, of the grain.
 - h. In the case of grain the identity of which is to be preserved, its identification or location in accordance with the regulations.
 - i. The words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.
2. Every negotiable warehouse receipt issued must, in addition to conforming with the requirements of paragraph (a), embody within its written or printed terms, a form of endorsement which may be used by the depositor, or their authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the grain covered by the receipt.
3. The grade stated in a warehouse receipt must be stated as determined by the inspector who last inspected and graded the grain or, if an appeal has been taken, the grade will be stated on such receipt in accordance with the grade as finally determined in such appeal.
4. If the warehouse operator issues a warehouse receipt omitting the statement of grade on request of the depositor, such receipt will have clearly and conspicuously stamped or written in the space provided for the statement of grade the words "Not graded on request of depositor".
5. If the warehouse operator issues a warehouse receipt under the Act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line will be drawn through such space to show that such omission has been made purposely.

C. Persons Authorized to Sign Warehouse Receipts

The warehouse operator must file with the Farm Service Agency, the name and genuine signature of each person authorized to sign warehouse receipts for the warehouse operator, promptly notify Farm Service Agency of any changes as to persons authorized to sign, file the signatures of such persons, and will be bound by such signatures the same as if the warehouse operator, had personally signed the receipt.

D. Copies of Warehouse Receipts

The warehouse operator agrees that at least one copy of all warehouse receipts must be made and, except skeleton and microfilm copies, have clearly and conspicuously printed or stamped on the face the words "Copy—Not Negotiable".

E. Printing of Warehouse Receipts

The warehouse operator agrees to issue only warehouse receipts that:

1. Are in a form prescribed by the Farm Service Agency.
2. Are on distinctive paper or card stock specified by the Farm Service Agency;
3. Printed by a printer with whom the United States has an agreement and bond for such printing; and
4. On paper and/or card stock tinted with ink in the manner prescribed by the agreement.

F. Return of Warehouse Receipts Prior to Delivery

The warehouse operator agrees to:

1. Not deliver any grain for which they have issued a negotiable receipt until the receipt has been returned to the warehouse operator and canceled; and
2. Not deliver grain for which they have issued a non-negotiable receipt until such receipt has been returned, or they have obtained from the holder or agent, a written order and a receipt upon delivery of 90% (ninety percent) of the quantity.

G. Balance Warehouse Receipts

The warehouse operator, upon request of the holder, may issue a warehouse receipt for previously warehouse receipted grain, the receipt for which has been canceled. The balance warehouse receipt must show the number and issuance date of the original warehouse receipt.

H. Lost or Destroyed Warehouse Receipts

1. The warehouse operator may issue a new warehouse receipt subject to the same terms and conditions, and bearing

on its face the number and the date of the original receipt when presented with the case of a lost or destroyed warehouse receipt.

2. Before issuing a replacement warehouse receipt, the warehouse operator must require the holder or other person applying therefore to make and file with the warehouse operator

a. An affidavit showing that the holder is lawfully entitled to the possession of the original warehouse receipt; that the holder has not negotiated or assigned it; how the original receipt was lost or destroyed; and, if lost, that diligent effort has been made to find the warehouse receipt without success.

b. A bond in an amount double the value, at the time the bond is given, of the agricultural product represented by the lost or destroyed warehouse receipt. This bond will be in a form approved for the purpose by the Farm Service Agency, and will be conditioned to indemnify the warehouse operator against any loss sustained by reason of the issuance of this warehouse receipt. The bond will have as surety a surety company which is authorized to do business, and is subject to administration of process in a suit on the bond, in the State in which the warehouse is located, unless a variance is granted by the Farm Service Agency.

3. Auditing Canceled Warehouse Receipts. The warehouse operator agrees to forward canceled receipts for auditing, as requested, to the Farm Service Agency.

VI. Service Licenses

A. The Applicant

The applicant for service licensing under the Act:

1. Must make application for license to inspect and/or weigh grain to the Farm Service Agency on forms furnished by the Agency. Each application must:

- a. Be signed by the applicant.
- b. Contain or be accompanied by a statement from the warehouse that the applicant is acceptable to such warehouse operator.

c. If seeking inspection licensing, certification that the applicant can correctly inspect grain in accordance with the official standards of the United States, or in the absence of such standards, in accordance with any standards approved by the Farm Service Agency.

d. If seeking weighing licensing, certification that the applicant can correctly weigh grain.

e. Furnish such additional information as requested by the Farm Service Agency.

B. Examination of Applicant

As a service license applicant, submit to an examination or test to show ability to properly inspect, grade and/or weigh grain, as the case may be, and also make available for inspection copies of the standards of inspection and grading and the weighing apparatus as the case may be, used or to be used.

C. Inspection Certificate

1. Each inspection certificate issued under the Act by an inspector must be in a form approved by the Farm Service Agency, and include the following information within its terms:

- a. The caption "United States Warehouse Act, Grain Inspection Certificate,"
- b. Whether it is an original, a duplicate, or other copy, and that it is not negotiable,
- c. The name and location of the warehouse in which the grain is or is to be stored,
- d. A statement showing whether the inspection covers grain moving into or out of the warehouse,
- e. The date of the certificate,
- f. The consecutive number of the certificate,
- g. The approximate quantity of grain covered by the certificate,
- h. The kind of grain covered by the certificate,
- i. The grade of the grain, as determined by such duly licensed inspector, in accordance with official standards and, in the case of grain for which no official standards of the United States are in effect, the standards or description in accordance with which such grain is graded.
- j. A statement that the certificate is issued by an inspector licensed under the U.S. Warehouse Act and the regulations thereunder,
- k. A statement conspicuously placed to the effect that the certificate is not valid for the purposes of the United States Grain Standards Act, and

1. The signature of the inspector who inspected and graded the grain.

2. In addition to the provisions of paragraph 1, the inspection certificate may include any other matter consistent with the Act or the regulations, provided the approval of the Farm Service Agency is first secured.

3. In lieu of an inspection certificate in the form prescribed in paragraph one, an official inspection certificate issued pursuant to the provisions of the United States Grain Standards Act, or the Agricultural Marketing Act of 1946 on grain which is stored or to be stored in a warehouse licensed under the Act will be acceptable for purposes of the Act and the regulations.

D. Weight Certificates

1. Each weight certificate issued under the Act by an inspector must be in a form approved for the purpose by the Farm Service Agency, and include the following information within its terms:

- a. The caption "United States Warehouse Act, Grain Weight Certificate,"
- b. Whether it is an original, a duplicate, or other copy, and that it is not negotiable,
- c. The name and location of the warehouse in which the grain is or is to be stored,
- d. Whether the grain is weighed into or out of the warehouse,
- e. The date of the certificate,
- f. The consecutive number of the certificate,
- g. The net weight, including dockage, if any, of the grain.
- h. A statement that the certificate is issued by a weigher licensed under the U.S. Warehouse Act and the regulations thereunder, and
- i. The signature of the weigher.

2. In addition to the provisions of paragraph 1, the weight certificate may include any other matter consistent with the Act or the regulations in this part provided the approval of the Farm Service Agency is first secured.

3. In lieu of a weight certificate in the form prescribed in paragraph 1 of this section, an official weight certificate issued pursuant to the provisions of the United States Grain Standards Act, or an official weight certificate issued pursuant to the Agricultural Marketing Act of 1946 on grain which is stored or to be stored in a warehouse licensed under the Act is acceptable for purposes of the Act.

E. Grade and Weight Certificate

The grade and weight of any grain, ascertained by an inspector and a weigher, may be stated on a certificate meeting the combined requirements of subsections C and D provided the form of the certificate is approved for the purpose by the Farm Service Agency.

F. Duties of Inspector and Weigher

Each inspector and weigher whose license remains in effect must:

1. When given grain to inspect, grade and/or weigh under conditions which permit proper inspection and weighing, without discrimination, as soon as practicable and upon reasonable terms, perform the requested services for which licensed.
2. Issue a certificate of grade for any grain only if the inspection and grading thereof is based upon a correct and representative sample of the grain.

3. As soon as possible after grading any grain and not later than the close of business on the next following business day, make accessible to the parties interested in a transaction in which the grain is involved at the location of the license, a copy of the inspection certificate issued by the licensed inspector.

4. Keep the license to inspect, grade and/or weigh conspicuously posted at the place where those duties are performed or as directed by the Farm Service Agency.

5. Permit any authorized officer or agent of the United States Department of Agriculture or the Farm Service Agency or their designee to inspect or examine, on any business day during the usual hours of business, their books, papers, records, and accounts relating to the performance of their duties under the Act and, with the consent of the warehouse operator concerned, assist any such officer or agent in the inspection or examination as far as it relates to the performance of the duties of such inspector or weigher under the Act.

6. Keep for a period of one year, in a place accessible to interested parties, a copy of each certificate issued and file the certificate with the warehouse in which the grain covered by the certificates is stored.

VII. Grain Grading**A. Official Grain Standards of the United States**

The Official Grain Standards of the United States are hereby adopted as the official grain standards for the purposes of the Act and the regulations.

B. Standards of Grade for Other Grain

Until Official Standards of the United States are fixed and established for the kind of grain to be inspected, the grade of the grain will be stated, subject to the approval of the Farm Service Agency:

1. In accordance with the State standards, if any, established in the State in which the warehouse is located,
2. In the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, Chamber of Commerce, or by the grain trade generally in the locality in which the warehouse is located, or
3. In the absence of the standards mentioned in paragraphs 1 and 2 of this section, in accordance with any standards approved for the purpose by the Farm Service Agency.

VIII. Grain Appeals

A. Appeal Procedure

The depositor, holder of the warehouse receipt or the warehouse operator may make an appeal as to the grade of a lot of grain stored or to be stored in a warehouse. If the original grade certificate was issued by an inspector licensed under, or authorized by, the United States Grain Standards Act or the Agricultural Marketing Act, the appeal, including the amount of fees, will be governed by the regulations issued under those Acts respectively; otherwise, the appeal, including fees will be governed by paragraphs B and C of this section.

B. Request for Appeal

1. The warehouse operator agrees to accept a request for an appeal inspection by a depositor or holder of the warehouse receipt made by written notice to the warehouse operator before the identity of the lot of grain has been lost and not later than the close of business on the first business day following furnishing of the statement of original grade.

2. If the appeal is requested by the warehouse operator, notice must be given promptly to the owner of the grain. Oral notice may be made if followed by written notice.

3. Where it is not practical for the warehouse operator to maintain the identity of all grain being received for storage until depositors receive a statement of grade and consequently opportunity for appeal, any depositor or agent before or at the time of delivery of grain may request that the warehouse operator retain the identity of such lot until depositor has been furnished with a statement of grade for the lot and has waived or requested and received an appeal inspection grade.

4. The warehouse operator need not preserve the identity of the lot in the original conveyance; but with the knowledge and consent of the depositor or agent may use other means to preserve such identity. Further, if compliance with such request would adversely affect receiving, storing or delivering the grain of other depositors, the warehouse operator may defer unloading the grain until such time as would not disrupt service to other depositors but without unnecessary delay to the party making such request.

C. Appeal Sampling, Preservation, Delivery and Examination

1. The lot of grain for which an appeal is requested must be re-sampled in such manner and quantity as the depositor or holder of the warehouse receipt and the warehouse operator agree results in a representative sample of the lot acceptable to each for appeal purposes. If the parties are unable to agree on such a sample, a sample drawn by a duly licensed inspector in the presence of the interested parties must be deemed binding. In no case will the sample be of less than 2000 grams by weight.

2. The sample must be packaged, to the satisfaction of the interested parties, so as to preserve its original condition.

3. Delivery.

a. For grains for which there are official U.S. Standards, the sample will be secured and delivered to the nearest office charged with providing official inspection service under the United States Grain Standards Act or the Agricultural Marketing Act of 1946. At this point, procedures to determine the grade of the grain will be as set forth in regulations issued under the United States Grain Standards Act or under the Agricultural Marketing Act of 1946, as is applicable.

b. For grain for which there are no official U.S. Standards, the party requesting the appeal will apply directly to the Farm Service Agency for relief. The Farm Service Agency will determine the appeal based on approved standards and set the required fees. Such determination will be binding on all interested parties.

4. The sample must be accompanied by:

a. A copy of the written request for appeal,

b. The grain inspection certificate originally issued, and

c. An agreement to pay the costs of such inspection as prescribed by the United States Grain Standards Act, the Agricultural Marketing Act or the Farm Service Agency.

5. The sample of the grain involved in the appeal must be examined as soon as possible. Such tests must be applied as are necessary. Unless the appeal is dismissed, a grade certificate must be issued by the person determining the grade, showing the grade assigned by them to such grain. The certificate will supersede the inspection certificate

originally issued for the grain involved. The original or a copy of the new grade certificate will be sent to the depositor or holder of the warehouse receipt, the warehouse operator and the licensed inspector making the original determination of grade.

D. Ability To Appeal

1. No person licensed under the Act, will, directly or indirectly by any means whatsoever, deter or prevent or attempt to deter or prevent any party from taking an appeal.

2. No rule, regulation, bylaw, or custom of any market, board of trade, Chamber of Commerce, exchange, inspection department or similar organization nor any contract, agreement or understanding, will be grounds for refusing to determine any appeal.

E. Owner Not Compelled To Store Grain

Nothing in this agreement will require the owner or agent to store such grain with the warehouse operator after the appeal inspection, but if the grain is stored it will be accepted for and delivered out of storage in accordance with the grade as finally determined in such appeal.

IX. Fees

The Farm Service Agency is authorized, by the enabling legislation, to assess and collect fees to cover the administration of the program. A schedule showing the current fees or any annual fee changes will be provided as an addendum to the licensing agreement.

The fees for grain warehouses are detailed in the attached Addendum No. 1.

This agreement forms a part of the (License Number _____ for (Warehouse Operator) _____ (Licensed Location) _____ and is effective (Date) _____.

Warehouse Operator

By _____

Date _____

For the Farm Service Agency.

BILLING CODE 3410-05-P

ADDENDUM No. 1: FEES

Fee Table ***Schedule of fees charged for services rendered***

United States Warehouse Act *(effective October 1, 2001) Fee Table

Grain	License Action Fee	Service License Fee	Inspection Fee	Annual User Fees		
				Capacities - Range By Functional Unit	CCC Agreement	W/o CCC Agreement
	\$80	\$35	\$16/ 10,000 Bushels or Fractional Part Min \$160 Max \$1,600	1 to 150,000 Bushels	\$145	\$290
				150,001 to 250,000 Bushels	295	585
				250,001 to 500,000 Bushels	435	865
				500,001 to 750,000 Bushels	590	1,175
				750,001 to 1,000,000 Bushels	730	1,460
				100,000,001 to 1,200,000 Bushels	875	1,750
				120,000,001 to 1,500,000 Bushels	1,120	2,035
				1,500,001 to 2,000,000 Bushels	1,165	2,325
				2,000,001 to 2,500,000 Bushels	1,310	2,620
				2,500,001 to 5,000,000 Bushels	1,450	2,900
				5,000,001 to 7,500,000 Bushels	1,605	3,205
				7,501,001 to 10,000,000 Bushels	1750	3,500
				10,000,000 + Bushels	*1,750	**3,500
					*Plus \$50 per million bushels capacity above 10,000,000 bales or fraction	**plus \$90 per million bushels capacity above 10,000,000 bushels or fractio

Exhibit C—Draft**Farm Service Agency****Provider Agreement to Electronically File and Maintain Electronic Warehouse Receipts and United States Warehouse Act Documents**

[WA-141; 0560-0120]

This Provider Agreement (hereafter “Agreement”) between (hereafter “Provider”) and the Farm Service Agency (hereafter “FSA”) authorizes the Provider to establish and maintain a database and system for the purpose of electronically filing warehouse receipts and documents issued under the United States Warehouse Act (hereafter “USWA”) in a central data filing system (hereafter “central filing system” or “CFS”) and permits the Provider to accept the filing of warehouse receipts from other than USWA licensed warehouse operators in such electronic data filing system. Such electronically filed warehouse receipts and electronically filed USWA documents are hereafter referred to herein as “electronic warehouse receipts” and “electronic USWA documents” respectively.

The purpose of this Agreement is to ensure that:

A. Electronic warehouse receipts and electronic USWA documents issued and filed in accordance with this Agreement meet the requirements of the USWA and 7 CFR Part 735,

B. Providers meet the applicable requirements of the USWA and 7 CFR Part 735,

C. The Provider as a U. S. Department of Agriculture representative, operates a system that is independent in action and appearance of bias or influences other than those which serve the best interest of the users, and

D. Data kept in the Provider’s CFS is secured, not changed inappropriately and only released to authorized parties. Only the issuer may change, cancel or void the USWA documents.

The terms of the Agreement are:

I. Incorporation of Regulations

The regulations promulgated by FSA and published in the **Federal Register** and annually codified at 7 CFR Part 735 relating to the issuance of electronic warehouse receipts and electronic USWA documents are incorporated herein and made a part hereof by reference, including regulations published after execution of this agreement.

II. Access

A. Provider shall make the CFS operative and accessible to users and

FSA for a period of not less than 18 hours per day Monday through Friday and not less than 12 hours per day on Saturday and Sunday. Provider shall offer a continuous period of access to the CFS during the hours of 7:00 AM to 6:00 PM for the local time zone where the CFS is located. Routine maintenance shall be performed without disruption of services.

B. If, for extraordinary maintenance or for reasons beyond the Provider’s control, the Provider cannot furnish access to the CFS as described in paragraph A of this section, the Provider shall furnish notice to FSA as follows:

1. For extraordinary maintenance, an advance notice of at least 5 calendar days setting out the reasons and expected duration of the maintenance; and

2. If unforeseen circumstances cause the CFS to be inaccessible during operating hours for more than a 1 hour period, Provider shall immediately notify the FSA contact person of the access problems.

If a Provider’s shutdowns interfere with FSA activities under this Agreement, FSA may immediately suspend this Agreement pending completion of the activities or may immediately terminate this Agreement.

C. Provider shall give FSA unrestricted access to the CFS and all related and backup files, at no charge, for purposes of administering this Agreement. The Provider shall also give FSA unrestricted access to the physical site where the CFS and off-site records are retained. All FSA requested information from the Provider shall be available in either electronic or printed format or both at FSA discretion.

III. Fees and Charges

A. Fees charged to Providers by FSA.

1. Providers shall pay fees to FSA as shown in Addendum No. 1. This fee schedule may be changed by FSA annually. Such changes will be announced by April 1st and will become effective as of the following May 1st.

2. Each applicant requesting approval shall submit the current non-refundable application fee. Upon approval applicant shall pay the current non-refundable annual fee.

3. Each year the Agreement is in effect the Providers shall pay FSA the annual fee for that year. Providers will be invoiced by FSA for each annual payment. Providers shall pay FSA the annual fee for that year by May 30.

B. Provider’s Schedule of fees for Users.

1. Any fee charged a user by the Provider shall be filed with FSA.

Provider shall make its fees available to the public, upon demand.

2. Fees for the use of the CFS shall not be assessed to users in a discriminatory manner.

3. Providers may, after notification to FSA, restrict a user’s access to the CFS when fee payments are more than 60 days overdue.

IV. Financial, Insurance and Audit Requirements

A. Each Provider shall maintain complete, accurate, and current financial records. The Provider must submit to FSA an annual audit level financial statement. This audit shall encompass the Provider’s fiscal year and shall be submitted to FSA no later than four calendar months following the end of the Providers fiscal year.

B. Provider shall furnish insurance coverage payable to system users and FSA as required by 7 CFR Part 735. Deductible provisions for each policy shall not exceed \$10,000. Each policy shall contain a clause requiring written notification to FSA 30 days prior to cancellation.

C. The Provider must submit to FSA an electronic data processing audit that encompasses the Provider’s fiscal year and must be submitted to the FSA no later than four calendar months following the end of the Providers fiscal year. The audit must evidence current computer operations, security, disaster recovery capabilities of the system, and other related systems.

V. Liability

Providers shall be strictly liable to FSA under this agreement for any losses and costs incurred by FSA associated with system failure or lost, damaged, or improperly destroyed electronic warehouse receipts or electronic USWA documents.

VI. Records

A. Provider shall maintain a continuous log capable of producing an audit trail of all electronic warehouse receipts and all electronic USWA documents activities as follows:

1. Each Provider shall establish a contemporaneous log and accompanying set of records that shall allow for a reconstruction of the files, activities, and events pertaining to each electronic warehouse receipt and each electronic USWA document issued, canceled, converted to paper, converted from paper, or changed in anyway. The log and records maintained for this reconstruction shall be kept in secure storage for a period of 6 years after December 31 of the year in which the electronic warehouse receipt was

canceled and 6 years after the electronic USWA document was issued, unless FSA requires that the data be retained for a longer period. The log at a minimum shall capture a before and after field, the date of change, the time of the change, and the identity of the user making the change.

2. The log shall include details of any attempts to make unauthorized changes or access to electronic warehouse receipt or electronic USWA document data.

3. Provider shall furnish reports as requested by FSA to ensure compliance with this Agreement and the USWA.

B. Each Provider shall create, daily, two complete sets of disaster recovery records. These records shall be kept in a fireproof chamber and retained until a new set of disaster recovery records are created and stored. One set of the disaster recovery records shall be kept off-site.

C. Providers shall not delete or alter any of the FSA required electronic warehouse receipts, electronic USWA documents or related data in the CFS, including the holder unless such actions are authorized by this Agreement or by FSA.

D. Provider shall notify FSA immediately if any data related to an electronic warehouse receipt or electronic USWA document has been lost due to a system malfunction. Provider shall furnish a written explanation of the events which occurred and any other documentation as requested by FSA.

VII. Security

A. Provider shall ensure on-site security of the computer hardware, software, and data. Security shall be designed to prevent the destruction, accidental or intentional, of facilities and data along with preventing the unauthorized distribution of electronic warehouse receipt or electronic USWA document information. Unless authorized by FSA, the data may only be given to a party who has the right to access it.

B. Provider shall have a comprehensive disaster recovery procedure approved by FSA of all computerized and non-computerized functions and data. Provider shall perform a comprehensive test of the disaster recovery plan twice a year and report the results of those tests to FSA. The comprehensive test is to be performed at a different location using hardware not used in the normal production program. A complete backup of production data is to be restored.

C. FSA may require alternative or additional security requirements if FSA

determines that the security procedures submitted by the Provider or actually implemented by the Provider are insufficient.

VIII. System Termination

If the Provider intends to terminate its operations under this Agreement, the Provider must give FSA and users thirty days advance notice of such termination. FSA will perform a closeout audit or advise the Provider in writing that such an audit is waived prior to termination. Any termination of operations under this Agreement by the Provider or by anyone operating in the place or instead of the operator will render the Provider or the Provider's insurance company, or both liable to FSA and the users for any damages resulting from such termination.

IX. Transferring Receipts or Documents

A. A Provider may transfer electronic warehouse receipts or electronic USWA documents from its CFS to the CFS of another FSA approved Provider, when the Provider has received a request from the warehouse operator or other authorized party, defined in the applicable Addendum, and approval from FSA. These warehouse operators and other authorized parties may only change Providers once a year. FSA may waive or modify this limitation of allowing the changing of Providers only once a year.

1. The current Provider must:

a. Provide the new Provider and the warehouse operator, a list of current holders of all open electronic warehouse receipts and electronic USWA documents that were issued within the past 1 year for that warehouse 45 days prior to the transfer date. The list should contain the following information about each holder: holder ID, name, complete mailing address, phone number, fax number, and contact person.

b. Invoice the warehouse operator fourteen days prior to the transfer date for the transfer charges. The invoice amount will be determined according to the current Provider's tariff and the number of open electronic warehouse receipts and electronic USWA documents that were issued within the past 1 year for the warehouse or holder on the date of invoice.

c. Before 12:00 noon on the day of transfer:

1. Terminate access by all holders to the electronic warehouse receipts and electronic USWA documents records of the subject warehouse.

2. Produce a file of all data in each of the electronic warehouse receipts and electronic USWA documents records for the subject warehouse. This file is to

include only open electronic warehouse receipts and electronic USWA documents issued within the past 1 year.

3. Provide the new Provider a list of current holders of open electronic warehouse receipts and electronic USWA documents issued within the past 1 year for that warehouse (new holders could have shown up since the notification date). The list should contain the same information about each holder as required in subparagraph A.1.a.

4. Initiate the connection to the new Provider's system and transmit the files of electronic warehouse receipts and electronic USWA documents records. Each Provider agrees to maintain a designated transfer site for purpose of transferring these files.

5. Notify FSA/Kansas City Commodity Office/Licensing Branch (FSA/KCCO/LB) of the transfer.

2. The warehouse operator must:

a. Notify FSA/KCCO/LB, current Provider, and their Licensing Authority, if applicable, 60 days prior to the transfer date. Notification must include an exact date for the transfer.

b. Send notification of the change to the holders of open electronic warehouse receipts and electronic USWA documents issued within the past 1 year 30 days prior to the transfer date. The notification must inform the holders that access to their electronic warehouse receipts and electronic USWA documents will not be available on the transfer date. The notification should also clearly state the last day the current Provider will be utilized, and the first day the new Provider will be effective.

c. Pay all charges due the current Provider prior to the transfer of electronic warehouse receipts and electronic USWA documents to the new Provider. This includes the transfer charges. Failure to pay could delay the transfer of data files to the new Provider.

3. The new Provider must:

a. Perform necessary data conversions and make the electronic warehouse receipts and electronic USWA documents records available on their system and open access to all holders and authorized users not later than 7:00 a.m., the day after the transfer date.

b. Notify the warehouse operator that the conversion is complete.

c. Notify FSA/KCCO/LB that the conversion is complete.

4. FSA/KCCO/LB will:

a. Contact the current Provider and new Provider to determine if the requested transfer date is acceptable. If the requested transfer date is not

acceptable to both Providers, negotiate an acceptable transfer date with both Providers and the warehouse operator.

b. Determine the notification date (at least 30 days prior to the transfer date).

5. FSA/KCCO/LB may accept a transfer date that is less than 60 days from the date of notification of change, if agreed to by FSA/KCCO/LB, both Providers and the warehouse operator. The 60 day requirement is to allow for proper notification to all holders of the electronic warehouse receipts and electronic USWA documents.

B. A Provider may transfer electronic warehouse receipts and electronic USWA documents from its CFS to the CFS of another FSA approved Provider when the Provider has received written permission from FSA and has notified all users of the electronic warehouse receipts and electronic USWA documents being transferred, at least 30 days prior to the transfer.

X. System Requirements

A. Transmission procedures for FSA used by the Provider shall be approved by FSA.

B. FSA may deny or withdraw approval of this Agreement if it determines that the prospective Provider's software or hardware are not capable of fulfilling the requirements of this Agreement.

C. Upon request by FSA all transmissions of data shall be secured and transmitted via telecommunications hardware and software according to the requirements described in the applicable Addendum for the electronic warehouse receipts and electronic USWA documents the Provider is authorized to maintain in the CFS.

XI. Record Data Requirements

The Provider shall adhere to the requirements as described in the applicable Addendum for the electronic warehouse receipts and electronic USWA documents that they are authorized to maintain in the CFS.

XII. Suspension or Termination

A. FSA may immediately suspend or terminate this Agreement for cause at any time if FSA determines the Provider is in default.

B. Once suspended and before the Provider is reinstated, FSA may conduct an on-site examination and may assess a reinstatement fee. The reinstatement fee shall equal the annual fee provided for in Addendum No. 1. This reinstatement fee may be waived if it is determined that the Provider was not in default of the terms of this Agreement.

C. Once this Agreement is terminated, all related electronic files and paper

records shall be immediately surrendered to FSA.

XIII. Effective Date, Renewal, Amendments, and Correspondence

A. This Agreement shall become effective upon the date signed by FSA.

B. Unless terminated, this Agreement shall automatically renew for a period of one year, effective April 30, if the provisions of this Agreement, the applicable provisions of 7 CFR Part 735 and the applicable provisions of the USWA are complied with. The Agreement will automatically renew each April 30 thereafter under the same terms and conditions, unless amended.

C. The Provider shall designate a contact person or alternate person as the person to be contacted by FSA regarding this Agreement. Notice required by this Agreement delivered to the address of the contact person or the person's alternate shall be notice to the Provider hereunder.

D. FSA may amend this Agreement for any reason. If the Agreement is so amended, the Provider may refuse to accept such amendment and terminate this Agreement in accordance with paragraph E of this section. During the 60 day notice period the Provider will continue to operate under the terms of the Agreement in effect prior to the amendment.

E. Either FSA or the Provider may terminate this Agreement without cause, provided the terminating party gives the other party written notice at least 60 days in advance.

F. Unless otherwise notified, the Provider shall direct all contacts in connection with this Agreement to the FSA contact person: Chief, Licensing Branch, Warehouse Licensing and Examination Division, Kansas City Commodity Office, P.O. Box 419205; Kansas City, Missouri; 64141-6205; Phone: 816-926-6474; Fax: 816-926-1774.

Provider: _____
Signature: _____
Title: _____
Date: _____
Director, Kansas City Commodity Office,
FSA: _____
Date: _____

Addendum No. 1: Fees

Schedule of fees charged Electronic Warehouse Receipt Providers for services rendered.

United States Warehouse Act—Provider Schedule of Fees

The fees shown below shall remain effective from:

May 1, ____ through April 30, ____.

Application Fee: \$9,000.00.

Annual Renewal Fee: \$9,000.00.

Exhibit D—Draft

Farm Service Agency

Addendum to the Provider Agreement to Electronically File and Maintain Cotton Warehouse Receipts

[WA-141-1; 0560-120]

This Addendum between _____ (hereafter "Provider") and the Farm Service Agency (hereafter "FSA") authorizes the Provider to establish and maintain a database and system for the purpose of electronically filing cotton electronic warehouse receipts issued under the United States Warehouse Act (hereafter "USWA") in a central data filing system (hereafter "central filing system" or "CFS") and permits the Provider to accept the filing of electronic warehouse receipts from other than USWA licensed warehouse operators in such electronic data filing system. Such electronically filed warehouse receipts for cotton are hereafter referred to herein as "electronic warehouse receipts (EWRs)."

This Addendum sets forth the Provider's minimum requirements for EWR record formatting, reporting requirements and the protocols to be used in the transmission of such information.

I. Receipt Record Data Requirements

FSA, in administration of the USWA, the regulations found at 7 CFR Part 735, the Provider Agreement To Electronically File And Maintain Electronic Warehouse Receipts, and this Addendum, may at any time require the Provider to furnish information beyond the minimum requirements shown in this Addendum.

A. Required Information

The Provider shall, at a minimum make the elements listed below available to every USWA and non-USWA licensed warehouse operator issuing EWRs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operators. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This Addendum does not restrict the number of fields that may be made available to warehouse operators.

USWA license number, if applicable ¹

Receipt number

Bale Tag number

Issuance date

Receipt status

¹ Enter Federal license number, if not licensed, zero fill field.

The words "Not Negotiable", or "Negotiable" according to the nature of the receipt
 Cancellation date
 Name of warehouse
 Location of warehouse (City)
 Location of warehouse (State)
 Warehouse operator
 Location receipt issued (City)
 Location receipt issued (State)
 Received from
 Lot identification tag (multiple bale receipts)
 Cotton graded statement
 State—"Not graded at request of the depositor" or—Color grade = "C-25" (4 character), fiber length = "F-45" (4 character), micronaire = "M-3.5" (5 character), strength = "S-38.1" (6 character), leaf grade = "L-4" (3 character), and extraneous matter = "E-47" (4 character).
 Net weight
 Number of bales (multiple bale receipts)
 Terms and conditions (These terms and conditions that apply to each EWR must be furnished by the individual warehouse operators issuing the EWRs. Refer to Exhibit I, for USWA licensed warehouse operators)
 Name of person authorized to sign warehouse receipt.

B. Additional Information

The Provider shall, at a minimum make the elements listed below available to every USWA and non-USWA licensed warehouse operator issuing EWRs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operators. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This addendum does not restrict the number of fields that may be made available to warehouse operators. FSA may allow a user of the Provider's system to modify the elements listed below without being the holder of the EWR. The Provider shall notify the current holder of the EWR of any changes.

Holder
 Warehouse Code
 Receipt Type (single bale or multiple bale)
 Paper receipt number (if applicable)
 Compression status
 Compression Paid or Unpaid
 Receiving Charges Paid or Due²
 Rail or Truck
 Gin Code³
 Gin Tag³

² These fields may be modified by the warehouse operator without being the holder.

³ **Note:** In case of reconcentrated cotton the gin code and gin tag can be the previous storing warehouse code and receipt number.

License Type, US if Federally Licensed, NL if not licensed or the two letter Postal abbreviation if State Licensed, will precede or follow the warehouse receipt number
 Commodity Credit Corporation (CCC) Agreement (Y or N)
 Location of bale²
 Gross and Tare weight

C. Converting Electronic to Paper

When converting from an electronic to a paper warehouse receipt, the Provider shall advise the warehouse operator to print on the face of the paper warehouse receipt the EWR number.

II. Transmission of Data

Upon request by FSA all transmissions of data shall be secured and transmitted via telecommunications hardware and software according to the requirements described in Attachment I Provider Specifications for interfacing with Warehouse Examiners' Communications Software (WECS) for cotton.

Provider: _____
 Signature: _____
 Title: _____
 Date: _____
 Director, Kansas City Commodity Office,
 FSA: _____
 Date: _____

Exhibit D-1

Terms and Conditions For USWA Licensed Warehouse Operators

The following information must be recorded on all EWR's.

The statements:

Incorporated or Unincorporated and if incorporated, under what laws.
 Insured or Not Insured and if insured, to what extent, by the warehouse operator against loss by fire, lighting and other risks.
 Weight was determined by a weigher licensed under the USWA or not weighed at the request of the depositor.
 In the event the relationship existing between the warehouse operator and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship.

Exhibit E—Draft

Farm Service Agency

Addendum to the Provider Agreement to Electronically File and Maintain Grain Warehouse Receipts

[WA-141-2; 0560-0120]

This Addendum between _____ (hereafter "Provider") and the Farm Service Agency (hereafter "FSA") authorizes the Provider to establish and

maintain a database and system for the purpose of electronically filing grain warehouse receipts issued under the United States Warehouse Act (hereafter "USWA") in a central data filing system (hereafter "central filing system" or "CFS") and permits the Provider to accept the filing of electronic warehouse receipts from other than USWA licensed warehouse operators in such electronic data filing system. Such electronically filed warehouse receipts for grain are hereafter referred to herein as "electronic warehouse receipts(EWRs)."

Grain is defined as all products commonly classed as grain such as wheat, corn, oats, barley, rye, flaxseed, rough, brown, and milled rice, sunflower seeds, field peas, soybeans, emmer, sorghum, safflower seed, triticale, millet and such other products as are ordinarily stored in grain warehouses, subject to the disapproval of the FSA.

This Addendum sets forth the Provider's minimum requirements for EWR record formatting, reporting requirements and the protocols to be used in the transmission of such information.

I. Receipt Record Data Requirements

FSA, in administration of the USWA, the regulations found at 7 CFR Part 735, the Provider Agreement To Electronically File and Maintain Warehouse Receipts and this Addendum, may at any time require the Provider to furnish information beyond the minimum requirements shown in this Addendum.

A. Required Information

The Provider shall, at a minimum, make the elements listed below available to every USWA and non-USWA licensed warehouse operator issuing EWRs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operators. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This Addendum does not restrict the number of fields that may be made available to warehouse operators.

USWA license number, if applicable¹
 Receipt number
 Issuance date
 Receipt status

The words "Not Negotiable" or "Negotiable" according to the nature of the receipt
 Cancellation date
 Name of warehouse
 Location of warehouse (City)

¹ Enter Federal license number, if not licensed, zero fill field.

Location of warehouse (State)
 Warehouse operator
 Location receipt issued (City)
 Location receipt issued (State)
 Received from
 Net weight
 Dockage (if any)
 Grade
 Commodity
 Name of person authorized to sign
 warehouse receipt

Terms and conditions (These terms and conditions that apply to each EWR must be furnished by the individual warehouse operators issuing the EWRs. Refer to Exhibit I for USWA licensed warehouse operators).

B. Additional Information

The Provider shall, at a minimum, make the elements listed below available to every USWA and non-USWA licensed warehouse operator issuing EWRs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operators. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This Addendum does not restrict the number of fields that may be made available to warehouse operators. FSA may allow a user of the Provider's system to modify the elements listed below without being the holder of the EWR. The Provider shall notify the current holder of the EWR of any changes.

Holder
 Warehouse Code
 Paper receipt number (if applicable)
 License Type, US if Federally Licensed, NL if not licensed or the two letter Postal abbreviation if State Licensed, will precede or follow the warehouse receipt number
 Date to which storage has been paid or storage start date²
 Received by Truck, Rail or Barge
 Amount per unit of measure of prepaid in or out charges
 Commodity Credit Corporation (CCC) Agreement (Y or N)

C. Converting Electronic To Paper

When converting from an electronic to a paper warehouse receipt, the Provider shall advise the warehouse operator to print on the face of the paper warehouse receipt the EWR number.

II. Transmission of Data

Upon request by FSA, all transmissions of data shall be secured and transmitted via telecommunications hardware and software according to the requirements described in Attachment I

Provider Specifications for interfacing with Warehouse Examiners' Communications Software (WECS) for grain.
 Provider: _____
 Signature: _____
 Title: _____
 Date: _____
 Director, Kansas City Commodity Office,
 FSA: _____
 Date: _____

Exhibit E-1

Terms and Conditions For USWA Licensed Warehouse Operators

The following information must be recorded on all EWR's.

The statements:

Incorporated or Unincorporated and if incorporated, under what laws.
 Insured or Not Insured and if insured, to what extent, by the warehouse operator against loss by fire, lighting and other risks.

Weight was determined by a weigher licensed under the USWA or not weighed at the request of the depositor.

In the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship.

Exhibit E-2 Draft

Farm Service Agency

Addendum to the Provider Agreement to Electronically File and Maintain United States Warehouse Act Grain Inspection and/or Weight Certificates

[WA-141-3; 0560-0120]

This Addendum between _____ (hereafter "Provider") and the Farm Service Agency (hereafter "FSA") authorizes the Provider to establish and maintain a database and system for the purpose of electronically filing inspection and weight certificates issued under the United States Warehouse Act (hereafter "USWA") in a central data filing system (hereafter "central filing system" or "CFS"). Such electronically filed certificates are hereafter referred to herein as "electronic inspection and/or weight certificates (EIWCs)."

This Addendum sets forth the Provider's minimum requirements for EIWC record formatting, reporting requirements, and the protocols to be used in the transmission of such information.

I. Document Record Data Requirements

FSA, in administration of the USWA, the regulations found at 7 CFR part 735, the Provider Agreement To

Electronically File And Maintain United States Department of Agriculture Documents and this Addendum, may at any time require the Provider to furnish information beyond the minimum requirements shown in this Addendum.

A. Required Information

The Provider shall, at a minimum make the elements listed below available to every USWA warehouse operator issuing EIWCs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operator's. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This Addendum does not restrict the number of fields that may be made available to warehouse operators.

License number
 Certificate number
 Issuance date
 Name of warehouse
 Location of warehouse (City)
 Location of warehouse (State)
 Type of certificate (Inspection, Weight or Both)
 In or Out of warehouse certificate
 Kind of grain
 Grade
 Net weight, including dockage, (Weight or combination certificate)
 Approximate quantity of commodity (if not a weight or combination certificate)
 Name of person authorized to sign certificate
 Terms and conditions (These terms and conditions that apply to each EIWC must be furnished by the individual warehouse operator issuing the EIWCs. Refer to Exhibit I for required statements).

B. Additional Information

The Provider shall, at a minimum make the elements listed below available to every USWA warehouse operator issuing EIWCs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operator's. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This Addendum does not restrict the number of fields that may be made available to warehouse operators. FSA may allow a user of the Providers system to modify the elements listed below without being the holder of the certificate. The Provider shall notify the current holder of the certificate of any changes.

Holder
 Warehouse Code
 Paper certificate number (if applicable)
 License Type, U.S. if Federally Licensed, NL if not licensed or the

² This field may be modified by the warehouse operator without being the holder.

two letter Postal abbreviation if State Licensed, will precede or follow the certificate number.

C. Converting Electronic to Paper

When converting from an electronic to a paper certificate, the Provider shall advise the warehouse operator to print on the face of the paper certificate the EIWC number.

II. Transmission of Data

Upon request by FSA, all transmissions of data shall be secured and transmitted via telecommunications hardware and software according to the requirements described in Attachment I Provider Specifications for interfacing with Warehouse Examiners' Communications Software (WECS) for inspection and/or weight certificates.

Provider: _____
Signature: _____
Title: _____
Date: _____
Director, Kansas City Commodity Office,
FSA: _____
Date: _____

Exhibit E-3

Exhibit I

Terms and Conditions for USWA Licensed Warehouse Operators

The following information must be shown on all EIWCs.

The statements:

- "United States Warehouse Act, Grain Inspection and/or Weight Certificate"
- "Certificate issued by an inspector/weigher licensed under the United States Warehouse Act"
- "Not valid for the purpose of the United States Grain Standards Act"

Exhibit F—Draft

Farm Service Agency

Provider Agreement To Electronically File And Maintain Other Electronic Documents

[WA-142; 0560-0120]

This Provider Agreement (Agreement) between _____ (Provider) and the Farm Service Agency (FSA) authorizes the Provider to establish and maintain a database and system for the purpose of electronically utilizing documents related to the shipment, payment, and financing of the sale of agricultural products in a central filing system (central filing system or CFS) as authorized by the United States Warehouse Act (USWA). This Agreement will become effective upon execution by FSA and shall remain in effect until terminated as provided for in section III of the Agreement.

For the purposes of this Agreement:

Electronic documents are documents which are generated, sent, received, or stored by electronic, optical, or similar means, including electronic data exchange, electronic mail, telegram, telex or telecopy. Such documents include but are not limited to: sales contracts; bills of lading; insurance certificates; grading and classing documents; and letters of credit. Once a negotiable electronic document is issued under this Agreement, no duplicate document in any other form may be transferred by any person with respect to the same agricultural product (or any portion of the same agricultural product).

If a non-negotiable document in a non-electronic format is presented to the Provider for transmission in their CFS, the Provider may generate an electronic version of such document but must maintain custody of the original non-negotiable document except as is authorized by FSA.

Agricultural products are those commodities and products of such commodities listed in Appendix I. Items that consist of an agricultural product and a non-agricultural product will be considered to be an agricultural product if the non-agricultural component is less than 50 percent of the weight or volume of the item (excluding added water)

I. Terms and Conditions

A. The regulations at 7 CFR Part 735 are incorporated by reference including any amendments to such regulations which are made after execution of the Agreement.

B. The CFS shall be designed in a manner that allows parties to transfer and, if necessary to complete a transaction, generate a document for use by another party with respect to the shipment, payment or financing of a sale with respect to an agricultural commodity.

C. The Provider will operate a CFS in a manner that does not favor the interests of any party over those of another party or which creates the appearance of operation in a manner that is biased in favor of any other party. The Provider will make the CFS operative and accessible to users and FSA for a period of not less than 18 hours per day Monday through Friday and not less than 12 hours per day on Saturday and Sunday. The Provider will offer a continuous period of access to the CFS during the hours of 7:00 AM to 6:00 PM for the local time zone where the CFS is located. Routine maintenance shall be performed without disruption of services. If, for extraordinary maintenance or for reasons beyond the Provider's control, the Provider cannot

furnish such access to the CFS the Provider shall furnish notice to FSA as follows:

1. For extraordinary maintenance, advance written notice setting forth the reasons and expected duration of the maintenance shall be provided 5 calendar days before the beginning of such maintenance; and

2. If unforeseen circumstances cause the CFS to be inaccessible during operating hours for more than a 1 hour period, the Provider will immediately notify FSA of the access problems.

D. The Provider will give FSA unrestricted access, without cost to FSA, to: the CFS; all related and backup files; and off-site records. Such access includes access to the location where such systems, records and data are maintained. The Provider will provide to FSA information which FSA has requested in the form, either printed or electronic or both, as requested by FSA.

E. The Provider will pay to FSA fees as set forth in Appendix II by the dates specified in such Appendix. These fees may be changed annually and any changes will be provided as an amendment to Appendix II by April 1st of each year and will become effective May 1st of each year.

F. Any fee charged a user by the Provider must be filed with FSA and must be approved by FSA. The Provider will make available at no charge a schedule of its fees to potential users. Fees assessed to users of the CFS must be levied in a non-discriminatory manner. The Provider may deny a user access to the CFS if the user has not made payment to the Provider for fees which are more than 60 days overdue.

G. The Provider will maintain a financial net worth of at least \$10 million and will maintain financial records for review by FSA for the purposes of verifying net worth of the Provider.

H. The Provider will furnish insurance coverage payable to users of the CFS as provided in 7 CFR Part 735. Deductible provisions for each policy may not exceed \$10,000. Each policy must provide that coverage under the policy remains in effect until 30 days after written notification is made by FSA to the insurer that the Provider is terminating the policy.

I. The Provider will be strictly liable for costs incurred by FSA as a result of action taken by FSA in the event of a failure of the CFS or in the event of lost, damaged, or improperly destroyed electronic documents.

J. The Provider will maintain a log of all activity undertaken in the CFS that is capable of producing an audit trail of transactions. The log and accompanying

set of records must be sufficient to allow for a reconstruction of the files, activities, and events pertaining to each electronic document that is: issued; canceled; converted to paper; converted from paper; transferred; or changed in anyway. The log and records maintained for this reconstruction shall be kept in secure storage for a period of 6 years after the electronic document was issued. The log must contain: a "before" and "after" field; the date of change; the time of the change; the identity of the user making the change; and details of attempts to make unauthorized changes or access to electronic document data. Daily, the Provider will create two complete sets of disaster recovery records. These records shall be kept in a fireproof chamber and retained until a new set of disaster recovery records are created and stored. One set of the disaster recovery records shall be kept off-site. The Provider will notify FSA immediately if any data related to an electronic document has been lost due to a CFS malfunction and will furnish a written explanation of the events which occurred and any other documentation as requested by FSA.

K. The Provider shall ensure on-site security of the computer hardware, software, and data. Security shall be designed to prevent the destruction of facilities and data and the unauthorized distribution of electronic document information. Unless authorized by FSA, the data may only be given to a party who has the right to access it. The Provider will maintain a comprehensive disaster recovery procedure approved by FSA of all computerized and non-computerized functions and data. At a location that is not related to the CFS, the Provider will perform a comprehensive test of the disaster recovery plan twice a year and report the results of those tests to FSA. After reviewing the results of such a test, FSA may require alternative or additional security requirements if FSA determines that the security procedures of the Provider are insufficient to protect users of the system.

L. The Provider will furnish reports as requested by FSA to ensure compliance with this Agreement and the USWA.

M. Each Provider shall maintain complete, accurate, and current financial records. The Provider must submit to FSA an annual audit level financial statement. This audit shall encompass the Provider's fiscal year and shall be submitted to FSA no later than

four calendar months following the end of the Provider's fiscal year.

N. The Provider must submit to FSA an electronic data processing audit that encompasses the Provider's fiscal year and must be submitted to the FSA no later than four calendar months following the end of the Provider's fiscal year. The audit must evidence current computer operations, security, disaster recovery capabilities of the system, and other related systems.

II. System Requirements

A. Before the Provider allows a user access to its CFS, FSA must have approved a written submission received from the Provider that sets forth in detail the manner in which the CFS will operate. The CFS must be operated in a manner that allows inter-action with FSA data bases and the CFS of another entity approved by FSA as a provider under 7 CFR Part 735.

B. Upon request by FSA, all transmissions of data shall be secured and transmitted by using hardware and software approved by FSA.

III. Suspension or Termination

A. The Provider or FSA may terminate this Agreement by providing the other party written notification 60 days prior to the effective date of the termination. During this 60 day period, prior to allowing a user to use the CFS, the Provider will notify the user of the date this Agreement will terminate.

B. FSA may immediately suspend or terminate this Agreement for cause at any time if FSA determines the Provider has failed to comply with any provision of the USWA, the regulations at 7 CFR Part 735 or this Agreement. If this Agreement is suspended, FSA will provide the Provider a written statement of the basis of the suspension. Upon completion of the action necessary to conform to the provisions of the USWA, the regulations at 7 CFR Part 735 or this Agreement, the Provider may request reinstatement of the Agreement. As a condition of reinstatement, FSA may conduct an on-site examination and may assess a reinstatement fee. The reinstatement fee shall not exceed the annual fee provided for in Appendix II and may be waived if it is determined that the Provider was not in material violation of such provisions.

C. Once this Agreement is terminated, all related electronic files and paper records shall be immediately surrendered to FSA.

D. If the Agreement is to be terminated by the Provider, FSA will

perform a final audit of the CFS or advise the Provider in writing that such an audit is waived.

IV. Amendment to this Agreement

FSA may amend this Agreement for any reason. If the Agreement is to be amended, the Provider may refuse to accept such amendment and terminate this Agreement in accordance with section III.

V. Contact Persons

A. The Provider shall designate a contact person or alternate person as the person to be contacted by FSA regarding performance of this Agreement. Notice required by this Agreement delivered to the address of the contact person or the person's alternate shall be notice to the Provider.

B. Unless specified in writing by FSA, the Provider shall direct all inquiries regarding performance of this Agreement to: Chief, Licensing Branch, Warehouse Licensing and Examination Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, MO 64141-6205; Phone: 816-926-6474; Fax: 816-926-1774.

Provider: _____
Signature: _____
Title: _____
Date: _____
On behalf of FSA: _____
Date: _____

Appendix I

Agricultural Products covered under this agreement include but are not limited to:

Beans, Berry's, Coffee, Cotton, Dairy Products, Fish/Shellfish, Flowers, Fruits, Grain, Grass, Greens, Gourds, Herbs, Hides/Skins, Horticulture, Livestock, Meat, Melons, Nuts, Oilseeds, Poultry, Sweeteners, Vegetables, Wool, Wood Products.

Addendum No. 1: Fees

Schedule of fees charged Providers of Other Electronic Documents for services rendered.

United States Warehouse Act—Provider Schedule of Fees

The fees shown below shall remain effective from:

May 1, ____ through April 30, ____.

Application Fee: \$9,000.00.

Annual Renewal Fee: \$9,000.00.

[FR Doc. 01-21852 Filed 8-31-01; 8:45 am]

BILLING CODE 3410-05-P