

## SUBCHAPTER B—FAIR TRADE PRACTICES

### PART 869—REGULATIONS FOR THE UNITED STATES WAREHOUSE ACT

#### Subpart A—General Provisions

- Sec.
- 869.1 Applicability.
- 869.2 Administration.
- 869.3 Definitions.
- 869.4 Fees.
- 869.5 Penalties.
- 869.6 Suspension, revocation and liquidation.
- 869.7 Return of suspended or revoked certificates of licensing or certificates of authorization.
- 869.8 Appeals.
- 869.9 Dispute resolution and arbitration of private parties.
- 869.10 Posting of certificates of licensing, certificates of authorization or other USWA documents.
- 869.11 Lost or destroyed certificates of licensing, authorization or agreements.
- 869.12 Safe keeping of records.
- 869.13 Information of violations.
- 869.14 Bonding and other financial assurance requirements.

#### Subpart B—Warehouse Licensing

- 869.100 Application.
- 869.101 Financial records and reporting requirements.
- 869.102 Financial assurance requirements.
- 869.103 Amendments to license.
- 869.104 Insurance requirements.
- 869.105 Care of agricultural products.
- 869.106 Excess storage and transferring of agricultural products.
- 869.107 Warehouse charges and tariffs.
- 869.108 Inspections and examinations of warehouses.
- 869.109 Disaster loss to be reported.
- 869.110 Conditions for delivery of agricultural products.
- 869.111 Fair treatment.
- 869.112 Terminal and futures contract markets

#### Subpart C—Inspectors, Samplers, Classifiers, and Weighers

- 869.200 Service licenses.
- 869.201 Agricultural product certificates; format.
- 869.202 Standards of grades for other agricultural products.

#### Subpart D—Warehouse Receipts

- 869.300 Warehouse receipt requirements.
- 869.301 Notification requirements.

- 869.302 Paper warehouse receipts.
- 869.303 Electronic warehouse receipts.

#### Subpart E—Electronic Providers

- 869.400 Administration.
- 869.401 Electronic warehouse receipt and USWA electronic document providers.
- 869.402 Providers of other electronic documents.
- 869.403 Audits.
- 869.404 Schedule of charges and rates.

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#### Subpart A—General Provisions

##### § 869.1 Applicability.

(a) The regulations of this part set forth the terms and conditions under which the Secretary of Agriculture through the Agricultural Marketing Service (AMS) will administer the United States Warehouse Act (USWA or the Act) and sets forth the standards and the terms and conditions a participant must meet for eligibility to act under the USWA. The extent the provisions of this part are more restrictive, or more lenient, with respect to the same activities governed by State law, the provisions of this part shall prevail.

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

(c) Compliance with State laws relating to the warehousing, grading, weighing, storing, merchandising or other similar activities is not required with respect to activities engaged in by a warehouse operator in a warehouse subject to a license issued in accordance with this part.

##### § 869.2 Administration.

(a) AMS will administer all provisions and activities regulated under the Act under the general direction and

### § 869.3

supervision of AMS's Director, Warehouse and Commodity Management Division, or a designee.

(b) AMS may waive or modify the licensing or authorization requirements or deadlines in cases where lateness or failure to meet such requirements does not adversely affect the licensing or authorizations operated under the Act.

(c) AMS will provide affected licensees or authorized providers with changes to their licensing or provider agreements before the effective date.

(d) Licensing and authorization agreement updates will be available at:

(1) AMS's USWA website, and

(2) The following address: Director, Warehouse and Commodity Management Division, Fair Trade Practices Program, AMS, USDA, Stop 3601, 1400 Independence Avenue SW, Washington, DC 20250-3601.

[67 FR 50783, Aug. 5, 2002. Redesignated and amended at 84 FR 45645, 45646 Aug. 30, 2019]

#### § 869.3 Definitions.

Words used in this part will be applicable to the activities authorized by this part and will be used in all aspects of administering the Act.

*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 agriculturally-produced product stored or handled for the purposes of interstate or foreign commerce, including a processed product of such agricultural product, as determined by AMS.

*Central filing system (CFS)* means an electronic system operated and maintained by a provider, as a disinterested third party, authorized by AMS where information relating to warehouse receipts, USWA documents and other electronic documents is recorded and maintained in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

*Certificate* means a USWA document that bears specific assurances under the Act or warrants a person to operate or perform in a certain manner and sets forth specific responsibilities, rights, and privileges granted to the person under the Act.

### 7 CFR Ch. VIII (1-1-24 Edition)

*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 any document that is generated, sent, received, or stored by electronic, optical, or similar means, including, but not limited to, electronic data interchange, advanced communication methods, electronic mail, telegram, telex, or telecopy.

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

*Examiner* means an individual designated by AMS for the purpose of examining warehouses or for any other activities authorized under the Act.

*Financial assurance* means the surety or other financial obligation authorized by AMS that is a condition of receiving a license or authorization 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, USWA electronic document, or any electronic document.

*License* means a license issued under the Act by AMS.

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

*Non-storage agricultural product* means an agricultural product received temporarily into a warehouse for conditioning, transferring or 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 (7 U.S.C. 51) the United States Cotton Standards Act, (7 U.S.C. 71) the United States Grain Standards Act, (7 U.S.C. 1622) the Agricultural Marketing Act of 1946, or other applicable official United States Standards.

*Other electronic documents (OED)* means those electronic documents, other than an EWR or USWA electronic document, that may be issued or transferred, related to the shipment, payment or financing of agricultural products that AMS has authorized for inclusion in a provider's CFS.

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

*Provider* means a person authorized by AMS, as a disinterested third party, which maintains one or more confidential and secure electronic systems independent of any outside influence or bias in action or appearance.

*Provider agreement* means the document and any amendment or addenda to such agreement executed by the provider and AMS that sets forth the provider's responsibilities concerning the provider's operation or maintenance of a CFS.

*Receipt* means a warehouse receipt issued in accordance with the Act, including an electronic warehouse receipt.

*Schedule of charges* means the tariff or uniform rate or amount charged by an authorized person for specific services offered or rendered under the Act.

*Schedule of fees* means the fees charged and assessed by AMS for licensing, provider agreements or services furnished under the Act to help defray the costs of administering the Act, and as such are shown in a schedule of fees attached to the licensing or provider agreement.

*Service license* means the document and any amendment to such document, issued under the Act by AMS to individuals certified competent by the licensed warehouse operator to perform inspection, sampling, grading

classifying, or weighing services according to established standards and procedures, set forth in § 868.202, at the specific warehouse license.

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

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

*USWA electronic document* means a USWA electronic document initiated by AMS to be issued, transferred or transmitted that is not identified as an EWR or OED in the appropriate licensing or provider agreement or as determined by AMS.

*Warehouse* means a structure or other authorized storage facility, as determined by AMS, in which any agricultural product may be stored or handled for the purpose of interstate or foreign commerce.

*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 AMS.

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

*Warehousing activities and practices* means any legal, operational, managerial or financial duty that a warehouse operator has regarding an agricultural product.

[67 FR 50783, Aug. 5, 2002. Redesignated and amended at 84 FR 45645, 45646 Aug. 30, 2019]

#### § 869.4 Fees.

(a) AMS will assess persons covered by the Act fees to cover the costs of administering the Act.

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

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

(2) Fees that AMS assesses for specific services, examinations and audits, or as provided in the applicable licensing or provider agreement.

(c) The schedule of fees showing the current fees or any annual fee changes will be provided as an addendum to the

## § 869.5

applicable licensing or provider agreement or/and:

(1) Will be available at AMS's website, or

(2) May be requested at the following address: Director, Warehouse and Commodity Management Division, Fair Trade Practices Program, AMS, USDA, Stop 3601, 1400 Independence Avenue SW, Washington, DC 20250-3601.

(d) At the sole discretion of AMS, these fees may be waived.

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### § 869.5 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, AMS may assess, after an opportunity for a hearing as provided in § 869.8, a civil penalty:

(a) Of not more than the amount specified in § 3.91(b)(10)(i) of this title 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.

[67 FR 50783, Aug. 5, 2002, as amended at 75 FR 17560, Apr. 7, 2010. Redesignated and amended at 84 FR 45645, 45646 Aug. 30, 2019]

### § 869.6 Suspension, revocation and liquidation.

(a) AMS may, after an opportunity for a hearing as provided in § 869.8, suspend, revoke or liquidate 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, revocation or liquidation under this part include, but are not limited to:

(1) Failure to perform licensed or authorized 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;

(3) Failure to submit a proper annual financial statement within the established time period as provided in the

## 7 CFR Ch. VIII (1-1-24 Edition)

applicable licensing or provider agreement.

(4) Failure to maintain control of the warehouse or provider system.

(5) The warehouse operator or provider requests closure, cancellation or liquidation, and

(6) Commission of fraud against AMS, any depositor, EWR or OED holder or user, or any other function or operation under this part.

(c) AMS retains USWA's full authority over a warehouse operator or provider for one year after such license revocation or provider agreement termination or until satisfaction of any claims filed against such warehouse operator or provider are resolved, whichever is later.

(d) Upon AMS's determination that continued operation of a warehouse by a warehouse operator or an electronic provider system by a provider is likely to result in probable loss of assets to storage depositors, or loss of data integrity to EWR or OED holders and users. AMS may immediately suspend, close, or take control and begin an orderly liquidation of such warehouse inventory or provider system data as provided in this part or in the applicable licensing or provider agreement.

(e) Any disputes involving probable loss of assets to storage depositors, or loss of data integrity to EWR or OED holders and users will be determined by AMS for the benefit of the depositors, or EWR or OED holders and users and such determinations shall be final.

[67 FR 50783, Aug. 5, 2002. Redesignated and amended at 84 FR 45645, 45646 Aug. 30, 2019]

### § 869.7 Return of suspended or revoked certificates of licensing or certificates of authorization.

(a) When a license issued to a warehouse operator or service license ends or is suspended or revoked by AMS, such certificates of licensing and applicable licensing agreement and certificates of authorization must be immediately surrendered and returned to AMS.

(b) When an agreement with a provider ends or is suspended or revoked by AMS, such certificates of authorization and applicable provider agreement must be immediately surrendered to AMS

**§ 869.8 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 AMS at the following address: Director, Warehouse and Commodity Management Division, Fair Trade Practices Program, AMS, USDA, Stop 3601, 1400 Independence Avenue SW, Washington, DC 20250-3601.

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

(c) 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) AMS will notify the person in writing of the nature of the suspension, revocation or liquidation action;

(2) The person must notify AMS of any appeal of its action within twenty-eight calendar 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) AMS 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 AMS will allow that person:

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

(ii) Twenty-eight calendar days from the receipt of the acknowledgment to file any statements and documents in support of their appeal, unless provided with notice by AMS of a different deadline, and

(iii) An additional fourteen calendar days to respond to any new issues raised by AMS in response to the person's initial submission, unless provided with notice by AMS of a different deadline;

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

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

(ii) Determine the location of the hearing, when the person asks to appear in person,

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

(iv) Afford the person twenty-eight calendar days from the receipt of the notification of the scheduling of the hearing to submit any statements and documents in support of the appeal, unless provided with notice by AMS of a different deadline, and

(v) Allow the person an additional fourteen calendar days from the date of the hearing to submit any additional material, unless provided with notice by AMS of a different deadline;

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

(8) A person may not initiate an action in any court of competent jurisdiction concerning a determination made under the Act prior to the exhaustion of the appeal process set forth in this section.

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**§ 869.9 Dispute resolution and arbitration of private parties.**

(a) A person may initiate legal action in any court of competent jurisdiction concerning a claim for noncompliance or an unresolved dispute with respect to activities authorized under the Act.

(b) Any claim for noncompliance or an 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 through mutually agreed-upon arbitration procedures or as may be prescribed in the applicable licensing or provider agreement. No arbitration determination or award will affect AMS's authority under the Act.

(c) In no case will USDA provide assistance or representation to parties involved in an arbitration proceeding arising with respect to activities authorized under the Act.

**§ 869.10 Posting of certificates of licensing, certificates of authorization or other USWA documents.**

(a) The warehouse operator must post, in a conspicuous place in the principal place where warehouse receipts are issued, any applicable certificate furnished by AMS that the warehouse operator is an authorized licensee under the Act.

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

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

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

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

**§ 869.12 Safe keeping of records.**

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

**§ 869.13 Information of violations.**

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

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

(a) As a condition of receiving a license or authorization under the Act, the person applying for the license or

authorization must execute and file with AMS a bond or provide such other financial assurance as AMS 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 AMS.

(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 AMS determines that a previously accepted bond or other financial assurance is insufficient, AMS may immediately suspend or revoke the license or authorization covered by the bond or other financial assurance if the person that filed the bond or other financial assurance does not provide such additional bond or other financial assurance as AMS determines appropriate.

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

**Subpart B—Warehouse Licensing**

**§ 869.100 Application.**

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

- (1) For a partnership, an executed partnership agreement; and
- (2) For a corporation:

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

- (ii) Bylaws; and
- (iii) Permits to do business; and
- (3) For a limited partnership, an executed limited partnership agreement; and
- (4) For a limited liability company:
  - (i) Articles of organization or similar documents; and
  - (ii) Operating agreement or similar agreement.

(b) The warehouse facilities of an operator licensed under the Act must, as determined by AMS, be:

(1) Physically and operationally suitable for proper storage of the applicable agricultural product or agricultural products specified in the license;

(2) Operated according to generally accepted warehousing activities and practices in the industry for the applicable agricultural product or agricultural products stored in the facility; and

(3) Subject to the warehouse operator's control of the facility including all contiguous storage space with respect to such facilities.

(c) As specified in individual licensing agreements, a warehouse operator must:

(1) Meet the basic financial requirements determined by AMS; and

(2) Meet the net worth requirements determined by AMS;

(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) AMS 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 AMS in accordance with the licensing agreements applicable to the specific agricultural product, based upon the warehouses' total capacity for storing such product, that would require:

(1) The largest bond or financial assurance;

(2) The greatest amount of net worth; and

(3) The greatest amount of fees.

#### § 869.101 Financial records and reporting requirements.

(a) Warehouse operators must maintain complete, accurate, and current financial records that must be available to AMS for review or audit at AMS'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 AMS.

#### § 869.102 Financial assurance requirements.

(a) Warehouse operators must file with AMS financial assurances approved by AMS 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 AMS 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 AMS 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 AMS, established and maintained by a State, backed by the full faith and credit of the applicable State, which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouse operator under the terms of the Act. If a warehouse operator files a bond or financial assurance in the form of a certification of participation in an indemnity or insurance fund, the certification may only be used to satisfy any deficiencies in assets above the minimum net worth requirement as prescribed in the applicable licensing agreement. A certificate of participation and coverage in this fund must be furnished to AMS annually; or

(5) Other alternative instruments and forms of financial assurance approved by AMS as may be prescribed in the applicable licensing agreement.

**§ 869.103**

(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.

**§ 869.103 Amendments to license.**

AMS will issue an amended license upon:

(a) Receipt of forms prescribed and furnished by AMS 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 AMS.

**§ 869.104 Insurance requirements.**

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

**§ 869.105 Care of agricultural products.**

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

**§ 869.106 Excess storage and transferring of agricultural products.**

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

(b) A warehouse operator who desires to transfer stored agricultural products to another warehouse may do so either by physical movement, by other methods as may be provided in the applica-

**7 CFR Ch. VIII (1-1-24 Edition)**

ble licensing agreement, or as authorized by AMS.

**§ 869.107 Warehouse charges and tariffs.**

(a) A warehouse operator must 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 and rates as prescribed in the applicable licensing agreement.

**§ 869.108 Inspections and examinations of warehouses.**

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

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

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

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

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

**§ 869.109 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 AMS.

**§ 869.110 Conditions for delivery of agricultural products.**

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

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

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

(b) Prior to delivery of the agricultural product, payment of the accrued

charges associated with the storage or handling of the agricultural product, including satisfaction of the warehouse operator's lien, must be made if requested by the warehouse operator.

(c) When the holder of a warehouse receipt requests delivery of an agricultural product covered by the warehouse receipt, the holder must surrender the warehouse receipt to the warehouse operator before obtaining the agricultural product.

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

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

**§ 869.111 Fair treatment.**

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

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

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

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

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

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

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

(b) AMS may authorize a registrar of warehouse receipts issued for an agricultural product in a warehouse licensed under the Act that operates in any terminal market or in any futures contract market the official designated by officials of the State in which such market is located if such individual is not:

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

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

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

**Subpart C—Inspectors, Samplers, Classifiers, and Weighers**

**§ 869.200 Service licenses.**

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

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

(2) Sampling of such an agricultural product;

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

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

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

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

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

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

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

**§ 869.201**

**7 CFR Ch. VIII (1–1–24 Edition)**

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

**§ 869.201 Agricultural product certificates; format.**

Each inspection, grade, class, weight or combination certificate issued under the Act by a licensee to perform such services must be:

- (a) In a format prescribed by AMS;
- (b) Issued and maintained in a consecutive order; and
- (c) As prescribed in the applicable licensing or provider agreement and authorized by AMS.

**§ 869.202 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 AMS. 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 AMS.

**Subpart D—Warehouse Receipts**

**§ 869.300 Warehouse receipt requirements.**

- (a) Warehouse receipts may be:
  - (1) Negotiable or non-negotiable;
  - (2) For a single unit, multiple units, identity preserved or commingled lot; and

(3) In a paper or electronic format that, besides complying with the requirements of the Act, must be in a format as prescribed in the applicable licensing or provider agreement and authorized by AMS.

(b) The warehouse operator must:

(1) At the request of a depositor of an agricultural product stored or handled in a warehouse licensed under the Act, issue a warehouse receipt to the depositor;

(2) 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) 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) 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) Not issue an additional warehouse receipt under the Act for a specific identity-preserved or commingled agricultural product lot (or any portion thereof) 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) When issuing a warehouse receipt and purposefully omitting any information, notate the blank to show such intent;

(7) Not deliver any portion of an agricultural product for which they have issued a negotiable warehouse receipt until the warehouse receipt has been surrendered to them and canceled as prescribed in the applicable licensing agreement;

(8) Not deliver more than 90% of the receipted quantity of an agricultural product for which they have issued a non-negotiable warehouse receipt until such warehouse receipt has been surrendered or the depositor or the depositor's agent has provided a written order for the agricultural product and

the warehouse receipt surrendered upon final delivery; and

(9) 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, grade 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.

**§ 869.301 Notification requirements.**

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

**§ 869.302 Paper warehouse receipts.**

Paper warehouse receipts must be issued as follows:

- (a) On distinctive paper specified by AMS;
- (b) Printed by a printer authorized by AMS; and
- (c) Issued, identified and maintained in a consecutive order.

**§ 869.303 Electronic warehouse receipts.**

(a) Warehouse operators issuing EWR under the Act may issue EWR's for the agricultural product stored in their warehouse. Warehouse operators issuing EWR's under the Act must:

- (1) Only issue EWR's through one AMS-authorized provider annually;
- (2) Inform AMS of the identity of their provider, when they are a first time user of EWR's, 60 calendar days in advance of issuing an EWR through that provider. AMS may waive or modify this 60-day requirement as set forth in § 869.2(b);
- (3) Before issuing an EWR, request and receive from AMS a range of consecutive warehouse receipt numbers that the warehouse will use consecutively for issuing their EWR's;

(4) When using an authorized provider, issue and cancel all warehouse receipts as EWR's;

(5) Cancel an EWR only when they are the holder of the warehouse receipt;

(6) Be the holder of an EWR to correct information contained within any required data field;

(7) Receive written authorization from AMS at least 30 calendar days before changing providers. Upon authorization, they may request their current provider to transfer their EWR data from its Central Filing System (CFS) to the CFS of the authorized provider whom they select; and

(8) Notify all holders of EWR's by inclusion in the CFS at least 30 calendar days before changing providers, unless otherwise required or allowed by AMS.

(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 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 confidential and included as information for every EWR.

(4) Only one person may be designated as the holder of an EWR at any one time.

(5) A warehouse operator may not issue an EWR on a specific identity-preserved or commingled lot of agricultural product or any portion thereof while another valid warehouse receipt representing the same specific identity-preserved or commingled lot of agricultural product remains not canceled. 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 or the provider itself 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 warehouse operator and provider.

(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.

[67 FR 50783, Aug. 5, 2002. Redesignated and amended at 84 FR 45645, 45646 Aug. 30, 2019]

**Subpart E—Electronic Providers**

**§ 869.400 Administration.**

This subpart sets forth the regulations under which AMS may authorize 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.

**§ 869.401 Electronic warehouse receipt and USWA electronic document providers.**

(a) To establish a USWA-authorized system to issue and transfer EWR's and USWA electronic documents, each applicant must submit to AMS information and documents determined by AMS to be sufficient to determine that the applicant can comply with the provisions of the Act. Each provider operating pursuant to this section must meet the following requirements:

- (1) Have and maintain a net worth as specified in the applicable provider agreement;
- (2) Maintain two insurance policies; one for "errors and omissions" and another for "fraud and dishonesty." Each policy's minimum coverage and maximum deductible amounts and applicability of other forms of financial assurances as set forth in § 869.14 will be prescribed in the applicable provider agreement. Each policy must contain a clause requiring written notification to

AMS 30 days prior to cancellation or as prescribed by AMS;

(3) Submit 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;

(4) For any entity that is not an individual, a document that establishes proof of the existence, such as:

- (i) For a partnership, an executed partnership agreement; and
- (ii) For a corporation:
  - (A) Articles of incorporation certified by the Secretary of State of the applicable State of incorporation;
  - (B) Bylaws; and
  - (C) Permits to do business; and

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

(iv) For a limited liability company:
 

- (A) Articles of organization or similar documents; and
- (B) Operating agreement or similar agreement.

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

(6) Pay user fees annually to AMS, as set and announced annually by AMS prior to April 1 of each calendar year; and

(7) Operate a CFS as a neutral third party in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

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

- (1) Scope of authority;
- (2) Minimum document and warehouse receipt requirements;
- (3) Liability;
- (4) Transfer of records protocol;
- (5) Records;
- (6) Conflict of interest requirements;
- (7) USDA common electronic information requirements;
- (8) Financial requirements
- (9) Terms of insurance policies or assurances;
- (10) Provider's integrity statement;
- (11) Security audits; and
- (12) Submission, authorization, approval, use and retention of documents.

(c) AMS 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 §§ 869.6 and 869.8.

(2) Suspended or terminated providers may not execute any function pertaining to USDA, USWA documents, or USWA or State EWR's during the pendency of any appeal or subsequent to this appeal if the appeal is denied, except as authorized by AMS.

(3) The provider or AMS 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.

[67 FR 50783, Aug. 5, 2002. Redesignated and amended at 84 FR 45645, 45646 Aug. 30, 2019]

**§ 869.402 Providers of other electronic documents.**

(a) To establish a USWA-authorized system to issue and transfer OED, each applicant must submit to AMS information and documents determined by AMS to be sufficient to determine that the applicant can comply with the provisions of the Act. Each provider operating pursuant to this section must meet the following requirements:

(1) Have and maintain a net worth as specified in the applicable provider agreement;

(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Each policy's minimum coverage and maximum deductible amounts and applicability of other forms of financial assurances as set forth in § 869.14 will be prescribed in the applicable provider agreement. Each policy must contain a clause requiring written notification to AMS 30 days prior to cancellation or as prescribed by AMS;

(3) Submit 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;

(4) For any entity that is not an individual, a document that establishes proof of the existence, such as:

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

(ii) For a corporation:

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

(B) Bylaws; and

(C) Permits to do business; and

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

(iv) For a limited liability company:

(A) Articles of organization or similar documents; and

(B) Operating agreement or similar agreement.

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

(6) Pay user fees annually to AMS, as set and announced annually by AMS prior to April 1 of each calendar year; and

(7) Operate a CFS as a neutral third party in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

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

(1) Scope of authority;

(2) Minimum document and warehouse receipt requirements;

(3) Liability;

(4) Transfer of records protocol;

(5) Records;

(6) Conflict of interest requirements;

(7) USDA common electronic information requirements;

(8) Financial requirements;

(9) Terms of insurance policies or assurances;

(10) Provider's integrity statement;

(11) Security audits; and

(12) Submission, authorization, approval, use and retention of documents.

(c) AMS 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 §§ 869.6 and 869.8.

(2) Suspended or terminated providers may not execute any function pertaining to USDA, USWA documents, USWA or State EWR's or OED's during

## § 869.403

the pendency of any appeal or subsequent to this appeal if the appeal is denied, except as authorized by AMS.

(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 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.

[67 FR 50783, Aug. 5, 2002. Redesignated and amended at 84 FR 45645, 45647 Aug. 30, 2019]

## § 869.403 Audits.

(a) No later than 120 calendar days following the end of the provider's fiscal year, the provider authorized under §§ 869.401 and 869.402 must submit to AMS 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 AMS to evaluate current computer operations, security, disaster recovery capabilities of the system, and compatibility with other systems authorized by AMS.

(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.

[67 FR 50783, Aug. 5, 2002. Redesignated and amended at 84 FR 45645, 45647 Aug. 30, 2019]

## § 869.404 Schedule of charges and rates.

(a) A provider authorized under §§ 869.401 or 869.402 must furnish AMS with copies of its current schedule of charges and rates for all services as they become effective.

(b) Charges and rates assessed any user by the provider must be in effect for a minimum period of one year.

## 7 CFR Ch. VIII (1–1–24 Edition)

(c) Providers must furnish AMS and all users a 60-calendar day advance notice of their intent to change any charges and rates.

[67 FR 50783, Aug. 5, 2002. Redesignated and amended at 84 FR 45645, 45647 Aug. 30, 2019]

## PART 870—ECONOMIC ADJUSTMENT ASSISTANCE FOR TEXTILE MILLS

Sec.

870.1 Applicability.

870.2 Definitions.

870.3 Upland Cotton Domestic User Agreement.

870.5 Eligible upland cotton.

870.7 Monthly Consumption Report.

870.9 Payment.

870.11 Capital expenditures.

870.13 Records and inspection.

870.15 Compliance, enforcement, and appeals.

AUTHORITY: 7 U.S.C. 9037(c).

SOURCE: 88 FR 74333, Oct. 31, 2023, unless otherwise noted.

### § 870.1 Applicability.

(a) These regulations specify the terms and conditions under which the Commodity Credit Corporation (CCC) will make payments to eligible domestic users who have entered into an Upland Cotton Domestic User Agreement with the Agricultural Marketing Service to participate in the Economic Adjustment Assistance for Textile Mills Program.

(b) The Agricultural Marketing Service will specify the forms to be used in administering the Economic Adjustment Assistance for Textile Mills program.

### § 870.2 Definitions.

For the purposes of the regulations in this part:

*Agreement effective date* means the date on which the Upland Cotton Domestic User Agreement takes effect or becomes operative and enforceable.

*Agricultural Marketing Service (AMS)* means the Agricultural Marketing Service of the United States Department of Agriculture, which administers the Economic Adjustment Assistance for Textile Mills Program.