

**UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency**

WA-402

**LICENSING AGREEMENT
FOR
GRAIN and RICE WAREHOUSE
OPERATORS**

License Number _____ Effective Date _____

LICENSING AGREEMENT FOR GRAIN and RICE WAREHOUSE OPERATORS

Section

A. Definitions..... 1

B. Qualifications..... 5

 1. Good Business Reputation 5

 2. Facilities..... 5

 3. Personnel..... 6

C. Financials..... 6

 1. Financial Requirements..... 6

 2. Financial Reporting 7

 3. Accepting Other Financial Statements..... 7

 4. Special Cases – Assets 8

D. Financial Assurance..... 8

 1. Computation..... 8

 2. Acceptable Forms 8

E. Duties of the Warehouse Operator..... 9

 1. General..... 9

 2. Warehousing 10

 3. Facilities..... 11

 4. Facility Security 12

 5. Fair Treatment..... 12

 6. Insurance..... 12

 7. Business Hours 13

 8. System of Records..... 13

 9. Reports..... 14

 10. Records 15

 11. Public Tariff and Schedule of Charges 15

 12. Grades and Grain Quality Inspections 16

 13. Scales and Weighing..... 16

 14. Prompt Delivery 16

 15. Identity-Preserved and Conjoint-Storage Grain..... 17

 16. Storage Obligations 18

 17. Containerized Grain Storage 18

 18. Delivery of Commingled Grain..... 18

 19. Loading Out Without Weighing 18

 20. Out-of-Condition and Damaged Grain..... 19

 21. Inspections and Examinations of Warehouse 19

 22. Transferring Grain 20

F. Warehouse Receipts..... 21

 1. General..... 21

 A. Issuance..... 21

 B. Persons Authorized to Sign Warehouse Receipts 22

Table of Contents (Continues)

C.	Return of Warehouse Receipts Prior to Delivery.....	22
D.	Balance Warehouse Receipts.....	23
2.	Paper Warehouse Receipts.....	23
A.	Content.....	23
B.	Copies of Paper Warehouse Receipts.....	25
C.	Printing of Negotiable and Non-Negotiable Paper Warehouse Receipts.....	25
D.	Details on the Printing of Paper Warehouse Receipts.....	25
E.	Lost or Destroyed Paper Warehouse Receipts.....	25
F.	Canceled and Voided Paper Warehouse Receipts.....	26
3.	Electronic Warehouse Receipts (EWR).....	26
A.	General.....	26
B.	Rights and Obligations.....	27
C.	EWR Data Requirements.....	27
G.	Service Licenses	29
1.	Warehouse Operator’s Responsibility.....	29
2.	Applicant’s Responsibility.....	29
3.	Duties of Licensed Sampler, Weigher, Inspector and/or Grader.....	30
4.	Service license forms or formats.....	30
H.	Inspection and Weight Certificates	30
1.	Inspection and Grade Certificates.....	30
2.	Weight Certificates.....	31
3.	Weight, Inspection and/or Grade Certificates.....	32
I.	Determining Quality	32
1.	Official Grain Standards of the United States.....	32
2.	Standards of Kind, Class and Grade for Other Grain.....	32
J.	Grain Grading Appeals	32
1.	Ability to Appeal.....	32
2.	Appeal Procedure.....	33
3.	Request for Appeal.....	33
4.	Appeal Samples.....	33
5.	Owner Not Compelled to Store Grain.....	34
K.	Temporary and Emergency Licensing	34
L.	Warehouses Regular for Delivery in Terminal and Futures Contract Markets	35
M.	Dispute Resolution and Arbitration	36
N.	Temporary Suspension	36
O.	Unjust Enrichment	37
P.	Unearned Storage	38
Q.	Fines and Penalties	38
R.	Warehouse Operator Failures and Defaults – Remedies	38
1.	DACO May Initiate Suspension, Revocation and Liquidation.....	38
2.	Suspension, Revocation and Liquidation In Accordance With 7 CFR Part 735.....	38

Table of Contents (Continues)

3. The Warehouse Operator May Request Cancellation and Liquidation	38
4. DACO May Seize, Liquidate and Recover	38
5. Order of Claims	39
6. Bankruptcy	39
S. Fees	39
Signature Page	41

Licensing Agreement for Grain and Rice Warehouse Operators

As a condition of initial licensing and continued licensing under the United States Warehouse Act (USWA), administered by the Deputy Administrator for Commodity Operations (DACO) of the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA), the Warehouse Operator agrees to the terms and conditions set forth in this Agreement and the regulations found at 7 CFR Part 735 and the statute found at 7 U.S.C. § 241 *et seq.*

No person may represent themselves as licensed under the USWA unless holding an un-suspended or un-revoked license under the USWA.

Any person engaged in business as a Warehouse Operator, but not licensed under the USWA, is barred from participation in or benefit from any USWA activity or its claimants from any of the USWA protections or coverage.

The USWA, regulations located at 7 CFR Part 735, this Agreement and its addenda prevail to the extent that the USWA, the regulations located at 7 CFR 735, this Agreement and its addenda conflict with the laws, regulations or practices of the various states, localities or municipalities.

The following are included by reference:

United States Warehouse Act (7 U.S.C. § 241 *et seq.*)

Public Law 106-472 "The Grain and Warehouse Improvement Act of 2000" (the Act).

Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. § 1621-1627), as amended.

Commodity Exchange Act (7 U.S.C. § 1-22), as amended.

Official U.S. Grain Standards Act (7 U.S.C. § 71-87).

Provider Agreement to Electronically File and Maintain Warehouse Receipts and United States Warehouse Act Documents (FSA form WA-460) and its applicable addenda and appendices.

Inspecting Grain: Practical Procedures for Grain Handlers and other training materials issued by the USDA's Grain Inspection, Packers and Stockyards Administration [Federal Grain Inspection Service] (GIPSA-FGIS).

Section A - Definitions

Bin. A bin, tank, interstice or other container in a warehouse or other space as approved by DACO in which bulk grain may be stored.

Board of Trade. A designated futures contract market authorized under the Commodity Futures Modernization Act of 2000.

Business Day. A calendar day, excluding Saturdays, Sundays, or legal holidays observed by the Chicago Board of Trade.

Central Filing System (CFS). An electronic system operated and maintained by a provider, as a disinterested third party, authorized by DACO 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. A USWA document that bears specific assurances under the USWA 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 USWA.

Collateral Warehouse Receipts. Negotiable warehouse receipts issued by Warehouse Operators to themselves that enable them to pledge unencumbered company-owned grain stored within their licensed warehouse space as loan security or collateral.

Commingled. The storage or handling of bulk grain under any circumstance other than identity-preserved or conjoint-grain storage, including **all** depositor and company-owned grain transferred or delivered to a third-party warehouse operator for storage or handling.

Company-Owned Grain. Grain for which title has passed to the Warehouse Operator.

Composite Sample. The combining and splitting of a depositor's representative grain sample drawn from multiple conveyances to determine the aggregate quality of a specific lot.

Conjoint Storage. A storage obligation for grain created by warehouse receipts issued in common to multiple depositors that identify and denote specific binning methods that results in the segregated storage and handling of such grain with like characteristics apart and separate from all other grain. The actual commingled conjoint-stored grain deposited jointly in the warehouse by multiple depositors, and no others, shall be delivered to those persons holding title to such grain.

Contracts. A legally binding agreement between the producer/depositor/owner and the Warehouse Operator that establishes certain specific, legal obligations between the parties.

Control of the Warehouse. The Warehouse Operator's ultimate responsibility for the operation and integrity of the warehouse storage facility by ownership, lease or operating agreement.

Conveyance. The individual transportation unit, truck, railroad car, unit train, barge, vessel or other such unit as determined by DACO used in receiving or shipping grain.

Crop Year. The subsequent 12-month period following a crop's harvest.

Current Assets. Assets, including cash, 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 that 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.

Depositor. Person depositing grain in a USWA warehouse for storage and who maintains title to the grain.

Direct Shipments. Grain delivered for the account of the Warehouse Operator at a location other than the Warehouse Operator's USWA-licensed warehouse facility.

Dockage. Grain and non-grain material removed from the original sample as defined by the Official U.S. Grain Standards.

Electronic Document. A 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). A warehouse receipt authorized by DACO to be electronically issued or transmitted under the USWA.

EWR Provider. A designated representative of the Secretary of Agriculture that is authorized by DACO to establish and maintain a database and a system referred to as a CFS.

Examiner. The employee designated by DACO for the purpose of examining warehouses or for any other activities authorized under the USWA.

Field Warehouse Agreement. A third-party financing and operational lease agreement whereby a USWA Warehouse Operator relinquishes partial or full control of their USWA licensed facility to a field warehouse company and its disinterested local third-party custodian who may issue non-USWA warehouse receipts, covering commingled commodities, as financing collateral for the benefit of specific client(s).

Financial Assurance. The surety bond or other financial obligation authorized by DACO that is a condition of receiving a license or authorization under the USWA.

Force Majeure. Severe weather conditions, fire, explosion, flood, earthquake, nuclear incident, nuclear reaction, nuclear radiation, radioactive contamination, insurrection, riot, strike, labor dispute, acts of terrorism, acts of civil or military authority, non-availability of transportation, or any other cause beyond the control of the Warehouse Operator or provider that renders performance impossible, as determined by DACO.

Foreign Material. Grain and non-grain material remaining in the sample after removal of dockage as defined by the Official U.S. Grain Standards.

Futures Contract Market. Any grain market designated as a futures contract market under authority of the Commodity Exchange Act, as amended.

Grain. All products commonly classed as grain, such as wheat, corn, oats, barley, rye, flaxseed, rice, sunflower seeds, soybeans, emmer, sorghum, safflower seed, triticale, millet, other oilseeds, pulses (other than dry edible beans) and such other products as are ordinarily stored in grain warehouses, subject to the disapproval of DACO.

Grain Bank. Grain belonging to others intended to be returned to the depositor or lawful owner for use.

Holder. A person who has possession, in fact or by operation of law, of a paper or electronic warehouse receipt, USWA electronic document or any electronic document.

Identity Preserved. The practice of storing and handling grain separate from all other grain, so the actual grain deposited in the warehouse, and no other, may be delivered to the person holding title to such grain.

Lawful Owner. The person who has title to the grain.

Licensed Sampler, Weigher, Inspector and/or Grader. A person licensed under the USWA to sample, weigh, inspect and/or grade grain and certifies the grade and/or weight of grain stored at a grain warehouse licensed under the USWA.

Load Out. Removing grain from the Warehouse Operator's licensed warehouse space.

Lot. The quantity and quality of single or multiple deliveries of grain received into a warehouse for which one inspection and weight certificate is issued by a licensed sampler and weigher, and/or inspector and grader, at a warehouse licensed under the USWA.

Negotiable Warehouse Receipt. A written or electronic instrument capable of being transferred by delivery or endorsement when the depositor or holder takes the instrument for value, in good faith, without notice of conflicting claims or defenses.

Net Weight. The weight of grain after foreign material, pick, dockage and excess moisture weight have been deducted.

Net Worth. The balance amount after financial liabilities are subtracted from allowable assets. 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 conduct such business and subject to service of process in the State in which the warehouse is located. DACO will determine what assets are allowable and under what conditions appraisals may be used.

Non-Negotiable Warehouse Receipt. A written or electronic document that cannot be transferred by endorsement or delivery to another holder or party.

Non-Storage Grain. Grain received temporarily into a warehouse for conditioning, transferring or assembling for immediate shipment, or specific lots of grain moving through a warehouse for current marketing or other use, against which no warehouse receipts are issued and no storage charges assessed. Examples include, but are not limited to, custom drying of grain, cleaning of seed, etc.

Open-Storage Grain. Grain obligations to others that are not warehouse receipted or company-owned.

Person. Individuals, as well as, corporations, companies, associations, firms, partnerships, societies, and joint stock companies, a State or a political subdivision of a State.

Pick. Any material other than pulses, together with undeveloped, shriveled, discolored, damaged, split and/or small pieces of pulses, which are picked by hand or eliminated by mechanical means from the lot. The pick shall be calculated as a percentage based on the total weight of the pulses including the material to be eliminated.

Quality and Quantity. The legal, operational, managerial and financial liability of the Warehouse Operator for any grain obligation(s), including company-owned grain, handled or stored by the Warehouse Operator.

Schedule of Charges. The public tariff or uniform rate or amount charged by the Warehouse Operator for specific services offered or rendered under the USWA.

Schedule of Fees. Those fees charged and assessed by FSA for licensing or services furnished under the USWA to help defray the costs of administering the USWA.

Screenings. The portion of cereal grains, oilseeds or legume seed crop refuse remaining after cleaning that contains variable proportions of damaged, cracked and small whole kernels, weed seeds, forage residue, chaff, dirt, dust and/or other foreign materials.

Signature. The hand-inscribed original, facsimile, digital, electronic or any other form of authentication approved by DACO.

Split Sample. A portion of the retained representative sample derived from grain delivered for, or into, storage in accordance with authorized grain-evaluation procedures. If an appeal of the original inspection result is requested, the split sample is to be provided to the official inspection agency conducting the appeal inspection for independent evaluation.

Storage Grain. All grain received into, deposited in or delivered out of the warehouse that is not classified as non-storage.

Transferring of Grain. When, under certain circumstances, the Warehouse Operator transfers or forwards grain by physical movement or by other DACO-approved transfer to another warehouse operator for continued storage.

Unreceipted Obligations. Grain deposited in the warehouse for which no warehouse receipt is outstanding, including, but not limited to, open-storage grain; unsettled obligations; unobligated company-owned; and grain bank.

USWA Weight, Inspection and/or Grade Certificate. The source document that establishes the weight and/or grade obligation of each specific grain lot accepted for storage in, or loaded out, of the Warehouse Operator's licensed warehouse space.

Warehouse Capacity. The maximum quantity of grain that the warehouse can accommodate when stored in a manner customary to the warehouse and within the limits of the amount of financial assurance that the Warehouse Operator provides, as determined by DACO.

Warehouse Operator. A person licensed under the USWA who has operational control of a grain warehouse.

Warehouse Receipt. A paper or electronic receipt, either negotiable or non-negotiable, issued by or on behalf of the Warehouse Operator that evidences title to grain received for storage by the Warehouse Operator in USWA-licensed space.

Warehousing Activities and Practices. Any legal, operational, managerial or financial duty that the Warehouse Operator has regarding grain handled or stored at the USWA warehouse.

Section B - Qualifications

In general, Warehouse Operators under the USWA must (**each** of the following applies):

1. Be a responsible person, with a good business reputation, who are in the business of public warehousing and have knowledge of, and experience in, generally accepted warehousing and handling practices for grain, and generally are competent and willing to conduct such a warehouse in accordance with the USWA.
2. Have facilities that:
 - A. are physically and operationally suitable for the proper storage of grain and that specifically:
 - (1) are of sound construction and in good repair;
 - (2) have adequate equipment, installed and maintained in good working order, for the movement of grain into, out of and within the warehouse;
 - (3) have adequate ventilation, installed and maintained in good working order, for the proper storage and preservation of grain quality;

- (4) have adequate lighting;
 - (5) are free from materials and substances that may adversely affect the quality of stored grain;
 - (6) have a safe work environment; and
 - (7) ensure adequate security and protection of stored or handled grain from tampering or adulteration.
- B. allow for the accurate and efficient weighing, sampling, inspection and grading of the grain in store, and
 - C. are within the control, extending to the immediate surrounding property, upon which the Warehouse Operator's facility is located.
3. Have personnel or contractors who:
- A. have knowledge and experience in sampling, weighing, inspecting and/or grading of grain;
 - B. are licensed under the USWA to sample, weigh, inspect and/or grade grain;
 - C. have integrity, good judgment and proven performance; and
 - D. are sufficiently knowledgeable to assist FSA warehouse examiners with inspections and examinations.

Section C - Financials

1. Financial Requirements.

The Warehouse Operator agrees:

- A. to have and maintain (**each** of the following):
 - (1) 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 an allowable net worth of at least \$200,000. (**Any** deficiency in net worth above the \$200,000 minimum may be supplied by an increase in the amount of the financial assurance); and
 - (2) total allowable current assets equal to or exceeding total current liabilities or evidence acceptable to DACO that funds will be and will remain available to meet current obligations.
- B. to have adequate insurance for the claimed value of any asset or property claimed as an asset or value on their financial statement; and
- C. that, if operating multiple warehouses under one license, the maximum capacity of **all** licensed warehouses, as determined by DACO, will be the capacity considered in determining whether the Warehouse Operator meets the net worth requirements.

2. Financial Reporting.

The Warehouse Operator agrees:

- A. to provide annually to DACO, within 90 calendar days of the fiscal year end, or more frequently if required, current financial statements from the Warehouse Operator's records prepared according to generally accepted accounting principles.
- B. that the required financial statements will include, but not be limited to (**each** of the following):
 - (1) a balance sheet;
 - (2) a statement of income (profit and loss);
 - (3) a statement of retained earnings;
 - (4) a statement of cash flows; and
 - (5) notes to the financial statement.
- C. that authorized representatives for the Warehouse Operator will certify under penalty of perjury that the statements, as prepared, accurately reflect the financial condition of the licensed warehouse as of the date designated, and fairly represent the results of operations for the period designated.
- D. that they will have the required financial statements reviewed or audited by a certified public accountant or an independent public accountant, as approved by DACO. Reviews and audits by independent certified public accountants and independent public accountants are to 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 notes of the financial statements are to include a detailed list of company-owned inventories, including unpaid grain.
- E. that reviews and audits without a physical measurement of inventory and its resultant qualified opinion may subject the Warehouse Operator to an inventory measurement by USDA personnel and the assessment of fees to compensate USDA for the cost of conducting such measurement.
- F. that if any financial statement is restated, recalculated or republished, the Warehouse Operator shall notify DACO immediately.

3. Accepting Other Financial Statements.

The Warehouse Operator may meet the financial and reporting requirements of Section C, Paragraphs 1 and 2, subject to DACO approval, with (**any** of the following):

- A. consolidated financial statements of parent companies that separately identify the financial position of the Warehouse Operator as a subsidiary; or
- B. guaranty agreements from multiple parent companies submitted on behalf of wholly-owned subsidiaries if **all** parent companies submit financial statements which meet the requirements of Paragraphs 1 and 2 of Section C; or
- C. guaranty agreements accompanied by audit-level financial statements meeting the requirements of Paragraphs 1 and 2 of Section C of an entity or entities with substantial interest in the Warehouse Operator.

4. Special Cases - Assets.

- A. subject to such terms and conditions as DACO may prescribe and for the purposes of determining allowable net assets, appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by the Warehouse Operator to conform to the requirements may be allowed if **each** of the following conditions are met:
- (1) the assessment is prepared by independent certified appraisers and according to established appraisal criteria acceptable to DACO; and
 - (2) the assets are fully insured against casualty loss. The Warehouse Operator must provide written notice to DACO not less than 30 calendar days before the insurer(s) intends to cancel insurance coverage.
- B. all grain purchased in-store or at another warehouse location can only be shown as an asset to the limit of the verifiable equity paid, adjusted for current market value, as determined by DACO.

Section D - Financial Assurance

1. Computation

The Warehouse Operator agrees to furnish (**each** of the following):

- A. financial assurance computed at the rate of \$0.20 per bushel for the first million bushels of USWA-licensed warehouse capacity, as determined by DACO, \$0.15 per bushel for the second million bushels of grain capacity and \$0.10 per bushel in excess of two million bushels of grain capacity, up to a maximum of \$500,000 for each State in which licenses are held;
- B. additional financial assurance, if necessary, as determined by DACO, by adding to the amount of financial assurance an amount equal to any deficiency in net worth in excess of the \$200,000 minimum requirement;
- C. additional financial assurance, if DACO finds that conditions exist which warrant requiring additional financial assurance; and
- D. financial assurance, at the Warehouse Operator's option, meeting the requirements of the USWA and regulations promulgated thereunder, to cover all of the Warehouse Operator's warehouses licensed in the same State (or in multiple States in cases where a single license covers warehouse capacity in multiple states; e.g., by facility or facilities under a master code).

2. Acceptable Forms

The Warehouse Operator may offer as financial assurance **any** of the following:

- A. a Warehouse Operator's surety bond, or
- B. a deposit with DACO of U.S. bonds, U.S. 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, subject to **each** of the following restrictions:
 - (1) the obligation deposited will **NOT** be considered a part of the Warehouse Operator's assets;

- (2) any deficiency in allowable net worth exceeding the \$200,000 minimum may be offset by the Warehouse Operator furnishing an acceptable financial assurance for the difference. The deposit may be replaced or continued in the required amount from year-to-year;
 - (3) the deposit will **not** be released until one year after cancellation or revocation of the license that it supports, or until after satisfaction of any claim against the deposit, whichever is later or approved by DACO; or
- C. a letter of credit issued to DACO, on a form approved by DACO, to which **each** of the following apply:
- (1) issued for a period of one year, provided that:
 - (a) the issuer of the letter of credit provides 120-day notification in the event the letter of credit will not be renewed; and
 - (b) USDA shall provide written notice that it will draw upon the letter of credit in full 10 days prior to its cancellation date if replacement financial assurance is not provided. These funds will be held until such time as all obligations are settled or replacement is provided.
 - (2) is irrevocable, issued by a commercial bank, payable to DACO, FSA by sight draft and insured by the Federal Deposit Insurance Corporation or by an institution in good standing regulated by the Farm Credit Administration;
 - (3) its supporting funds on deposit are **NOT** considered an asset of the company; and
- D. other forms of financial assurance as may be deemed acceptable by DACO.

Section E - Duties of the Warehouse Operator

1. In general:

The Warehouse Operator agrees, unless prevented from doing so by force majeure, to (**each** of the following):

- A. **exercise** at all times, such care in regard to grain in custody as a reasonably careful owner would exercise under the same circumstances and conditions;
- B. **not differentiate** among depositors or lawful owners regarding use of and access to services, except that available storage space may be allocated;
- C. **provide** all necessary assistance in the execution of inspections and examinations by FSA warehouse examiners;
- D. **maintain**, at all times, legal and operational control of all licensed storage space;
- E. **apply** for licensing all warehouse space or facilities controlled by the Warehouse Operator at a specific location, unless that space or those facilities are physically separated and specifically exempted from the license by DACO;
- F. **apply** for an amendment to their license when adding or deleting bins, locations or other space that alters the licensed storage capacity;

- G. **post** for public access at all locations, copies of certificates of licensing, current tariff and any special rules;
- H. **report immediately** the occurrence of a fire, disaster or loss, and the extent of damage, to DACO;
- I. **update** inventory and insurance records upon receiving or shipping grain and transmit the updated information to the Warehouse Operator's insurer in accordance with the insurer's reporting requirements; and
- J. **ensure** that contracts involving the application of **producer open-storage or credit-sale grain** are executed by both parties within 30 days of final application of the grain against the contract and fully reflect the terms of settlement.

2. Warehousing

The Warehouse Operator agrees, unless prevented from doing so by force majeure, to (**each** of the following):

- A. **accept** for storage only storable grain;
- B. **accept** all storage and non-storage grain and, at the request of the depositor or lawful owner, deliver out (other than in the case of specially-binned grain) all storage and non-storage grain in accordance with the weight and grade of that grain as determined by a person duly licensed to sample, weigh, inspect and/or grade that grain and to certificate the weight and grade of that grain under the USWA and the regulations, (Disputes are addressed in Section J – *Grain Grading Appeals*);
- C. **accept** and deliver out of storage grain in accordance with the factors determined as the result of an appeal of the original inspection results;
- D. **ensure** all grain accepted for storage is stored in the Warehouse Operator's licensed warehouse space;
- E. **issue** a USWA Weight, Inspection and/or Grade Certificate for each individual conveyance that delivers grain received for storage or that is loaded out of the Warehouse Operator's licensed warehouse space;
- F. **deliver** stored grain without unnecessary delay and in a commercially reasonable manner;
- G. **not deliver** infested or adulterated grain as defined under the official U.S. Grain Standards; USDA-GIPSA, Food and Drug Administration or Environmental Protection Agency regulations; or other Federal laws or standards;
- H. **not load or deliver** grain in a conveyance that places the quality or quantity of the grain at risk;
- I. **not redeliver, ship or remove** any warehouse receipted grain from licensed storage space based on written or oral orders from the current holder or other lawful person without the Warehouse Operator first being made the final holder of the EWR or having physical possession of the paper warehouse receipt or other document of release for such grain;
- J. **resolve** any claim for noncompliance with the shipping of grain or any other dispute in a U.S. district court of competent jurisdiction or through mutually agreed upon arbitration procedures. The arbitration procedures will be nondiscriminatory and provide equal access and protection relating to the shipping of grain;

- K. **maintain** sufficient inventory of grain in licensed storage space that reflects the quality and quantity represented by outstanding storage obligations (including warehouse-receipted and unreceipted grain) and, in the event the quality of stored grain becomes out of balance with quality represented by outstanding storage obligations, to effect the necessary corrective actions to regain a balanced position for quality and quantity;
- L. **issue** a warehouse receipt upon acceptance for storage of any lot of identity-preserved or conjoint-storage grain in accordance with Section F, *Warehouse Receipts*;
- M. **attach**, upon acceptance for storage of any lot of bagged grain, a durable tag or stencil in a manner that readily makes possible the identification of the lot at all times. Such tags or stencil must show:
 - (1) lot number;
 - (2) warehouse receipt number issued for such grain, if warehouse receipt is requested;
 - (3) number of bags in the lot, if applicable;
 - (4) kind and class of grain;
 - (5) quality factors, if determined;
 - (6) gross weight of the screened grain when it entered storage; and
 - (7) date the grain entered storage.

(Note: The tags on bagged grain must be visible and readily accessible enabling an accurate count.)
- O. **assure** that the physical warehouse inventory record balances exactly and equals the total outstanding warehouse receipt and storage liability obligation records (including company-owned) at the close of each business day and before the start of the next business day.
- P. **not issue** a warehouse receipt for any grain product or byproduct which would meet the definition of "**screenings**";
- Q. **exercise due care** with respect to non-storage grain while in the Warehouse Operator's custody.

3. Facilities

The Warehouse Operator agrees, unless prevented from doing so by force majeure, to (**each** of the following):

- A. **maintain** the warehouse(s) in sound physical condition consistent with good warehousing practices;
- B. **keep** the warehouse and the property on which it is located reasonably clean and safe at all times; (**Note:** FSA shall notify the Occupational Safety and Health Administration if examiners encounter grain dust accumulations or other safety-related issues that may violate OSHA safety standards.)
- C. **securely affix** clearly discernible numbers to identify bulk grain bins and compartments licensed under the USWA for storing bagged grain. The series of designated numbers must be pre-approved by DACO. 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 that clearly shows the space covered by each number.

4. Facility Security

The Warehouse Operator agrees to (**each** of the following):

- A. **conduct** a facility vulnerability assessment and establish written security procedures that address grain handled and stored under this Agreement with regard to (**each** of the following):
- (1) general security of the USWA-licensed physical structures and property on which the licensed warehouse is located;
 - (2) shipping and receiving procedures to ensure that grain is not subject to tampering;
 - (3) action to be taken in the event of a national emergency; and
 - (4) contact information for local emergency responders and law enforcement authorities.
- B. **have** a written facility security plan that includes measures which address the vulnerabilities found during the risk assessment and that protect the grain handled and stored under this License.

5. Fair Treatment

- A. The Warehouse Operator agrees to deal in a fair and reasonable manner with persons storing or seeking to store grain if (**each** of the conditions is met):
- (1) the grain is of the kind, type and quality customarily stored or handled in the geographic area;
 - (2) the grain has been tendered to the warehouse in a suitable condition for warehousing; and
 - (3) the grain is tendered in a manner consistent with the ordinary and usual course of business.
- B. The Warehouse Operator may enter into agreements with depositors or lawful owners to allocate available warehouse storage space.

6. Insurance

A. Requirements.

The Warehouse Operator agrees to (**each** of the following):

- (1) **secure**, in their own name, insurance on stored grain against loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado or inherent explosion and other special peril risks 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. Arrangements between the Warehouse Operator and insurers concerning indemnification of waivers of deductibles are acceptable as long as an insurer covers any loss fully or the Warehouse Operator indemnifies deductibles with a letter of credit, additional bonding or other financial assurance in favor of USDA. DACO may accept consolidated blanket insurance policies of parent companies that separately identify the insurance coverage of the Warehouse Operator as a subsidiary and include the full replacement value of stored grain;
- (2) **keep** a general insurance account showing the policy number, issuing company, amount binding, exclusions, limits of liability and expiration dates of all insurance policies and in each instance show the property covered by such policies. These insurance policies may be issued by one or more insurance companies;
- (3) **submit** such reports to underwriters as may be required under the terms of such policies;

- (4) **submit** copies of such reports to DACO, as required;
- (5) **include** in the rules and schedule of charges (tariff) the conditions under which stored grain will be insured against loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado or inherent explosion and other special peril risks; and
- (6) **provide DACO with written notice** not less than 30 calendar days before the insurer(s) intends to cancel property and/or stock (inventory) coverage,

7. Business Hours

The Warehouse Operator agrees to (**each** of the following):

- A. **be open** for the purpose of receiving grain for storage and delivering grain out of storage and for settlement purposes each business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m., except as provided in Section 7.C.;
- B. **post** business hours at a conspicuous, publicly accessible location at the licensed warehouse, including the grain receiving area; and
- C. **post** notice, in the event that the warehouse is not open during the hours specified in Section 7.A., the estimated period during which the warehouse is to be closed and the address and telephone number of the Warehouse Operator.

8. System of Records

The Warehouse Operator agrees to (**each** of the following):

- A. **develop and maintain** a system of records, approved by DACO, on site, unless otherwise provided for in this Agreement's Addenda. These records shall include an accurate and concise Master Daily Position Record (DPR) by each kind of grain and supporting Supplemental DPRs based on USWA Weight, Inspection and/or Grade Certificates as the initiating source document that shows the total quantity and quality of each kind; class; subclass; and grade, special grade, specialty traits or use, of grain stored and handled in USWA-licensed space showing **each** of the following categories on a daily basis:
 - (1) total grain (as shown in the record of physical inventory) received into the warehouse;
 - (2) total grain loaded out of the warehouse;
 - (3) total adjustments to grain in the warehouse;
 - (4) total grain remaining in the warehouse at the close of each business day;
 - (5) total grain obligations transferred to another warehouse;
 - (6) total grain represented by negotiable and non-negotiable warehouse receipts issued and canceled, and the remaining outstanding balance;
 - (7) total increase, decrease and outstanding un-receipted grain obligations, including grain bank and open-storage grain belonging to others;
 - (8) total unpaid (unsettled) grain owned by the Warehouse Operator for which warehouse receipts have not been issued;

- (9) total paid and unpaid (unsettled) grain owned by the Warehouse Operator for which warehouse receipts have not been issued; and
- (10) total grain obligations.

Note: Before proceeding to the next day's DPR, the Warehouse Operator is to accurately update the current day's DPR with all applicable changes that occurred that date by closing and preventing subsequent changes to those data. Any corrections to that data must be made and shown as an adjustment on the date that the error is found and corrected. DPR Items (1), (2) and (3) must equal Item (4); Item (5) stands alone; Items (4) and (5) must equal Item (10); Items (6), (7) and (9) must equal Item (10); and Item (8) stands alone.

- B. **maintain** a record of corrections and adjustments made to the DPR. This record may be included as footnotes in the DPR or a separate record may be maintained. The footnotes shall reference the date, the document used to make the adjustment, the nature of the adjustment and the reason for the adjustment. (Note: Upward adjustments to the DPR are not permitted, except when verified by emptying the warehouse or a complete verifiable weigh-up, or as authorized by DACO. Under normal circumstances and conditions, grain does not increase in volume while in storage. Excesses of measured inventory over obligations are to be explained and not arbitrarily adjusted.).
 - C. **maintain** a separate set of records for each depositor showing the kind, class (and the subclass white club wheat), grade or specialty and quantity of grain deposited or redelivered.
 - D. **maintain** records of direct-shipment and transferred grain. In the case of direct-shipment grain, such records shall include the inspection and/or weight certificates from the receiving warehouse(s). If direct-shipment grain is being substituted for storage grain, the storage grain must be shown on the DPR as a storage obligation. If direct-shipment grain is being substituted as sold or contracted grain, such grain must be shown in the Warehouse Operator's records as a monetary obligation. If the grain is transferred or forwarded and the Warehouse Operator is maintaining ownership, the grain shall be shown on the DPR as a storage obligation and shall comply with the requirements for transferring of grain.
 - E. **maintain** a detailed accounting system of all money received and disbursed;
 - F. **maintain** records accurately and concisely reflecting daily business activity, including weekend activity;
 - G. **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 DACO in particular cases to carry out the purposes of the USWA; and
 - H. **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.
9. Reports
- The Warehouse Operator agrees to (**each** of the following):
- A. **make** reports concerning the condition, contents, operation and business of the warehouse available upon request by DACO on forms prescribed and furnished for that purpose by FSA, and

- B. **keep** on file an exact copy of each report submitted as a part of the records of the warehouse for a period of six years after December 31 of the year in which submitted or longer, if required by DACO.

10. Records

The Warehouse Operator agrees to (**each** of the following):

- A. **back up and maintain** an off-site copy of electronic records daily;
- B. **provide**, unless an alternative is approved by DACO, at least a fireproof safe, a fireproof vault or a fire-resistant compartment in which to keep, when not in actual use, all records, books and papers pertaining to the licensed warehouse, including current warehouse receipt books, and copies of issued and canceled warehouse receipts;
- C. **retain** each canceled warehouse 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 DACO in particular cases to carry out the purposes of the USWA;
- D. **retain** a copy of each weight and grade certificate for a period of six years after December 31 of the year in which created; and
- E. **arrange** for purposes of an audit, canceled paper or electronic warehouse receipts, contracts and inspection and/or weight certificates in a sequential numerical order or as otherwise may be directed by DACO.

11. Public Tariff and Schedule of Charges

The Warehouse Operator **must** (do **each** of the following):

- A. **not impose** unreasonable or exorbitant charges for services rendered;
- B. **file** with DACO, a copy of the public tariff rules and schedule of charges to be assessed depositors before a license to operate a warehouse is granted under the USWA;
- C. **post conspicuously** at a publicly accessible location where the depositor may access it at the warehouse, including the grain weighing area, a copy of the public tariff, including current rules and schedule of charges;
- D. **file** with DACO a new public tariff rule statement or schedule of charges before making any change to such rules or schedule of charges. No increase in charges or rates shown in such schedule will apply to grain in storage at the time the changes become effective for a period of one (1) year from the date such grain was deposited; and
- E. **include** in the rules and schedule of charges the conditions under which the grain will be insured against loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado or inherent explosion and other special peril risks.

The Warehouse Operator **may** (do **any** of the following):

- F. **demand** payment of all accrued charges at the close of each crop year or other mutually agreed-upon date. If, upon demand, the owner of the grain refuses to pay such charges at the end of a season, action may be taken to enforce collection of such charges as permitted by the laws of the State in which the warehouse is located; or
- G. **demand** payment of all accrued charges associated with the storage of grain prior to delivering such grain to the depositor to satisfy the warehouse operator's lien; or
- H. **enter** into mutually agreed upon special agreements with depositors that may include service rates and rules differing from the public tariff rules and schedule of charges. Such special arrangements shall be submitted by the Warehouse Operator to DACO prior to execution, and are subject to approval by DACO.

12. Grades and Grain Quality Inspections

The Warehouse Operator agrees to (**each** of the following):

- A. **equip** the warehouse with grading and quality-evaluation equipment necessary to determine the kind, grade and quality of each class, subclass and specialty grain received, handled or accepted for storage; and
- B. **ensure** that all grading and quality-evaluation equipment is inspected and certified annually by an applicable regulatory or independent authority. Testing or quality-evaluation equipment whose performance is rejected and not certified shall **not** thereafter be used to ascertain the grade or quality of grain for the purposes of the USWA license, until such rejection is withdrawn by the applicable regulatory or independent authority.

13. Scales and Weighing

The Warehouse Operator agrees to (**each** of the following):

- A. **equip** the warehouse with scales appropriate for the kind of grain being stored, and have them arranged in a manner that all grain, whether for storage or non-storage purposes, can be weighed in and out of the warehouse;
- B. **have** scales inspected and certified annually by an applicable regulatory or independent authority. Scales whose performance is rejected and not certified shall **not** thereafter be used in ascertaining the weight of grain for the purposes of the USWA license, until such rejection is withdrawn by the applicable regulatory or independent authority; and
- C. **apply** for licensing at all facilities controlled by the warehouse operator at a specific location, among which grain may be transferred without weighing, unless those facilities are specifically exempted by DACO.

14. Prompt Delivery

In the absence of force majeure or a lawful excuse, the Warehouse Operator shall, as commercially reasonable and without unnecessary delay, deliver the grain stored or handled in the warehouse on a demand made by (**either** of the following):

- A. the holder of the warehouse receipt; or

- B. the lawful owner of the grain, if no warehouse receipt has been issued.

15. Identity-Preserved and Conjoint-Storage Grain

- A. The Warehouse Operator may elect **not** to accept and store identity-preserved or conjoint-storage grain.
- B. If electing to accept and store such grain in bagged or bulk form, the Warehouse Operator agrees to (**each** of the following):
 - (1) **clearly identify and mark** each bag or container, bin or tank containing such grain;
 - (2) **maintain** records that clearly show the depositor of such grain, the quality characteristics and internal storage location of each lot deposited and stored in the warehouse;
 - (3) **obtain**, at the time of deposit, an agreement with the depositor on the amount of shrinkage or quality deterioration to be allowed while such grain is in storage; and
 - (4) **issue** warehouse receipts showing the characteristics, special binning and any special provisions;
 - (a) warehouse receipts issued for such grain expire no later than 12 months from the date of issuance, at which time the grain is to be returned to open storage reflecting shrinkage or quality changes or a new warehouse receipt is to be issued reflecting shrinkage or quality changes; and
 - (b) shrinkage will be determined in accordance with the agreement obtained in Paragraph 15.B.(3).
- C. For identity-preserved grain:
 - (1) Except as may be required by law or the regulations in this part, the Warehouse Operator shall not remove or transfer any such grain for storage from the licensed warehouse or a part thereof to another bin without first obtaining and canceling the warehouse receipt(s), and issuing new warehouse receipt(s) for such grain following its transfer.
 - (2) The Warehouse Operator must deliver to the depositor or lawful owner the actual grain deposited and stored in the warehouse. The conditions for delivery are (**each** of the following):
 - (a) proper presentation of title for any identity-preserved grain; and
 - (b) payment of all accrued charges associated with the storage and handling of such grain if requested by the Warehouse Operator.
- D. For conjoint-storage grain:
 - (1) Except as may be required by law or the regulations in this part, the Warehouse Operator shall **not** remove or transfer any grain for storage from the licensed warehouse or a part thereof to another bin without first obtaining and canceling the warehouse receipt(s), and issuing new warehouse receipt(s) for such grain following its transfer.

(2) The Warehouse Operator shall deliver to the depositor(s) or lawful owner(s), upon demand, the actual commingled grain deposited and stored jointly in the warehouse. The conditions for delivery are (**each** of the following):

(a) proper presentation of title for any conjoint-stored grain; and

(b) payment of all accrued charges associated with the storage and handling of such grain if requested by the Warehouse Operator.

E. The Warehouse Operator is not obligated to guarantee the quality and quantity of such grain, but shall guarantee the delivery of the actual grain, unless otherwise stated within the applicable public tariff or special storage agreement entered into with the depositor.

16. Storage Obligations

The Warehouse Operator, while authorized to commingle grain in store, is liable for the care and redelivery of grain stored in licensed space to each depositor or lawful owner to the same extent and under the same circumstances as if the grain was separately stored. The Warehouse Operator, as a bailee for hire, is free to store grain in any manner that enables it to be delivered in a condition that meets or exceeds the quality and quantity represented on the warehouse receipt or original USWA Weight and/or Grade Certificate.

17. Containerized Grain Storage

The Warehouse Operator agrees to keep binned grain stored in an orderly manner to permit easy access to all lots and to facilitate inspecting, sampling, counting and identification of each lot.

18. Delivery of Commingled Grain

The Warehouse Operator must deliver to the depositor or lawful owner, upon demand, grain of the kind, quantity, numerical grade and class as obligated or better, as determined by a licensed weigher and inspector/grader. The conditions for delivery are (**each** of the following):

A. **proper presentation** of documents of title;

B. **payment** of all accrued charges associated with the storage of grain if requested by the Warehouse Operator; and

C. **basis** of grades and weights determined by a licensed inspector/grader and weigher.

19. Loading Out Without Weighing

The Warehouse Operator may load out without weighing (**either** of the following):

A. identity-preserved or conjoint-storage grain if the owner has agreed to assume all shortages, provided that the outstanding warehouse receipts covering the grain have been surrendered to the Warehouse Operator for cancellation; or

B. commingled bulk grain, at the request of the owner. However, any interim USWA weight certificate issued by the shipping Warehouse Operator must clearly show the weight as an estimate and must be posted to the DPR as activity occurs. Destination weights are to be obtained and adjustments posted to the DPR as soon as available.

20. Out-of-Condition and Damaged Grain

- A. The Warehouse Operator may refuse to accept grain offered for storage if its condition is such that it will adversely affect the condition of grain customarily stored in the warehouse.
- B. When grain is discovered to be going out of condition and the Warehouse Operator is unable to condition the grain or stop the deterioration, the Warehouse Operator agrees to (**each** of the following):
 - (1) **immediately notify** the owner(s) and DACO.
 - (a) Such notification shall include:
 - (i) the warehouse location in which the grain is stored;
 - (ii) the quantity, kind, class and grade of the grain at the time notification occurred;
 - (iii) the actual condition of the grain, as nearly as can be ascertained;
 - (iv) the reason for the current condition, if known;
 - (v) the warehouse receipt information, if a warehouse receipt has been issued; and
 - (vi) a statement that the grain will be delivered upon the presentation of the warehouse receipt and payment of charges.
 - (2) **Follow** instructions received from DACO;
 - (3) **Maintain** as a warehouse record copies of all notices and correspondence; and
 - (4) **Submit to and reimburse** the cost of a verification examination, if one is necessary.

21. Inspections and Examinations of Warehouse

The Warehouse Operator agrees to (**each** of the following):

- A. permit USDA-authorized personnel to enter and inspect or examine any licensed warehouse on any business day during normal or posted business hours;
- B. provide access to the examiner to the extent reasonable to determine the quantity and quality of grain stored in the licensed warehouse;
- C. provide the USDA-authorized warehouse examiner with notice of any safety or other company policies pertaining to the physical facility and grounds subject to examination or inspection;
- D. provide access to such books, records, papers, accounts and their contents pursuant to the examination of a licensed warehouse;
- E. furnish USDA-authorized representative(s) with the assistance necessary to conduct an inspection or examination;
- F. provide safe and functioning equipment (i.e., ladders, catwalks, lifts or elevators) required to conduct a warehouse examination. Further, the Warehouse Operator shall provide advance notice to DACO of any special requirements or equipment required to perform an examination at the licensed warehouse. An examination will be stopped – and an exception report prepared for removal of the facility from licensed space – if unsafe equipment prevents a licensed warehouse examination from being conducted or completed; and

- G. provide notice, at the time of the examination, of any fumigation of bins in progress or where the fumigant is currently active, and to provide conspicuous written notification affixed to the fumigated storage structure of the date and type of fumigant used.

22. Transferring Grain

- A. The Warehouse Operator may, under certain circumstances, transfer or forward grain by physical movement or other DACO-approved method to a receiving warehouse. For the purposes of this paragraph, a receiving warehouse is (**any** of the following):
- (1) an active USWA-licensed grain warehouse;
 - (2) a public grain warehouse currently licensed by a State licensing authority that has financial, bonding and examination requirements for the benefit of all depositors; or
 - (3) a public grain warehouse holding a Commodity Credit Corporation (CCC)-approved storage agreement in a State without a regulatory licensing program for public grain warehouses.
- B. The transferring Warehouse Operator agrees to (do **each** of the following):
- (1) Provide written notification immediately to DACO – by FAX or e-mail – upon becoming aware that the grain obligations at a specific storing warehouse exceed the licensed or insured capacity of that warehouse, as well as the name and location of the receiving warehouse; and
 - (2) if physically moving or transferring grain to a receiving warehouse (do **each** of the following):
 - (a) **ensure** that the public tariff's rules and schedule of charges includes language that allows the Warehouse Operator to transfer grain according to conditions prescribed by DACO;
 - (b) **obtain** written permission from DACO, by FAX or e-mail, in advance of movement or approved transfer of warehouse-receipted grain;
 - (c) **obtain** permission in advance from CCC if grain to be transferred is owned by CCC;
 - (d) **obtain** from the receiving warehouse a non-negotiable warehouse receipt or certified deposit affidavit or notarized deposit letter stating, "Held in Trust for Depositors of "name of transferring warehouse," as legal depositor, for all transferred grain;
 - (e) **not accept** transferred grain from another warehouse while grain of the same kind and class is in a transferred position;
 - (f) **retain or increase** financial assurance encompassing the warehouse capacity and the transferred grain, as specified in Section C. 1. A. of this Agreement;
 - (g) **post** transferred grain positions to the DPR, as specified in Section E, Paragraph 8 of this Agreement;
 - (h) **retain** a storage obligation to the depositor or lawful owner for grain originally deposited in the warehouse and, unless otherwise specified in Item (i) below, be prepared to redeliver the grain deposited upon demand of the depositor or lawful owner at the place where the grain was first deposited for storage; and

- (i) **provide** an opportunity for the depositor or lawful owner to make final settlement and take delivery of the storage obligation at the place where the grain was first deposited for storage unless, with the consent of both the *transferring (shipping)* Warehouse Operator and the *receiving* Warehouse Operator, the depositor or lawful owner elects to take delivery at the warehouse to which the grain was transferred.
- C. Non-Negotiable warehouse receipts received under 22 B.(2)(d) above:
- (1) **must** have conspicuously printed or stamped across the face of the paper receipt the words “Not Negotiable” or be issued as a “Non-Negotiable” electronic warehouse receipt;
 - (2) **are not** valid for collateral purposes;
 - (3) **are retained** by the *transferring (shipping)* Warehouse Operator to be presented for use by DACO in lieu of an on-site inventory of the *receiving* warehouse; and
 - (4) **will** be subject to the general requirements for warehouse receipts in their recording and retention.
- D. For grain transferred to a warehouse in a State that does not allow or recognize the issuance of non-negotiable warehouse receipts, obtain from the *receiving* Warehouse Operator a certified deposit affidavit or notarized deposit letter specifying the kind, class, numerical grade, specialty and quantity of the grain received.
- E. NOTE: The *transferring (shipping)* Warehouse Operator shall execute a legal binding operational contract with the *receiving* warehouse operator that specifies that the *receiving* warehouse operator will (**each** of the following):
- (1) **not exceed** the licensed or approved capacity of their warehouse,
 - (2) **not further move, transfer or** in any way offset the grain transferred to it to another warehouse (asset kiting or daisy-wheel transfers) and retains a storage obligation to the depositors of the *transferring (shipping)* Warehouse Operator,
 - (3) **fully insure** the transferred grain, and
 - (4) **promptly issue** a non-negotiable warehouse receipt or certified deposit affidavit or notarized deposit letter for the transferred grain stating on the document that such grain is, “Held in Trust for Depositors of the (name) *transferring* warehouse”, as the legal depositor and return the warehouse receipt or certified deposit affidavit or notarized deposit letter promptly to the *transferring (shipping)* Warehouse Operator.
- F. The grain covered by non-negotiable warehouse receipts, certified deposit affidavits and notarized deposit letters are held in trust solely for the benefit of the shipping warehouse and its depositors or lawful owners whose grain was transferred individually or collectively and for which they retain title.

Section F - Warehouse Receipts

1. General

- A. Issuance - The Warehouse Operator agrees to (**each** of the following):
- (1) **issue** warehouse receipts for any grain received or stored in a warehouse if requested by a depositor or lawful owner;

- (2) **maintain** a sufficient quantity and quality of grain as represented on the warehouse receipt;
- (3) **issue** collateral warehouse receipts listing only the Warehouse Operator as depositor and endorsed by the financial institution receiving the warehouse receipt, (**ENDORSEMENT REQUIRED**);
- (4) **retain** a copy of the weight certificate, inspection certificate, or inspection and weight certificate representing the grain prior to issuing any warehouse receipt to a depositor under the USWA. The Warehouse Operator's records must identify the certificate(s) used as the basis for issuing the warehouse receipt and be retained for a period of six 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 Board of Trade, or a U. S. Registrar must also meet this requirement;
- (5) **replace** lost or destroyed warehouse receipts in accordance with 7 CFR Part 735;
- (6) **not issue** a warehouse receipt when another warehouse receipt is outstanding that represents the same specific identity-preserved, conjoint-storage or commingled lot of grain;
- (7) **not issue** two warehouse receipts having the same warehouse receipt number; and
- (8) **have plainly and conspicuously embodied** within the written or printed terms of non-negotiable warehouse receipts that such a warehouse receipt is not negotiable.

B. Persons Authorized to Sign Warehouse Receipts

The Warehouse Operator must (**do each** of the following):

- (1) **file** with DACO the name and genuine, facsimile or electronic signature of the person(s) authorized to sign warehouse receipts on behalf of the Warehouse Operator;
- (2) **promptly notify** DACO of any changes or additions to the names of persons authorized to sign warehouse receipts on behalf of the Warehouse Operator, and file the genuine, facsimile or electronic signature(s) of such person(s);
- (3) **be bound** by the signatures of persons authorized to sign warehouse receipts, the same as if the Warehouse Operator personally signed the warehouse receipt; and
- (4) **agree and verify** that all filed signatures legally bind the Warehouse Operator.

C. Return of Warehouse Receipts Prior to Delivery

The Warehouse Operator agrees to deliver grain (under **each** of the following situations):

- (1) for which they have issued a negotiable warehouse receipt only after the warehouse receipt has been returned to the Warehouse Operator and canceled; and
- (2) for which they have issued a non-negotiable warehouse receipt only after the warehouse receipt has been returned to the Warehouse Operator and canceled or, alternatively, the Warehouse Operator has obtained from the holder or agent a written order to deliver the grain. Under this alternative method, a Warehouse Operator may deliver up to 90% (ninety percent) of the quantity represented by the warehouse receipt. The warehouse receipt must be surrendered before the final 10% (ten percent) of the quantity can be delivered.

D. Balance Warehouse Receipts

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

2. Paper Warehouse Receipts

A. Content

- (1) Every paper warehouse receipt, whether negotiable or non-negotiable, issued for grain stored in a USWA warehouse, in addition to complying with the requirements of Section 11 of the Act, must embody within its written or printed terms, (**each** of the following):
 - (a) the name of the Warehouse Operator and the designation, if any, of the warehouse facility;
 - (b) the location of the warehouse in which the grain is stored;
 - (c) the Warehouse Operator's license number;
 - (d) the CCC storage agreement code number, if applicable;
 - (e) the issuance date of the warehouse receipt;
 - (f) the consecutive number of the warehouse receipt;
 - (g) the name of the depositor;
 - (h) a statement as to whether the grain received is to be delivered to the holder, to a specified person or their order;
 - (i) prepaid warehouse charges, if applicable;
 - (j) a description of the grain received, including the quantity, kind, class, grade and the standard or description in accordance with which such classification has been made;
 - (i) The grade stated in a warehouse receipt must be the weighted average of the numeric grades as determined by the inspector and as indicated on the applicable inspection certificate(s); however, if an appeal of the grade determination has been requested and obtained, the grade stated on such warehouse receipt shall be the final appeal grade; and
 - (ii) Except in the case of identity-preserved or conjoint-storage grain, if, at the request of the depositor, the Warehouse Operator issues a warehouse receipt omitting the statement of grade, such warehouse receipt shall have clearly and conspicuously stamped or written on the face thereof, or included as part of the paper warehouse receipt, the following statement: "Not graded at the request of the depositor."
 - (k) dockage, foreign material or pick, if applicable;
 - (l) a statement that the warehouse receipt is issued subject to the USWA, the regulations, and this Agreement and its rules;

- (m) a statement of the amount of advances, if made, and of liabilities incurred regarding warehouse storage, handling and other charges claimed by the Warehouse Operator; however, if the precise amount of such advances made or of such liabilities incurred is unknown to the Warehouse Operator (or to the agent who issues it) at the time the warehouse receipt is issued, it is sufficient to include a statement that advances have been made or liabilities incurred, as well as their purpose;
 - (n) if issued showing the Warehouse Operator as owner, either solely or jointly in common with others, the fact of such ownership;
 - (o) such other terms and conditions within the limitations of the USWA and this Agreement, as may be required by the Secretary of Agriculture or DACO;
 - (p) a statement of the Warehouse Operator's business organization type (i.e. private propriety, incorporated, partnership, LLC, etc.) and the name of the State whose laws govern that organization (i.e. "a Texas corporation");
 - (q) 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;
 - (r) a statement, conspicuously placed, that the grain is insured by the Warehouse Operator against loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado, inherent explosion or other special peril risks;
 - (s) net weight of the grain;
 - (t) if the grain represented by the warehouse receipt is identity-preserved or conjoint-stored product, the words "identity preserved" or "conjoint storage" and the specific bin(s) or warehouse location of such grain;
 - (u) the words "Negotiable" or "Non-Negotiable," as appropriate to the nature of the warehouse receipt, clearly and conspicuously printed or stamped thereon. Every negotiable warehouse receipt issued must, in addition to conforming to the requirements of this subparagraph, embody within its written or printed terms, a form of endorsement that may be used by the depositor or authorized agent, for showing the current ownership of the grain and applicable charges, mortgages or other encumbrances on the grain represented by the warehouse receipt;
 - (v) the signature of the Warehouse Operator, which may be made by the authorized agent; and
 - (w) other information as may be required by DACO.
- (2) If the Warehouse Operator issues a warehouse receipt under the USWA omitting any information not required to be stated, for which a blank space is provided in the form of the warehouse receipt, a line shall be drawn through such space to show that such omission has been made purposely or "ILB" entered in the blank data field to indicate it has been "intentionally left blank"; and
- (3) A warehouse receipt may contain additional information, provided it does not contradict, conceal or interfere with any required information or terms.

B. Copies of Paper Warehouse Receipts

The Warehouse Operator agrees to make at least one file copy of each warehouse receipt and, except for skeleton and microfilm copies, clearly and conspicuously print or stamp on the face of such warehouse receipt the words "Copy – Not Negotiable".

C. Printing of Negotiable and Non-Negotiable Paper Warehouse Receipts

The Warehouse Operator agrees to issue only paper warehouse receipts that are printed (**each** of the following apply):

- (1) in a form prescribed by DACO;
- (2) by a printer with which DACO has an agreement and bond for such printing; and
- (3) on distinctive paper tinted in a manner specified in DACO's agreement with the printer.

D. Details on the Printing of Paper Warehouse Receipts

The Warehouse Operator agrees that they will (**each** of the following apply):

- (1) order warehouse receipts on a form provided or method authorized by DACO;
- (2) proofread each order and warehouse receipts received from the printer for errors and omissions; and
- (3) pay the printer in a timely manner.

E. Lost or Destroyed Paper Warehouse Receipts

- (1) The Warehouse Operator may issue a new replacement warehouse receipt, subject to the same terms and conditions and bearing on its face the number and the date of the original 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 (**each** of the following):
 - (a) an affidavit showing (**each** of the following):
 - (i) that the holder is lawfully entitled to possess the original warehouse receipt;
 - (ii) that the holder has not negotiated or assigned the original warehouse receipt;
 - (iii) how the original warehouse receipt was lost or destroyed; and
 - (iv) if lost, that diligent efforts were made to find the warehouse receipt, without success.
 - (b) an assurance, in the form of a bond or personal guarantee, equal to an amount double the value of the grain represented by the lost or destroyed paper warehouse receipt. This assurance shall be in a form approved by DACO and conditioned to indemnify the Warehouse Operator against any loss sustained as a result of issuing a replacement warehouse receipt. The assurance may be (**either** of the following):

- (i) a bond issued by a surety company. Such company must be authorized to do business and be 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 DACO; or
- (ii) a personal guarantee, made by at least 2 individuals who are residents of the State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.

F. Canceled and Voided Paper Warehouse Receipts:

- (1) The Warehouse Operator agrees to make available all canceled and voided original warehouse receipts for auditing, as requested by DACO.
- (2) All canceled warehouse receipts shall be defaced with the word "CANCELED" written in large, bold lettering and shall reflect the date canceled and instrument of cancellation (i.e. check number, contract number, return to storage, etc). The date of cancellation shall not precede the date shown on the original or replacement warehouse receipt that is in the possession of the Warehouse Operator.
- (3) Voided original warehouse receipts must be defaced with the word "VOIDED" written in large, bold lettering.

3. Electronic Warehouse Receipts (EWRs)

A. General - The Warehouse Operator, when choosing the option to issue EWRs instead of paper warehouse receipts for grain stored in the warehouse, agrees to (**each** of the following):

- (1) **issue** EWRs only through a provider approved by DACO;
- (2) **inform DACO** of the identity of the Provider at least 60 calendar days before issuing EWRs through that Provider. DACO may waive or modify this 60-day requirement as set forth under 7 CFR Part 735;
- (3) **request and receive** from DACO, prior to issuing any EWRs, a range of consecutive warehouse receipt numbers, which the Warehouse Operator shall use consecutively when issuing EWRs;
- (4) **cancel** EWRs only when the Warehouse Operator is the holder of the EWR(s);
- (5) **correct** information on the EWR in accordance with the applicable Provider Agreement;
- (6) **receive** written approval from DACO at least 30 calendar days before changing Providers. Upon receiving notification of such approval, the Warehouse Operator may request that the current Provider transfer the EWR data from its CFS to the CFS of the new approved Provider selected by the Warehouse Operator. The Warehouse Operator shall instruct the new Provider to notify through its CFS all holders of outstanding EWRs of the identity of the new Provider at least 30 calendar days before changing Providers, unless otherwise authorized by DACO. The Warehouse Operator shall pay all charges, including transfer charges, due the current Provider before transferring EWRs to the new Provider. The Warehouse Operator may change Providers only once a year, unless otherwise authorized by DACO;
- (7) **not ship** grain represented by an EWR until it is canceled in the EWR Provider's CFS; and

- (8) **update** inventory and insurance records upon receiving or shipping grain, and transmit the updated information to the EWR Provider.

B. Rights and Obligations

The Warehouse Operator shall ensure that an issued EWR establishes the same rights and obligations with respect to grain as a paper warehouse receipt and that (**each** of the following applies):

- (1) 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;
- (2) only the current “holder” of the EWR may transfer the EWR to a new “holder”;
- (3) the identity of the “holder” shall be included as required information for every EWR;
- (4) only one person or entity shall be designated as an EWR “holder” at any one time;
- (5) an EWR may only be issued to replace an existing outstanding paper warehouse receipt if requested by the current “holder” of the paper warehouse receipt, and shall be issued only after the relevant paper warehouse receipt is surrendered and canceled;
- (6) an EWR “holder” has the option to authorize any other user of a Provider to act on the “holder’s” behalf with respect to activities engaged in with the Provider. Such authorization shall be in writing, and be acknowledged and retained by the Provider; and
- (7) only the current EWR “holder” may request a paper warehouse receipt in lieu of an EWR with respect to an agricultural product.

C. EWR Data Requirements

- (1) Every EWR, whether negotiable or non-negotiable, issued for grain stored in a USWA warehouse, in addition to complying with the requirements of Section 11 of the Act and Section F, subsections 1 and 2 of this Agreement, shall embody **each** of the following within its terms:
 - (a) the name of the Warehouse Operator and the designation, if any, of the warehouse facility;
 - (b) the location of the warehouse in which the grain is stored;
 - (c) the Warehouse Operator’s license type and license number (“US” – designating the EWR as being issued by the USWA licensee – is to precede the EWR receipt number);
 - (d) the CCC storage agreement code number, if applicable;
 - (e) the issuance date of the EWR;
 - (f) the consecutive number of the EWR;
 - (g) the name of the current “holder” of the EWR;
 - (h) the name of the previous “holder” from which the EWR was received (if applicable);
 - (i) cancellation date (if the EWR has been canceled);

- (j) warehouse location where the EWR was issued (city and state);
- (k) a statement whether the grain received will be delivered to the holder, to a specified person or to their order;
- (l) dockage, foreign material or pick, as appropriate;
- (m) the rate of storage charges;
- (n) prepaid storage charges, if applicable;
- (o) a description of the grain received, including the quantity, kind, class, grade and the standard or description in accordance with which such classification has been made;
 - (i) The grade stated on the EWR must be the weighted average of the numeric grades as determined by the inspector and as indicated on the applicable inspection certificate(s); however, if an appeal of the grade determination has been requested and obtained, the grade stated on such EWR shall be the final appeal grade; and
 - (ii) Except in the case of identity-preserved and conjoint-storage grain, if, at the request of the depositor, the Warehouse Operator issues an EWR omitting the statement of grade, such EWR shall state clearly and conspicuously the following statement: "Not graded on request of the depositor."
- (p) a statement that the warehouse receipt is issued subject to the USWA, the regulations and this Agreement and its terms and conditions;
- (q) a statement of the amount of advances, if made, and of liabilities incurred regarding warehouse storage, handling and other charges claimed by the Warehouse Operator; however, if the precise amount of such advances made or of such liabilities incurred is unknown to the Warehouse Operator (or to the agent who issues it) at the time the EWR is issued, it is sufficient to include a statement that advances have been made or liabilities incurred, as well as their purpose;
- (r) if issued showing the Warehouse Operator as owner, either solely or jointly in common with others, the fact of such ownership;
- (s) such other terms and conditions within the limitations of the USWA and this Agreement as may be required by DACO or the Secretary of Agriculture;
- (t) a statement of the Warehouse Operator's business organization type (i.e. private propriety, incorporated, partnership, LLC, etc.) and the name of the State whose laws govern that organization (i.e. "a Texas corporation");
- (u) 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;
- (v) a statement, conspicuously placed, that the grain is insured by the Warehouse Operator against loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado, inherent explosion or other special peril risks;
- (w) net weight of the grain;

- (x) if the grain represented by the EWR is identity-preserved or conjoint-stored product, the words “identity preserved” or “conjoint” grain storage and the specific bin(s) or warehouse location of such grain;
- (y) the terms “Non-Negotiable” or “Negotiable,” as appropriate to the nature of the warehouse receipt;
- (z) name of the person whose electronic signature is authorized for the EWR; and
- (zz) paper warehouse receipt number (if applicable).

Section G - Service Licenses

No person will in any way represent themselves as a sampler, weigher, inspector or grader licensed under the USWA unless such person holds an unsuspended and unrevoked license issued under the USWA. DACO reserves the right to suspend or revoke any service license for due cause.

1. Warehouse Operator’s Responsibility

The Warehouse Operator is responsible for **(each)** of the following):

- A. **having** at least one person licensed to perform sampling, inspection, grading and/or weighing of grain at the warehouse;
- B. **notifying** the Kansas City Commodity Office (KCCO) **(either)** of these);
 - (1) when a person discontinues to provide service at the specific warehouse they serve; or
 - (2) when a person no longer is employed by the Warehouse Operator; and
- C. **posting conspicuously**, at a publicly accessible location at the warehouse, including the grain receiving area, a copy of their certificate of license for each person performing the service(s) at that location.

2. Applicant’s Responsibility

The Applicant to obtain a service license under the USWA:

- A. must make application for a license to sample, weigh, inspect and/or grade grain to DACO on forms furnished by FSA. Each application shall **(each)** of the following apply):
 - (1) **be signed** by the applicant;
 - (2) **be certified** by a statement from the Warehouse Operator that the applicant is competent and authorized to perform the duties of a licensed sampler, weigher, inspector and/or grader;
 - (a) If the applicant is seeking an inspection license, the Warehouse Operator shall certify that such applicant can correctly sample, inspect and grade grain in accordance with the official U.S. Grain Standards or, in the absence of such standards, in accordance with standards accepted by DACO;
 - (b) If the applicant is seeking a weighers license, the Warehouse Operator shall certify that such applicant can correctly weigh grain; and

- (3) **furnish** such additional information as requested by DACO.
 - B. may be required to submit to an examination or test to demonstrate his or her ability to properly sample, weigh, inspect and/or grade grain; and
 - C. make available for inspection copies of the Warehouse Operator's standards for sampling, inspection and grading, as well as the equipment used or to be used to perform such duties.
3. Duties of the Licensed Sampler, Weigher, Inspector and/or Grader

Each sampler, weigher, inspector and/or grader licensed under the USWA whose license remains in effect must (do **each** of the following as applicable):

- A. **perform** the requested services for which licensed when given grain to sample, weigh, inspect and/or grade under conditions that permit proper sampling, weighing, inspecting and/or grading, without discrimination, as soon as practicable and upon reasonable terms;
 - B. **issue** a certificate of grade for any grain only if the inspection and grading is based upon a correct and representative sample of the grain;
 - C. **make accessible** to the depositor at the location of the licensed warehouse, a copy of the inspection certificate issued by the licensed sampler, weigher, inspector and/or grader as soon as possible after grading any grain, and not later than the close of business on the next business day following the performance of such duties, unless requested otherwise by the depositor;
 - D. **permit** any USDA-authorized person to inspect or examine, on any business day during the usual and customary hours of business, the books, papers, records and accounts relating to the performance of their duties under the USWA, and to assist any such USDA-authorized person in the inspection or examination into the performance of the duties of such sampler, weigher, inspector and/or grader under the USWA;
 - E. **file and retain** for a period of one year each paper or electronic inspection or weight certificate issued, and make such certificates accessible, upon request to interested parties at the warehouse location where the grain is stored; and
 - F. in addition to meeting the requirements in A through E of this paragraph, the licensee shall be subject to suspension or revocation under conditions described in Section R - *Warehouse Operator Failures, Defaults – Remedies*, as determined by DACO.
4. Service licenses will be issued in a form or format determined by DACO.

Section H - Inspection and Weight Certificates

Inspection and weight certificates may be in paper or electronic format issued and maintained in accordance with the EWR and USWA Documents Provider Agreement. Proof copies of formats must be approved in advance by KCCO.

- 1. Inspection and Grade Certificates
 - A. Each inspection certificate issued under the USWA shall be on a form approved by DACO and shall include the following information within its terms:
 - (1) the caption "United States Warehouse Act, Grain Inspection Certificate";

- (2) whether it is an original, a duplicate or other copy, and that it is Not Negotiable;
 - (3) the name and location of the warehouse in which the grain is stored, transferred or is to be stored;
 - (4) whether the inspection represents grain moving into or out of the warehouse;
 - (5) the date the certificate is issued;
 - (6) the consecutive number of the certificate;
 - (7) the quantity of grain represented by the certificate;
 - (8) the kind and class of grain represented by the certificate;
 - (9) the amount of foreign material, dockage or pick, if applicable;
 - (10) the grade of the grain, as determined by such duly licensed inspector and/or grader, in accordance with the official U.S. Grain 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;
 - (11) a statement that the certificate is issued by an inspector and/or grader licensed under the USWA and the regulations thereunder; and
 - (12) the signature of the licensed inspector and/or grader who inspected and graded the grain;
- B. In addition to the provisions of paragraph A, the inspection certificate may include any other matter consistent with the USWA or its regulations, if pre-approved by DACO.
- C. In lieu of an inspection certificate in the form prescribed in Subsection A (above) of this section, an official certificate issued pursuant to the Agricultural Marketing Act of 1946, as amended, on grain stored or to be stored in a warehouse licensed under the USWA will be acceptable for purposes of the USWA and its regulations.

2. Weight Certificates

- A. Each weight certificate issued under the USWA shall be on a form approved by DACO and shall include the following information within its terms:
- (1) the caption "United States Warehouse Act, Grain Weight Certificate";
 - (2) whether it is an original, a duplicate or other copy, and that it is Not Negotiable;
 - (3) the name and location of the warehouse in which the grain is stored or to be stored;
 - (4) a statement indicating whether the grain is weighed into or out of the warehouse;
 - (5) the date the certificate is issued;
 - (6) the consecutive number of the certificate;
 - (7) the weight of grain represented by the certificate;

- (8) a statement that the certificate is issued by a weigher licensed under the USWA and the regulations thereunder; and
 - (9) the signature of the licensed weigher.
- B. In addition to the provisions of Paragraph A (above) of this section, the weight certificate may include any other matter consistent with the USWA or its regulations in this part, if pre-approved by DACO;
 - C. In lieu of a weight certificate in the form prescribed in Paragraph A (above) of this section, an official weight certificate issued pursuant to the Agricultural Marketing Act of 1946, as amended, on grain stored or to be stored in a warehouse licensed under the USWA will be acceptable for purposes of the USWA and its regulations.
3. Weight, Inspection and/or Grade Certificates

The kind, class, grade and weight of any grain, ascertained by a sampler, weigher, inspector and/or grader licensed under the USWA, may be stated on a certificate in compliance with the combined requirements of Paragraphs 1 and 2 of this Section, provided the form of the certificate is pre-approved for this purpose by DACO.

Section I - Determining Quality

1. Official Grain Standards of the United States

The Official U.S. Grain Standards are hereby adopted as the official grain standards for the purposes of the USWA and the regulations thereunder.

2. Standards of Kind, Class and Grade for Other Grain

Until Official U.S. Grain Standards are established for the kind, class and grade of grain to be inspected, the grade of the grain will be stated, subject to the acceptance by DACO (**any** of the following):

- A. in accordance with the standards, if any, established by the State in which the warehouse is located; or
- 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 grain trade generally in the locality in which the warehouse is located; or
- C. in the absence of the standards mentioned in paragraphs A and B of this subsection, in accordance with any standards accepted for the purpose by DACO.

Section J -Grain Grading Appeals

1. Ability to Appeal

- A. No person licensed under the USWA will, directly or indirectly, deter, prevent, or attempt to deter or prevent any party from requesting an appeal of the results of an inspection of grain.
- B. 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 an appeal.

2. Appeal Procedure

The depositor or holder of the warehouse receipt or the Warehouse Operator may request an appeal of the grade of grain stored, to be stored or transferred into a warehouse. If the original inspection and/or grade certificate was issued by an inspector licensed under or authorized by the Agricultural Marketing Act of 1946, as amended, the appeal, including the amount of fees, will be governed by the regulations issued under that authority; otherwise, the appeal, including fees, will be governed by this Agreement.

3. Request for Appeal

- A. The Warehouse Operator agrees to make available to a depositor or holder of a warehouse receipt a split sample representative of grain delivered for storage, in accordance with authorized grain-evaluation procedures, before the identity of the representative sample of grain has been lost, provided a written request is received from the depositor or holder by no later than the close of business on the first business day after being furnished the results of the original inspection.
- B. If an 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 within two (2) business days.
- C. A representative sample must be retained for third-party evaluation. The identity of that sample is not to be compromised until the appeal inspection results are determined.
- D. If the identity of the grain is preserved and if the parties are unable to agree on such a sample, a sample drawn by a duly licensed sampler, inspector and/or grader in the presence of the interested parties shall be deemed binding. In no case is the sample to weigh less than 2,000 grams.

4. Appeal Samples

- A. For grain graded under the official U.S. Grain Standards, the appeal sample is to be secured and delivered to an office charged with providing official grain inspection service under the Agricultural Marketing Act of 1946, as amended. At this point, procedures used to determine the grade of the grain will be as set forth in regulations issued under the Agricultural Marketing Act of 1946, as amended, as is applicable. The sample is to be accompanied by (**each** of the following):
 - (1) a copy of the written request for appeal;
 - (2) the original grain inspection certificate upon which the appeal is based; and
 - (3) an agreement to pay the costs of such inspection, as prescribed by the Agricultural Marketing Act of 1946, as amended.
- B. For grain not graded under official U.S. Grain Standards because such standards have not been established, the party requesting the appeal is to apply directly to DACO for consideration. DACO's determination shall be binding on all interested parties.
- C. The sample of the grain subject to the appeal shall be submitted for inspection as soon as possible. The certificate representing the appeal inspection result will supersede the original inspection certificate. The original or a copy of the appeal inspection certificate is to be sent to the party requesting the appeal, with copies distributed to the depositor or holder of the warehouse receipt, the Warehouse Operator, and the licensed sampler and inspector executing the original certificate.

5. Owner Not Compelled to Store Grain

Nothing in this Agreement requires the owner or agent of grain to store such grain with the Warehouse Operator after the appeal inspection. But if the grain is stored, it shall be accepted for and delivered out of storage in accordance with the final grade determined through such appeal, and is subject to the warehouse operator's lawful tariff for storage, handling and other charges.

K - Temporary and Emergency Licensing

1. The Warehouse Operator may, under certain conditions, license temporary and emergency space for commodities deemed storable by DACO.
2. The Warehouse Operator agrees to (**each** of the following):
 - A. **provide** written reasonable justification that a need for temporary and emergency storage exists in the local area including the exact location, kind of commodity and quantity requested;
 - B. **receive** authorization before using the temporary and emergency space;
 - C. **operate** the temporary and emergency space in conjunction with their USWA licensed warehouse;
 - D. **meet all** security, net worth, financial assurance and insurance requirements as required in Section C, D and E of this Agreement;
 - E. **provide access** to the temporary and emergency space for examination purposes;
 - F. **maintain** separate inventory records of each commodity stored in temporary and emergency space, as well as accounting for such commodities in their DPR; and
 - G. **provide** written notification when all the commodities stored in temporary and emergency space are in the USWA licensed warehouse.
3. For temporary storage, the Warehouse Operator agrees to (**each** of the following):
 - A. **use** asphalt, concrete or other DACO-approved base materials;
 - B. **use** rigid self-supporting sidewalls;
 - C. **provide** adequate aeration;
 - D. **provide** an acceptable covering or tarp, as determined by DACO;
 - E. **move** commodities into their USWA licensed warehouse by:
 - (1) March 31 following initial licensing for rice and soybeans;
 - (2) July 1 following initial licensing for wheat, corn, grain sorghum and other feed grains; and
 - (3) Other dates, as established by DACO, for other commodities;
4. For emergency storage, the Warehouse Operator agrees to **move commodities** into their USWA licensed warehouse by:
 - A. March 31 following initial licensing for wheat, corn, grain sorghum and other feed grains; and
 - B. Other dates, as established by DACO, for other commodities.
5. If the Warehouse Operator chooses to continue using the temporary and emergency storage space for company-owned commodities after the respective final date, the Warehouse Operator agrees to (**each** of the following):
 - A. **remove** that quantity of the commodity from the DPR;
 - B. **not** use the commodity to cover the storage or warehouse receipted obligations of the warehouse; and
 - C. **not** allow that quantity of the commodity to be included in any USWA warehouse examination.

6. The licensing of temporary and emergency storage space does **not** relieve the Warehouse Operator of their obligations under the USWA. The Warehouse Operator is responsible throughout the authorized period for the quantity and quality of commodities stored in temporary and emergency storage space to the same extent as their liability for licensed warehouse storage space. All commodities stored in temporary and emergency storage space are considered a part of the Warehouse Operator's commingled inventory.

Section L – Warehouses Regular for Delivery in Terminal and Futures Contract Markets

For purposes of this Section, terminal and futures contract markets are any grain market designated as a futures contract market under authority of the Commodity Exchange Act, as amended, (7 U.S.C. § 1-27f).

Warehouse Operators whose licensed facilities are regular for delivery under the rules and regulations of an exchange or board of trade (i.e., warehouses whose warehouse receipts are accepted for delivery in satisfaction of futures contracts) agree, when applicable, to (**each** of the following apply):

1. **maintain** financial assurance, in addition to the requirements of sections C and D of this Agreement, in the maximum amount required of non-licensed Warehouse Operators by the exchange, board of trade or other agency within the terminal or futures market.
2. **permit**, with DACO approval, duly authorized person(s) of any exchange or board of trade in such a market to accompany USWA examiners to USWA-licensed warehouses regular for delivery to observe an official examination of the warehouse or to participate in such an examination under the supervision and direction of the USWA examiner in charge. This (These) person(s) are to be granted access to the Warehouse Operator's business records for warehouse receipts, fire insurance, and grade and weight certificates that are required to be issued pursuant to this Agreement. In lieu of such examination, DACO will furnish, at the exchange or board's option, a summarized statement of DACO's findings.
3. **register** all warehouse receipts with the duly authorized registrar and report changes in ownership to the registrar.
4. when grain represented by warehouse receipts deliverable in satisfaction of futures contracts in such a market is discovered to be going out of condition and the Warehouse Operator is unable to condition the grain or stop the deterioration, the Warehouse Operator agrees to (**each** of the following apply):

A. **immediately notify** the registrar and DACO;

Such notification shall include:

- (1) the warehouse location in which the grain is stored;
- (2) the quantity, kind, class and grade of the grain at the time notification occurred;
- (3) the actual condition of the grain, as nearly as can be ascertained;
- (4) the reason for the current condition, if known; and
- (5) a statement that the grain will be redelivered upon the presentation of the warehouse receipt and payment of charges.

B. **follow** instructions received from DACO; and

- C. **maintain** a warehouse record copy of all notices and correspondence.
5. The Warehouse Operator may:
- A. **hold** such grain for the owner's account, if the owner fails to remove such grain, with any loss of quality designated for the owner's account.
 - B. **fulfill** contracts with other stocks under the Warehouse Operator's control subject to the USWA, the regulations and this Agreement.
6. Warehouse Operators licensed under the USWA operating in such terminal and futures markets and issuing warehouse receipts deliverable in satisfaction of futures contracts shall assure DACO that the following conditions exist in order to participate in such a market:
- A. Any employee operating in a market, who weighs grain into or out of a USWA-licensed warehouse, shall be licensed under the USWA to weigh grain.
 - B. Any appointed registrar of warehouse receipts in such a market shall **not** be a USWA-licensed Warehouse Operator or their employee, nor a depositor of grain in a warehouse licensed under the USWA in such a market.

Section M – Dispute Resolution and Arbitration

- 1. A person may initiate legal action in any district court of the United States concerning a claim for noncompliance or an unresolved dispute with respect to activities authorized under the USWA.
- 2. Any claim for noncompliance or an unresolved dispute between the Warehouse Operator or USWA Provider and another party with respect to activities authorized under the USWA may be resolved by the parties through mutually-agreed upon arbitration procedures.
- 3. In no case will DACO provide assistance or representation to parties involved in a court or arbitration proceeding arising with respect to activities authorized under the USWA and the regulations thereunder.

Section N – Temporary Suspension

DACO may temporarily suspend the USWA license of the Warehouse Operator, prior to an opportunity for a hearing.

- 1. The grounds for temporary suspension imposed by DACO include, but are not limited to:
 - A. Violations of, or failure to perform the duties specified, under the USWA, the regulations thereunder and/or this Agreement;
 - B. Failure to maintain control of the warehouse;
 - C. Indication or commission of a fraudulent act;
 - D. Incapacity or incompetence of the Warehouse Operator;
 - E. Participation in a field warehousing agreement not approved by DACO;
 - F. Failure to make timely settlement and payment to depositors;
 - G. Any action by the Warehouse Operator that may place depositor obligations at risk;

- H. Failure to provide a safe work environment or noncompliance with safety regulations promulgated by the Occupational Safety and Health Administration of the U.S. Department of Labor;
 - I. Failure to ensure adequate security or protection of stored or handled grain from tampering or adulteration; and
 - J. Failure to pay fees required under this Agreement.
2. Upon temporary suspension, the Warehouse Operator will:
- A. **Not create** further depositor obligations without approval of DACO, specifically:
 - (1) no **USWA** inspection and/or weight certificates are to be issued;
 - (2) no warehouse receipts are to be issued; and
 - (3) licenses to sample, weigh, inspect and/or grade grain shall be temporarily suspended.
 - B. **Not remove** or deliver from inventory any stored grain without prior approval of DACO.
 - C. **Take corrective action** within the time frame specified in the temporary suspension.
 - D. **Not represent themselves as licensed** in good standing or perform the functions of a licensed USWA Warehouse Operator.
 - E. **Be notified:**
 - (1) by mail, email, phone or fax of the suspension;
 - (2) of the reason for the suspension;
 - (4) of the fact of an on-going review of the situation;
 - (5) of the time period for expected compliance;
 - (6) whether public notice will be made of a temporary suspension and of subsequent revocation of the USWA license;
 - (7) that revocation of the USWA license may be anticipated for noncompliance; and
 - (8) that progression from temporary suspension to revocation may be appealed as presented in Section R, *Warehouse Operator Failures and Defaults – Remedies*.

Section O - Unjust Enrichment

Upon a finding by DACO that the Warehouse Operator received profits from the sale and replacement of grain not owned by the Warehouse Operator, the Warehouse Operator shall, when instructed by DACO, pay to the general group of depositors a pro-rata share of those profits attributed to the amount of depositor-owned grain in store. The amount of profit will be determined by first-in, first-out inventory method. The profit will be calculated by comparing the price at which the grain was sold versus the price of the replacement grain. Any losses resulting from the sale and replacement of depositor-owned grain shall be for the account and the responsibility of the Warehouse Operator, and are not to be offset against profits paid to the general group of depositors.

Section P - Unearned Storage

Upon a finding by DACO that the Warehouse Operator received storage charges from depositors during any period that the warehouse operator's inventory was less than the Warehouse Operator's total warehouse-receipted and non-warehouse-receipted storage obligations, the Warehouse Operator shall, when instructed by DACO, reimburse storage charges to depositors on a pro-rated basis for the period that the shortage existed.

Section Q - Fines and Penalties

Warehouse Operators and their employees are subject to the provisions of criminal and civil fraud statutes that apply to making a false certification or statement, illegal conversion or removal of stored grain from USWA-licensed space, fraudulent adjustments or correction and concealment of operational or financial condition. Such violations may be punishable by imprisonment, fines and other penalties, including, but not limited to, the following: 18 U.S.C. §§ 286, 287, 371, 641, 651, 1001 and 1014; and 31 U.S.C. § 3729.

Section R - Warehouse Operator Failures and Defaults - Remedies

1. DACO may initiate suspension and revocation of the Warehouse Operator's license and liquidation of grain storage:
 - A. In the event of (any of the following):
 - (1) failure to (do any of the following):
 - (a) perform services required under this Agreement;
 - (b) maintain minimum financial requirements;
 - (c) provide proper financial statements; or
 - (d) maintain control of the warehouse,
 - (2) commission of a fraudulent act.
2. Suspension, revocation and liquidation shall be conducted in accordance with the adverse-determination rules in 7 CFR Part 735, which provide for a hearing before DACO.
3. The Warehouse Operator may request revocation of their license and, if appropriate, liquidation of obligations, in which case the USWA license will be revoked and liquidation accomplished, if appropriate.
4. Upon a finding of failure or Warehouse Operator's request or commission of a fraud, DACO may (take any of these actions):
 - A. Seize and take possession of (any of the following):
 - (1) the control of the warehouse facility(ies), office(s), merchandising, hedge accounts, bank accounts and/or grain inventories involved;
 - (2) any grain controlled by the Warehouse Operator in any manner;
 - (3) all books, papers and property used in the operation of the warehouse;
 - (3) monetary or bartered proceeds of any unauthorized grain sale;
 - (4) any involved authorized or unauthorized conveyance and its contents; and/or
 - (5) any grain in transit.

- B. Liquidate the grain contained within the warehouse and use the proceeds to satisfy valid grain claims as determined by DACO;
 - C. Recover from the Warehouse Operator necessary expenses incurred by DACO as a result of these seizure and liquidation procedures; and
 - D. Exercise a claim on the letter of credit or other financial assurances executed in the name of USDA, if applicable.
5. Should a liquidation become necessary, the following is the order of distribution of available liquidated funds:
- A. warehouse-receipted and validated-unreceipted storage obligation claims for:
 - (1) grain segregated in storage because of special characteristics may be joined with the other grain in-store; and
 - (2) claims for grain belonging to the Warehouse Operator, or in which the Warehouse Operator has financial ownership/interest, will be subordinate to all other claims.
 - B. disputed storage-obligation claims; and
 - C. lien-holder claims for warehouse charges and warehouse-owned claims.
6. If a "**Bankruptcy**" occurs, certain terms and conditions of this Agreement may be subject to the authority of a Federal Bankruptcy Court's jurisdiction regarding the disbursement of liquidated inventory proceeds and associated expenses and charges.

Section S - Fees

1. FSA is authorized to collect fees to cover the administration of the USWA-licensed warehouse activities. The schedule of fees is set by DACO.

Warehouse Operators shall pay:

- A. Annual Fees. Fees are determined by computing capacity by location (as defined by DACO) and applying the Annual Schedule of Fees (see Fee Schedule on USWA Forms Web Page). Annual Fees are invoiced and paid prior to license issuance and annually thereafter. Fee changes will be published in the *Federal Register*.
- B. Licensing Action Fees. Such fees are invoiced and payable for the following and are paid in advance of service.
 - (1) Original and amendment licensing actions; and
 - (2) Issuing licenses to sample, weigh, inspect and/or grade grain.
- C. Fees for Additional, Special Warehouse Examination Services.
 - (1) Reinstatement warehouse examination fees for suspended licenses are invoiced at the examination fee rate.

- (2) Examinations requested by Warehouse Operators. These fees are invoiced at an hourly rate as determined by DACO.

Such additional examination fees are determined by computing original or additional warehouse capacity at original and amendment examinations and for special examinations. Examination fees are estimated and deposited in advance of DACO scheduling an examination.

2. Fees paid in excess of actual fees owed will be refunded to the Warehouse Operator.
3. All fees collected under this Agreement will be credited to the account that incurs the costs of administering the warehousing activities and are available without further appropriation and without regard to fiscal year limitations. A schedule of fees showing the fees described in this section are detailed in a ***Federal Register*** notice.
4. Fees remaining unpaid will subject the Warehouse Operator to **suspension or revocation** of their license upon notification by DACO.

This Agreement completes the requirements for licensing of USWA Master Code				USWA Code
For:	_____			
	Warehouse Operator Licensee Headquarters Location			
At:	_____			
	Licensed Location (s)			
And is effective this	_____	Day of	_____	_____
	day		month	year

	Warehouse Licensee			
By:	_____			
	Signature of Authorized Individual			

	Date (MM-DD-YYYY)			
Business Telephone No. with Area Code	_____			
Accepted for Farm Service Agency:	_____			
	Signature			

Please sign this form and return it to:
 Kansas City Commodity Office
 Warehouse License and Examination Division
 Mail Stop 9148
 Post Office Box 419205
 Kansas City, Missouri 64141-6205

NOTE: *The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. 552a) and the Paperwork Reduction Act of 1995, as amended. The authority for requesting the following information is the regulations at 7 CFR Part 735. The information will be used to complete the terms of a license and contract between the Warehouse Operator and the Deputy Administrator for Commodity Operations. Furnishing the requested information is voluntary and no penalty will be imposed for failure to respond. However, a response is required in order to be considered for a warehouse license (7 U.S.C. 242). This information will not be disclosed outside of the U.S. Department of Agriculture except as required for law to the Department of Justice and to the Department of Treasury. This information may be provided to other agencies, IRS, Department of Justice or other State and Federal law enforcement agencies and in response to a court magistrate or administrative tribunal. The provisions of criminal and civil fraud statutes, including 18 U.S.C. 286, 287, 371, 641, 651, 1001; 1014 and 31 U.S.C. 3729, may be applicable to the information provided.*

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-0120. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. **RETURN THIS COMPLETED FORM TO THE KANSAS CITY COMMODITY OFFICE, POST OFFICE BOX 419205, Mail Stop 9148, KANSAS CITY, MO 64141-6205.***

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.