

U.S. Department of Agriculture

Farm Service Agency

Supporting Statement

OMB Number: 0560-0120

Warehouse Regulations

7 CFR 735

Under The United States Warehouse Act

Purpose:

The purpose of this package is to request an extension with revision of a currently approved information collection requirement package which expires on September 30, 2008. Regulations covering the United States Warehouse Act (USWA) are currently codified at 7 CFR Part 735.

The following are being added to the clearance package:

WA-460-13 – Addendum to the Provider Agreement to Electronically File and Maintain Orange Juice Warehouse Receipts

WA-580 – Port Terminal Inspection Checklist

WA-580-1 – Transloading Inspection Checklist

1. Circumstances Making Collection of and Recordkeeping Information Necessary.

Public Law 106-472 (United States Warehouse Act of 2000

7 U.S.C. 241-256

CCC Charter Act (15 U.S.C. 714 et. seq.)

2. How, by Whom, and For What Purposes is Information Used

Forms Used Only for Licensing Actions Under the USWA

Note: All "Item Numbers" used hereinafter refer to numbers identifying reports in the attached FSA-85-1.

The USWA and Commodity Credit Corporation (CCC) functions are administered by the Farm Service Agency (FSA). Although there are several warehouse types covered under the USWA and CCC's function, the reporting requirements within a particular warehouse type are essentially the same as those across all warehouse types and with some exceptions the forms are used bilaterally; that is, they are used for both USWA licensing and CCC purposes.

The general purposes of the forms are used as a basis to (1) determine whether or not the warehouse and the warehouse operator making application for licensing and/or approval

meets applicable standards, (2) issue such license or approvals, and (3) determine, once licensed or approved that the licensee or warehouse operator continues to meet such standards and is conforming to regulatory or contractual obligations.

Warehouses not meeting financial, bonding, operational or general approval standards may be denied an agreement (contract) unless a waiver is granted by the President or Executive Vice President of CCC. Those warehouse operators who did not meet such requirements and contracted with, but who on subsequent examination are found to have failed to maintain such requirements, are removed from the List of Approved Warehouses generally with opportunity to correct deficiencies. These warehouse operators may be reinstated to the approved list or terminated.

As indicated above, the basis for contract approval, removal, reinstatement, or termination is the information secured from interested warehouse operators or as secured and recorded by FSA examiners.

WA-50, Application For License or Modification of License For The Conduct of a Public Warehouse. (Item No. 1)

Section 3 of the USWA (7 U.S.C. 242) states "The Secretary may issue to any warehouse operator a license for the operation of a warehouse in accordance with this Act if ..."

Form WA-50 is used by public warehouse operators who voluntarily apply for a license under the USWA and its regulations and for modification or extension of an existing license. The form is filed with the Kansas City Commodity Office and is included with other material furnished to the examiner assigned to make an original and/or amendment examination.

WA-51-2, Financial Statement (All Agricultural Products) (Item No. 2)

Regulations under the USWA require that applicants for licenses and warehouse operators licensed under the Act have and maintain net worth, in a specified amount based on the capacity of the warehouse, liable for the payment of any indebtedness arising from the conduct of the warehouse. Minimum net worth requirements must be met at all times. Standards for Approval of Warehouses for Grain and Similarly Handled Commodities (7 CFR 1421.5551 and similar sections of other standards for approval) require that applications for approval under storage agreements (contracts) with CCC must furnish a current financial statement. Standards for Approval further provide that minimum net assets requirements be met at all times.

The financial statement filed by the warehouse operator forms the basis for the Department's determination as to whether or not the applicants and/or licensees meet and continue to meet financial requirements under the USWA and CCC Price Support Regulations. Other types of financial assurance may be accepted by FSA when warranted.

Maintaining sound, accurate financial records enables warehouse operators to perceive their financing condition and to meet net assets requirements for licensing or continuation of license.

Financial statements are normally required on an annual basis. WA-51-2-Financial Statement Supplement (All Agricultural Products) is used for cotton, grain, and rice warehouse operators and as the need arises will be used for all other agricultural product(s).

Form WA-53, Application For a License to Inspect, Classify, Sample, and or Weigh Agricultural Products Under the U.S. Warehouse Act. (Item No. 3)

Section 3 of the USWA (7 U.S.C. 242) states "On presentation of satisfactory proof of competency to carry out the activities described....may issue to any person a Federal license ... to inspect any agricultural product stored or handled in a warehouse...; to sample such an agricultural product; to classify such an agricultural product according to condition, grade, or other class and certify the condition, grade, or other class of the agricultural product...to weigh such an agricultural product and certify the weight of the agricultural product."

WA-53 is used only when persons apply for a license or for amendment of an existing license under the USWA to inspect, classify, sample, or weigh specified agricultural products.

Form WA-62 -- Bond to Cover Lost Paper Warehouse Receipts Under the United States Warehouse Act (Item No. 4)

This form is used by holders of Federal warehouse receipts when filing bonds to support delivery of products covered by lost or destroyed receipts, or to support the issuance of a duplicate receipt in lieu of the lost or destroyed paper warehouse receipt.

Warehouse operator's bond forms and related forms. (Item No. 6)

The USWA (7 U.S.C. 245) states "As a condition of receiving a license or approval under this Act (including regulations promulgated under this Act), the person applying for the license or approval shall execute and file with the Secretary a bond, or provide such other financial assurance as the Secretary determines appropriate, to secure the person's performance of the activities so licensed or approved....."

The warehouse operator may offer as financial assurance in the form of a warehouse operator's bond, in the form of a deposit with FSA, United States bonds, United States Treasury notes, or other public debt obligations of the United States or obligations that are unconditionally guaranteed as to both interest and principal by the United States, or in the form of a letter of credit issued to the Agency for a period of not less than one year to coincide with the period of any deposit of obligations, and other forms of

financial assurance as may be deemed acceptable by FSA.

The following forms are used for bonding purposes and other related activities connected with bonding.

WA-80, Warehouse Operator's Bond is used for grain, cotton, and miscellaneous agricultural product warehouse operators who are or have applied for a warehouse license as an individual, partnership, or corporation. It is continuous in nature and does not have to be reissued each year.

WA-81, Rider No. _____ to Warehouse Operator's Bond is used to accommodate all necessary changes to WA-80.

WA-82, Irrevocable Letter of Credit is used if the warehouse operator elects to provide a letter of credit instead of a surety bond to make up for a deficiency in net assets. Warehouse operators must have the minimum required net assets and may provide a letter of credit for a deficiency exceeding the normal bond. If letters of credit are used to cover the amount of a deficiency, it must be issued for a period of not less than one year to coincide with the period of any deposit of obligations. Any letter of credit is irrevocable, issued by a commercial bank, payable to DACO, FSA, by sight draft and insured by the Federal Deposit Insurance Corporation or an institution in good standing regulated by the Farm Credit Administration.

WA-83, Warehouse Operator's Bond (Eligible Securities) is used if the warehouse operator deposits eligible securities instead of a surety bond.

WA-84, Power of Attorney (To Sell Securities) is used for each individual or partnership depositing eligible securities instead of a bond.

WA-85, Corporate Power of Attorney (To Sell Securities) is used for each corporation wanting to deposit eligible securities instead of a bond. Additionally, the corporation must provide a certified copy of the resolution passed by the Board of Directors authorizing such a security deposit with this form.

WA-87 - Receipt of Obligor on Return of Securities - This form is completed and returned to the warehouse operator for signature, along with the securities and the original copy of the Power of Attorney.

WA-88 - Receipt for Eligible Securities Accepted as Security is executed upon receipt from the warehouse operator of securities to be deposited as security. After execution in duplicate the original is returned to the warehouse operator. The warehouse operator is requested to return the original to KCCO when the securities are returned.

WA-89 – Consent of Surety to Change in Name of Warehouse and Other Changes is used when a warehouse operator has a change in its Articles of Incorporation. The form is furnished to the applicable surety company for acceptance and continuation of

bond coverage.

WA-90 – Resolution is used by a warehouse operator to designate that any officer or the manager is empowered to execute all bonds, supplemental bond agreements and other papers or documents required under the USWA.

WA-91– Agreement to Indemnify is used when a warehouse operator is a wholly-owned subsidiary of another entity who is referred to as a guarantor and that guarantor has an interest in the warehouse operator being licensed or continuing their license and can furnish a financial statement which will meet all requirements of the USWA.

FSA is always willing to work with its customers in the use of the above forms or a like document that the warehouse operator may submit to cover the above instances.

Forms used in Warehouse Examinations

WA-220 - Examination Report (Item 11)

WA-221 - Original Examination Report (Supplement 1) (Item 11)

WA-222 - Original Examination Report (Supplement 2) (Item 11)

WA-225 – Warehouse Operator’s Statement and Examiner’s Comparison of Obligated Stocks (Item 12)

WA-302 - Examination Report (Item 14)

WA-303 - Original and/or Amendment Examination Report (Supplement 1) (Item 14)

WA-308 - Warehouse Operator's Statement and Examiner's Comparison of Obligations and Stocks (Item No. 15)

WA-125 – Memorandum of Adjustments (Item No. 8)

The above forms are used by warehouse examiners when making onsite inspections of warehouse operators applying for a license or in order to maintain a license when it has been issued.

WA-220, WA-221, and WA-222 (Examination Reports) (Item No. 11)

The warehouse examiner completes examination Forms WA-220, WA-221, and WA-222 by personal inspection of the warehouse property for cotton warehouses.

WA-225 – Warehouse Operator’s Statement and Examiner’s Comparison of Obligated Stocks (Item 12)

Form WA-225 is used as part of the cotton examination to determine that the warehouse operator has sufficient stocks on hand to cover receipted and nonreceipted storage obligations. This is done by making a physical inventory of stocks on hand and comparing it with the storage obligations.

WA-302 and WA-303 (Examination Reports) (Item No. 14)

The warehouse examiner completes examination Forms WA-302 and WA-303 by personal inspection of the warehouse property for grain warehouses.

WA-308, Warehouse Operator's Statement and Examiner's Comparison of Obligations and Stocks (Item No. 15)

Form WA-308 is part of the grain examination to determine that the warehouse operator has sufficient stocks on hand to cover receipted and nonreceipted storage obligations. This is done by making a physical inventory of stocks on hand and comparing it with the storage obligations.

WA-125, Memorandum of Adjustments (Item No. 8)

Form WA-125, Memorandum of Adjustments, serves as a record of deficiencies found during a warehouse examination, a written request to the warehouse operator for correction of the deficiencies and a record of corrective actions taken and reported by the warehouse operator.

Form WA-125 is issued for all major deficiencies and for other deficiencies not corrected during the examination.

Form WA-125ER is an electronic version of the above form and is available on the eGov website. No extra burden is added to the warehouse operator when using this form.

WA-372, Tariff for Storing and Handling Grain (Item No. 16)

Section 3 of the USWA (7 U.S.C. 242) states " The Secretary may issue to any warehouse operator a license for the operation of a warehouse in accordance with this Act if... and the rules and regulations prescribed thereunder." Section 13 of the USWA (7 U.S.C. 252) states "The Secretary may suspend or revoke any license issued on the ground that unreasonable or exorbitant charges have been imposed for services rendered..."

The WA-372, Tariff for Storing and Handling Grain, must be completed by all warehouse operators applying for a license under the USWA and forwarded to KCCO for acceptance. The warehouse operator must have a complete schedule of charges and rules that will apply at the warehouse to be licensed. After licensing, any warehouse operator wanting to change any of the charges or rules must file an amended tariff with KCCO before putting the new charges or rules into effect. The current accepted tariff must be posted in a conspicuous place.

FSA works with the warehouse operator by accepting tariffs in other formats such as in a memorandum (see sample enclosed) displaying the schedule of charges and rules that

apply at the warehouse. FSA will accept these by various methods of transmission, such as mail, fax, and e-mail.

WA-237–Order for Printing U.S. Warehouse Receipt Forms (Item No. 13)

Section 3 (7 U.S.C. 242) states “The Secretary may issue to any warehouse operator a license...the warehouse operator agrees, as a condition of the license, to comply with this Act (including regulations promulgated under this Act).”....

The WA-237 is used by the warehouse operator to order warehouse receipts to be printed for use by the warehouse in issuing USWA warehouse receipts. These forms are ordered from printers who have an authorized printing agreement with FSA.

WA-139, Certificate of Loss of Canceled/Uncanceled Warehouse Receipts (Affidavit). (Item No. 9)

Section 11 of the USWA (7 U.S.C. 250) states ... " While an original receipt issued under this Act is outstanding and uncanceled by the warehouse operator, an additional receipt may not be issued for the same agricultural product (or any portion of the same agricultural product) represented by the outstanding receipt, except as authorized by the Secretary.

A warehouse receipt is not considered issued until it is delivered to the depositor. Occasionally, federally licensed warehouse operators lose warehouse receipts before delivery to depositors or after they have been returned or canceled.

WA-139 Certificate of Loss of Canceled/Uncanceled Warehouse Receipts (Affidavit) is used to identify warehouse receipts issued by the warehouse operator that may have been lost or misplaced.

WA-140, Agreement to Assume Storage Obligations. (Item No. 10)

Section 3 of the USWA (7 U.S.C. 242) states "The Secretary may issue to any warehouse operator a license for the operation of a warehouse in accordance with this Act...."

The WA-140, Agreement to Assume ____ Storage Obligations is used for warehouse operators who have assumed the interest of other warehouse operators operating under the USWA.

WA-141 – Agreement With Respect to Agricultural Product Storage Obligations. (Item No. 10)

This form is used by warehouse operators desiring to merge a location with its license at a different location and guaranteeing the storage and delivery of all agricultural product(s) obligations as required under the USWA.

WA-70 – Receipt Signature Authority. (Item No. 5)

Section 3 of the USWA (7 U.S.C. 242) states..."The Secretary may examine and audit...all books, records, papers, and accounts...any other person issuing receipts"

The WA-70, Receipt Signature Authority, must be used by USWA licensed warehouse operators to designate persons authorized to sign warehouse receipts.

WA-105–Returned and Destroyed Receipt Record (Item No. 7)

Section 3 of the USWA (7 U.S.C. 242) states that "The Secretary may issue to any warehouse operator a license for the operation of a warehouse in accordance with this Act..."

In making application for a Federal license on Form WA-50, "Application for License or Modification of License for the Conduct of a Public Warehouse", a warehouse operator, as a condition to granting a license agrees "upon suspension, revocation, or expiration of the license to deliver all unissued, licensed warehouse receipts to the Department."

Those receipts will be destroyed by the Department without liability to the warehouse operator one year from the date of suspension or revocation of the license, if the applicant does not authorize destruction prior thereto.

The WA-105 is used by the warehouse examiner to make a record of unused warehouse receipts surrendered by the warehouse operator for any reason.

Licensing Agreements (Item Nos. 23-30)

Section 3 of the USWA (7 U.S.C. 242) states..."The Secretary shall have exclusive power, jurisdiction, and authority, to the extent that this Act applies with respect to--"(1) each warehouse operator licensed under this Act; (2) each person that has obtained an approval to engage in an activity under this Act;...."..."may issue to any warehouse operator a license for the operation of a warehouse..."

The USWA provides a licensing framework for Federal warehouses, warehouse operators, inspectors, samplers, classifiers, and weighers that establishes a set of broad general regulations that are not commodity specific and secondly places the more specific terms and conditions of each license into specific licensing agreements and applicable addenda. "Licensing Agreements" have been developed for those agricultural product(s) currently licensed under the Act.

The "Licensing Agreements" might contain an "Addendum to the Terms and Conditions of Licensing/Provider Agreement" which would contain amended and modified terms and conditions of the applicable licensing or provider agreement.

Listed below are form numbers and titles of the applicable "Licensing Agreements

and/or addendum.

WA-400 – Addendum to the Terms and Conditions of Licensing/Provider Agreement.
(Item No. 22)

WA-401–Licensing Agreement for Cotton Warehouses

WA-402–Licensing Agreement for Grain Warehouses

WA-403–Licensing Agreement for Wool Warehouses

WA-404 – Licensing Agreement for Tobacco Warehouses

WA-405– Licensing Agreement for Nut Warehouses

WA-406–Licensing Agreement for Dry Bean Warehouses

WA-407–Licensing Agreement for Sweeteners Warehouses

WA-408–Licensing Agreement for Cottonseed Warehouses

Use of Electronic Warehouse Receipts(EWR's) and Electronic Documents.

Congress originally amended the USWA of 1916 statute first in 1990 to provide the Secretary authority to allow cotton warehouse operators the ability to issue electronic warehouse receipts and secondly in 1992 to allow EWRs for any State and non-licensed warehouses.

The USWA of 2000 allows for the use of electronic warehouse receipts for all agricultural products.

The introduction by USWA of EWR's in the cotton industry has served the warehousing industry and its customers well by allowing warehouses to take advantage of today's electronic data storage and transmission systems.

A EWR is a negotiable electronic document considered equal to, and possesses identical attributes as a negotiable paper warehouse receipt. Because it is electronic, it offers instantaneous transfer and negotiability from one party to another with the security provided all fully legal warehouse receipts.

Section 11(e)(4) of the USWA provides that “(an) electronic receipt issued or other electronic document transferred, in accordance with this Act shall not be denied legal effect, validity, or enforceability on the grounds that the information is generated, sent, received, or stored by electronic or similar means.”

Under the provider agreement for these functions, in addition to other activities, a party will be able to take a paper document relating to the shipment, payment, and financing of the sale of an agricultural product to an approved provider and the provider may generate an identical electronic document for electronic transmission.

This aspect of the USWA will allow parties to conduct all aspects of these agricultural transactions in an electronic manner whereas currently, in many instances, necessary documents are in a paper format and must be physically delivered to another party.

Section 11(e) also provides that in establishing this electronic document system, the

Secretary may act “notwithstanding any other provision of Federal or State law. . . .”

The USWA also permits State and non-licensed warehouse operators to issue EWR’s and other electronic documents under the Federal system.

Examples of other documents could be weight and grade certificates, phytosanitary certificates, bills of lading, shipping orders, export evidence certificates, etc.

Approved providers must have an Agreement with FSA, comply with the terms of that Agreement; maintain specific financial and bonding requirements, pay user fees, establish and retain contemporaneous records of each EWR entry and access, be liable to the Secretary for issues associated with system failure or malfunction, furnish annual audit level financial statements, and submit to electronic data processing audits. Providers, must at all times, grant the Secretary, or the Secretary’s designee, free access to all records pertaining to the USWA or the system.

WA-400 – Addendum to the Terms and Conditions of Licensing/Provider Agreement.
(Item No. 31)

This is a generic agreement that will be used for changes that may be necessary to the Licensing or Provider Agreements.

WA-460, Provider Agreement to Electronically File and Maintain Electronic Warehouse Receipts and United States Warehouse Act Documents (Item No. 31)

Section 11 of the USWA (7 U.S.C. 250) states “...The Secretary may promulgate regulations that authorize the issuance, recording, and transfer of electronic receipts, and the transfer of other electronic documents in accordance with this subsection.

The USWA 2000 allows for the use of electronic warehouse receipts for all agricultural products and the use of other electronic documents. As necessary, other “Provider Agreements” to cover those instances when an agreement is needed will be done.

The following will be used to accommodate instances when these documents are needed.

WA-460-1 –Addendum to the Provider Agreement to Electronically File and Maintain Cotton Warehouse Receipts. (Item No. 32)

WA-460-2 –Addendum to the Provider Agreement to Electronically File and Maintain Grain Warehouse Receipts. (Item No. 33)

WA-460-3--Addendum to the Provider Agreement to Electronically File and Maintain Wool Warehouse Receipts. (Item No. 34)

WA-460-4--Addendum to the Provider Agreement to Electronically File and Maintain Tobacco Warehouse Receipts. (Item No. 35)

WA-460-5--Addendum to the Provider Agreement to Electronically File and Maintain Nut Warehouse Receipts. (Item No. 36)

WA-460-5A-Addendum to the Provider Agreement to Electronically File and Maintain

Peanut Warehouse Receipts. (Item No. 36)
WA-460-6--Addendum to the Provider Agreement to Electronically File and Maintain Dry Beans Warehouse Receipts. (Item No. 37)
WA-460-7--Addendum to the Provider Agreement to Electronically File and Maintain Sweetener Warehouse Receipts. (Item No. 38)
WA-460-8--Addendum to the Provider Agreement to Electronically File and Maintain Cottonseed Warehouse Receipts. (Item No. 39)
WA-460-9 – Addendum to the Provider Agreement to Electronically File and Maintain Rice Warehouse Receipts. (Item No. 40)
WA-460-11 – Addendum to the Provider Agreement to Electronically File and Maintain Coffee Warehouse Receipts. (Item No. 41)
WA-460-12 – Addendum to the Provider Agreement to Electronically File and Maintain Cocoa Warehouse Receipts. (Item No. 42)
WA-460-13 – Addendum to the Provider Agreement to Electronically File and Maintain Orange Juice Warehouse Receipts. (Item No. 43)
WA-470 – Addendum to Provider Agreement to Electronically File and Maintain United States Warehouse Act Cotton Class Certificates. (Item No. 44)
WA-470-1--Addendum to the Provider Agreement to Electronically File and Maintain United States Warehouse Act Cotton Weight Certificates. (Item No. 45)
WA-470-2--Addendum to the Provider Agreement to Electronically File and Maintain United States Warehouse Act Grain Inspection and/or Weight Certificates. (Item No. 46)
WA-470-3-Addendum to the Provider Agreement to Electronically File and Maintain United States Warehouse Act Wool Inspection and/or Weight Certificates. (Item No. 47)
WA-470-4--Addendum to the Provider Agreement to Electronically File and Maintain United States Warehouse Act Tobacco Inspection and/or Weight Certificates. (Item No. 48)
WA-470-5--Addendum to the Provider Agreement to Electronically File and Maintain United States Warehouse Act Nut Inspection and/or Weight Certificates. (Item No. 49)
WA-470-5A—Addendum to the Provider Agreement to Electronically File and Maintain United States Warehouse Act Peanut Inspection and/or Weight Certificates. (Item No. 49)
WA-470-6--Addendum to the Provider Agreement to Electronically File and Maintain United States Warehouse Act Bean Inspection and/or Weight Certificates. (Item No. 50)
WA-470-7--Addendum to the Provider Agreement to Electronically File and Maintain United States Warehouse Act Sweetener Inspection and/or Weight Certificates. (Item No. 51)
WA-470-8--Addendum to the Provider Agreement to Electronically File and Maintain United States Warehouse Act Cottonseed Inspection and/or Weight Certificates. (Item No. 52)
WA-490--Provider Agreement to Electronically File and Maintain Other Electronic Documents. (Item No. 53)
WA-490-1-Addendum to the Provider Agreement to Electronically File and Maintain Other Electronic Documents. (Item No. 53)

Provider Agreements will be adapted on a case-by-case basis to those individual instances for other electronic documents

Forms Used for Agricultural Product(s) for Which There are no Regulations Under USWA but Which are Stored Under CCC Programs.

WA-561, Original Warehouse Examination Report (Processed Commodities). (Item No. 17)

Standards for Approval of Dry and Cold Storage Warehouses for Processed Agricultural Commodities (7 CFR 1423.9) specifies that a warehouse will be examined by a person designated by CCC before it is approved by CCC for the storage or handling of commodities involved and periodically thereafter to determine compliance with CCC's standards and requirements. Currently, there are no regulations under USWA for such commodities. However, with the USWA 2000 statute it is likely that such commodities could be determined to be an agricultural product and if approved, could become licensed under the USWA.

The original examination occurs after an application has been received for a storage agreement with CCC. The examiner completes Form WA-561 for this purpose by onsite examination of the warehouse to obtain information with regard to the type of storage facility, management, handling equipment, and other information necessary to reach a decision with respect to the eligibility of the facility for approval under a storage agreement. The examiners obtain the information from warehouse management, by personal observation, and general knowledge.

WA-562, Subsequent Examination Report (Processed Commodities) (Item No. 18)

As part of a subsequent examination, the examiner completes the WA-562, "Subsequent Examination Report" (Processed Commodities) to report on the warehouse, warehouse operator, housekeeping practices, and agricultural product(s) in store, to determine if the warehouse and the warehouse operator continues to meet the standards for approval.

WA-570, Inventory Adjustment Notice - Processed Commodities. (Item No. 19)

As part of each examination, the examiners may find it necessary to complete Form WA-570, "Inventory Adjustment Notice," which is used to adjust inventories, reject damaged product, and provide the warehouse operator an opportunity to acknowledge liability so that presentation of claims may be facilitated. The form is completed by the examiner from information obtained from the management and by personal examination of the agricultural product(s) in storage, when necessary.

WA-580-Port Terminal inspection Checklist (Item No. 20)

This form is prepared at all port terminal examinations to record the conditions found

during such examination.

WA-580-1-Transloading Inspection Checklist (Item No. 21)

This form is prepared at all transloading examinations and is used to record the conditions found during such examination.

Explanation of Reporting Requirements for Which there are no Specific Form. (Item Nos. 54-56)

The Act is what is termed a permissive regulatory act. It is permissive in that it applies only to those warehouse operators who voluntarily elect to operate under its provisions and are accepted to do so. The CCC and its uniform storage agreements are similar in application.

All together both programs deal with some 4,000 warehouses who handle numerous agricultural product(s) with capacity from very small to very large, at country locations to processors and exporters, individual proprietors to multi-national corporations, some who do their own accounting and recordkeeping to CPA contracted accounting procedures and computer systems, etc.

Each such warehouse operator and warehouse must be examined to determine if they meet licensing and/or approval standards and, after licensing and/or approval, to continue to meet such standards.

Consequently, regulations and operating requirements, examining procedures and forms must be geared to all such persons and to all such operations.

A uniform system of reporting as to time, form, and information needed is not practical or feasible without undue burden on those regulated. Where no particular form or type of report is specified, some discretion can be used in requesting or requiring such information.

Section 7 (7 U.S.C. 246) provides the Secretary with such authority. Failure of a warehouse operator to comply is grounds for suspension and possible revocation of license. Section 13 (7 U.S.C. 252)...” states that the Secretary may suspend or revoke any license issued, or approved for an activity provided under this Act”...”for a material violation of, or failure to comply, with any provision of this Act...including regulations promulgated.....”

Recordkeeping Requirements

Records are maintained by licensed warehouse operators as a matter of general business records and are not maintained expressly for USDA. However, recordkeeping requirements under the USWA require retention of certain records for 6 years.

The warehouse operator needs to maintain an approved system of accounts because an examination is not possible if a proper system of accounts is not available. The warehouse operator must maintain adequate inventory and operating records. To cover each and every product would require a multiplicity of forms and instructions. As information is needed, it can be requested under authority of the Act, and the regulations, so long as it is pertinent to the warehouse operator's lawful responsibilities. Prescribed forms required on a regular basis would result in receiving more information than needed and would place an unnecessary burden on warehouse operators and the Department. If the warehouse operator's system of accounts meets requirements of the regulations, there is no reason to prescribe a standard set of books and accounts.

The warehouse receipt is the evidence of storage between the depositor and the warehouse operator--it is the contract of storage--it is symbolic of the product it represents and there should be no uncertainty as to what that product is, and finally, it must be an enforceable legal bailment.

Section 11 (7 U.S.C. 250) of the statute states that ...“Each receipt issued for an agricultural product stored or handled in a warehouse licensed under this Act shall contain such information for each agricultural product covered by the receipt, as the Secretary may require by regulation.” Section 735.302 of the general regulations states the form and content required and other general requirements. These requirements are also listed in more detail in the applicable licensing agreement for a particular agricultural product.

The statute allows for Electronic Receipts and Electronic Documents (Section 11 (7 U.S.C. 250) ”to be issued, recorded, and transferred, and electronic documents may be transferred, under this subsection with respect to an agricultural product under, a system or systems maintained in one or more locations...”

Section 735.303 (Electronic Warehouse Receipts (EWRs) contains the requirements for the issuance of these EWRs and states that data may be stored and transferred in and from a Central Filing System maintained by an approved provider. This information and requirements are also contained in the approved provider’s agreement.

Section 7 (7 U.S.C. 246) of the statute states “To facilitate the administration of this Act, the following persons shall maintain such records and make such reports, ...” “A warehouse operator that is licensed under this Act. A person operating a system for the electronic recording and transfer of receipts and other documents...any other person engaged in the issuance of electronic receipts or the transfer of documents.”

Inspection, grade, and weight certificates are the basis for receiving agricultural product(s) into a warehouse, issuance of the warehouse receipt and delivering agricultural product(s) from the warehouse. They are the depositor's assurance of what he has deposited and what he is entitled to receive on delivery. Copies must be maintained for auditing purposes to determine the correctness of warehouse receipts issued. These requirements give force and effect to Section 3 (7 U.S.C. 242) of the Act which requires that agricultural products ". . . shall be inspected, ...sampled,... classified... and weighed by a person duly licensed to grade the same under this Act ..."

These requirements are also found in Section 735.300 of the general regulations and more specific information can be found in the applicable licensing agreement.

The condition of agricultural product(s) in storage is important to depositors who expect to redeem their deposit, to the warehouse operator who is required to exercise the care of a prudent operator and to the administration of the program as it affects the warehouse operator's financial strength. These requirements fix the warehouse operator's reporting and recordkeeping needs to satisfy the warehouse operator's obligations in this respect.

The information collected and reported comes from a number of sources (licensed warehouse operators and storage agreement warehouses) and is collected in part by Federal employees during onsite visits.

3. Use of Information Technology

Copies of those forms posted or to be posted with instructions to the Internet are attached as part of this package. These forms are available through FSA's e-Forms web site and are also accepted by mail and FAX in the Kansas City Commodity Office. These methods of communication allow our customers to make their request to us in the most feasible manner for their particular operation. Also, the information on U.S. Warehouse Services is at <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=coop&topic=was>

There are no changes to the electronic forms from the hard copy versions. It is our intent to continue enhancing our website to accommodate as much of the general information regarding our program as possible. This will, therefore, make it accessible to those wishing to obtain information regarding what is required to become licensed.

A larger portion of our warehouse operators maintain their records on a computer and periodically review new and improved technology to enhance their systems. The Department accepts such records when they meet the need. The Department likewise considers every possibility for the use of new technology.

FSA warehouse examiners are equipped with laptop computers purchased by FSA for use in conducting warehouse examinations in electronic format. Programmers are continually working on the laptop computer program to enhance its

capabilities and utilizing it to its full advantage when conducting warehouse examinations of agricultural products.

Many of the forms included in this clearance package are internal operating forms for use by warehouse examiners in conducting compliance checks of warehouse operators licensed and/or approved under the USWA or a storage agreement. These forms, therefore, will not be posted for general use by the public.

4. Efforts to Identify Duplication

There is no duplication of collection - all information is used solely in connection with licensing/contracting responsibilities of the Agency. No other method is available to provide those charged with issuing licenses under the Act or executing agreements (contracts) for CCC to meet their obligations.

5. Methods to Minimize Burden on Small Business or Entities

Only common business records necessary to an ongoing warehouse business and already maintained by licensed-approved entities are required. Warehouse operators with lesser volume of business have less reporting.

6. Consequence If Information Collection were Less Frequent

Less frequent examinations and review of records contributes to more serious deficiencies and affects the integrity of the system. This information is also required for a warehouse operator to be considered for continued licensing/approval.

7. Special Circumstances. (Explain any special circumstances that would cause an information collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;

Please see the answer below for a response to this bullet.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

In some instances respondents are required to report information to the agency more often than quarterly. Normally warehouses are examined once each year for compliance purposes. However, in instances where the warehouse operator is found to be in noncompliance, a WA-125, Memorandum of Adjustments, noting those items of noncompliance is issued and a response to those items noted is required in 15 days.

- requiring respondents to submit more than an original and two copies of any document;

There are no special circumstances requiring respondents to submit more than an original and two copies of any document.

- requiring respondents to retain records, other than health, medical, government contract, grain-in-aid, or tax records for more than three years;

Each warehouse operator is to have and maintain a system of accounts approved for the purpose by the Agency, i.e., stock record, a separate record for each depositor of grain including a detailed record of all money received and disbursed and of all insurance policies taken out and canceled.

Licensing Agreements issued under the USWA require in some instances that records be kept for a period of 6 years after December 31 of the year in which created and for such longer period as may be necessary for the purposes of any litigation which the warehouse operator knows to be pending or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

There are no special circumstances that would be used in connection with a statistical survey.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

There are no special circumstances that would require the use of a statistical data classification that has not been reviewed and approved by OMB.

- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use;

There are no special circumstances that include a pledge of confidentiality that is not supported by authority established in statute or regulation.

- requiring respondents to submit proprietary trade secret or other

confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Warehouse operators are required to furnish certain information which could be classified as confidential as part of their licensing requirements and continued licensing. This agency protects the confidentiality to the extent permitted by law.

8. Federal Register notice, summarization of comments and consultation with persons outside the agency.

A Federal Register Notice and request for comments was published on February 27, 2008, at 73 FR, 10418. Interested parties were given until April 28, 2008, to submit comments regarding the collection of information contained in the package.

No comments were received regarding the collection requirements.

Consultations With Persons Outside the Agency. The agency maintains close contact and discussion with: Kendall Keith, Randy Gordon, National Grain and Feed Association (202) 289-0873; John McGuire, National Cotton Council of America (202) 745-7805; John T. Powell, American Peanut Shellers (229) 888-2508; Steve Hensley, USA Rice Federation (703) 236-1445; and Joshua Teitelbaum, New York Board of Trade (IntercontinentalExchange (ICE) (212) 201-8836.

9. Explain any decision to provide any payment or gift to respondents.

There have been no decisions made to provide any payment or gift to respondents.

10. Confidentiality provided to respondents.

All information collected is treated as confidential as indicated on the form and in conformance with the Privacy Act and Freedom of Information Act.

11. Questions of a sensitive nature.

There are no questions of a sensitive nature in our documents that individuals are required to answer. However, in order to be considered for licensing or approval, warehouse operators may be required to furnish data that could be considered as sensitive in nature such as financial information.

12. Estimates of Burden.

See the attached FSA-85-1's for an estimated burden break down for each required form. Each of the forms has a different estimated usage or annual response and different average time to respond.

The average estimated number of responses per respondent is 6.44875. The total estimated number of respondents is 25,795 (4,000 respondents times 6.44875). The average time to respond is .396 hours. The total estimated burden in this information collection is 10,211 (25,795 times .395851 hours)

There is no recordkeeping requirement in this information collection but the respondents are responsible for their records as part of their general business practices.

Estimated annual cost to the public is \$132,743 which is based on the estimated annual burden hours of 10,211 hours times an average hourly wage of \$13 for warehouse operators.

13. Total annual cost burden to respondents or recordkeepers.

There are no requirements under our regulations for capital/start up costs.

14. Provide estimates of annualized cost to the Federal government.

The estimated annual cost to the Federal Government is \$250,000 which includes costs for development, printing, distribution, storage, maintaining, retrieving and disseminating data. Employee wages of specialists responsible for administering the USWA are estimated at \$440,216.

15. Reasons for changes in burden.

The previous number of burden hours requested was 10,626 as compared to the burden hours requested in this package of 10,211 hours for a difference of minus 415 hours. This decrease is considered an adjustment which many of our licensed entities have combined locations thereby making their operation more efficient to run with less reporting/recordkeeping requirements. Three new forms are added to this information collection.

16. Tabulation, Analysis, and Publication Plans.

The information collected is not planned for publication. It is used solely to administer the program.

17. Reasons display of expiration date of OMB approval is inappropriate.

The forms in this clearance package have different creation/revision dates that in some instances have been revised for the sole purpose of incorporating the public burden statement requirements. However, in some instances forms have been routinely revised to change “warehouseman” to “warehouse operator.” Therefore, to destroy copies of these documents for the purpose of renewing the expiration date of the information collection package would be a waste of government resources. Coordination of the package clearance with the need to reprint and distribute the documents involved may not always be possible.

Forms management practices issued by the General Services Administration and followed by FSA require form stocks or electronic files to be controlled by the version or edition date on the form/regulations. This date determines whether the form/regulations are current or obsolete for the purposes of the program requirements it is fulfilling. Offices are notified on the status of program forms/regulations and are instructed to destroy or continue to use the stocks of forms/regulations based on the dates. A small supply of forms/regulations may be stocked at the FSA Kansas City Warehouse that is used for emergency purposes.

18. Explain exception to the certification statement identified in item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-1.

There are no exceptions to the certification statement identified in item 19, “Certification for Paperwork Reduction Act Submission” of OMB Form 83-1.

19. How is this information collection related to the Customer Service Center? Will this information be part of their one stop shopping?

Our customers (warehouse operators) under this information collection package do not use USDA Customer Service Centers. These USDA customers (warehouse operators) deal directly with our Kansas City Commodity Office.