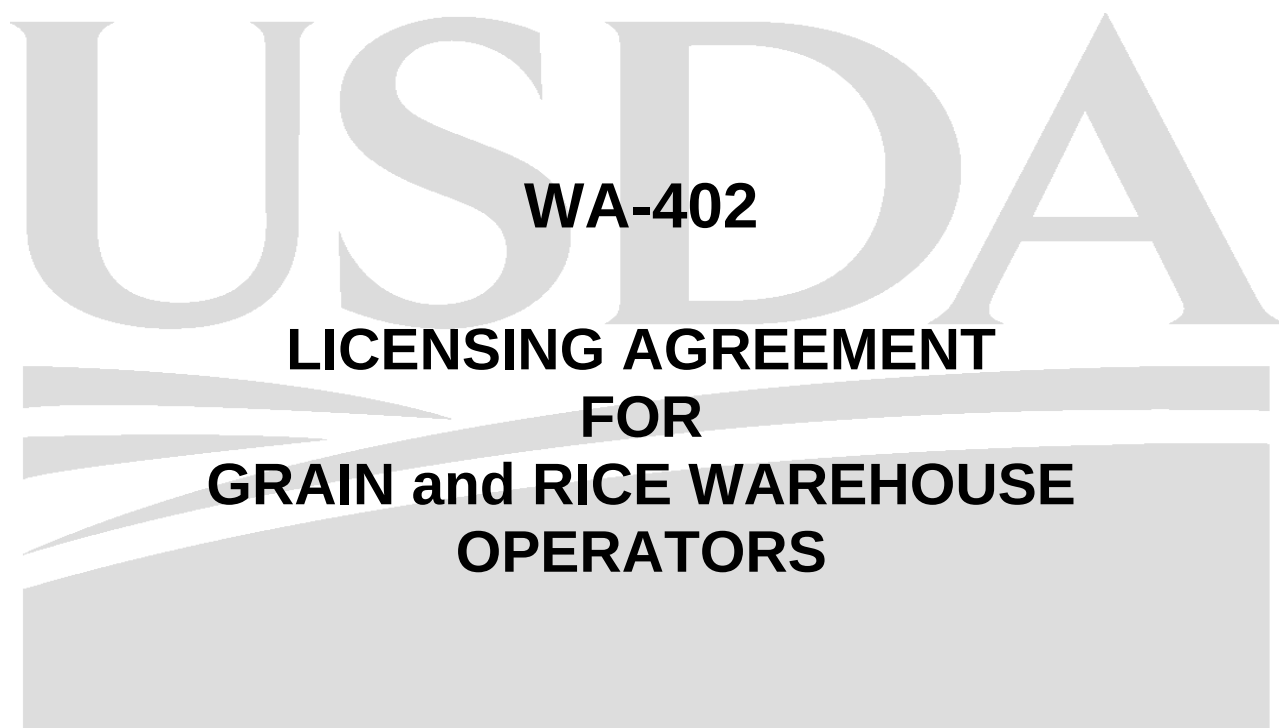


**UNITED STATES DEPARTMENT OF AGRICULTURE  
Farm Service Agency**



**WA-402**

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

**WA-402**  
(11-03-11)

**U. S. DEPARTMENT OF AGRICULTURE**  
Farm Service Agency  
United States Warehouse Act

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## 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 United States Department of Agriculture (USDA), Farm Service Agency (FSA), the Warehouse Operator agrees to the terms and conditions set forth in this WA-402 Licensing Agreement for Grain and Rice Warehouse Operators (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 a valid (neither suspended nor 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 Part 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.*)

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

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

United States 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

**Authorized Individual.** An individual, including a warehouse examiner, designated by DACO to engage in activities authorized under the USWA.

**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, as amended.

**Business Day.** A calendar day, excluding Saturday, Sunday, or legal holidays (unless business activity occurred) as observed by the Chicago Board of Trade (CBOT), a designated contract market.

**Central Filing System (CFS).** An electronic filing 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 Warehouse Operators 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 legal 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 to multiple depositors that identifies and denotes specific binning methods that result in the segregated storage and handling of such grain with like characteristics apart and separate from all other grain.

**Contract.** 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 12-month period following a crop's normal harvest period.

**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.

**Daily Position Record.** A record of grain inventory status summarizing all grain stored, handled, or under the control of the Warehouse Operator in licensed space.

**Depositor.** The person or legal title holder depositing grain in a licensed grain warehouse for storage and who maintains title to the grain.

**Deputy Administrator for Commodity Operations.** The FSA designee under whose general direction and supervision all provisions and activities regulated under the USWA are administered.

**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.** Material removed from an original grain sample as defined by the United States 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 person or entity authorized by DACO as a disinterested third party that maintains one or more confidential and secure electronic systems independent of any outside influence or bias in action or appearance.

**Examiner.** An individual designated by DACO for the purpose of examining warehouses or for any other activities authorized under the USWA.

**Farm Service Agency.** An agency of the USDA whose jurisdiction includes administration of the USWA.

**Field Warehouse Agreement.** A third-party financing and operational lease agreement whereby USWA Warehouse Operators relinquish 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 for commingled commodities, as financing collateral for the benefit of its 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.** Material remaining in a grain sample after removal of dockage as defined by the United States 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 referred to as grain, such as wheat, corn, oats, barley, rye, rice, soybeans, emmer, sorghum, triticale, millet, pulses (other than dry edible beans), sunflower seed, rapeseed, canola, safflower, flaxseed, mustard seed, crambe, sesame seed, or any oilseed designated by the Secretary for the purpose of this agreement, and other products as are ordinarily stored in grain warehouses, subject to the approval 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.

**Inspector, Sampler, Classifier, and/or Weigher.** A person licensed under the USWA to inspect, sample, classify, and/or weigh grain who determines the grade and/or weight of grain stored at a warehouse licensed under the USWA.

**Lawful Owner.** The person or legal entity that has legal title to grain.

**Load Out.** The removal of 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 certificate is issued by a licensed inspector, sampler, classifier and/or weigher at a warehouse licensed under the USWA.

**Master Daily Position Record.** A record of grain inventory status summarizing the location daily position record (DPR) including all grain stored, handled, or under the control of the Warehouse Operator by license.

**Negotiable Warehouse Receipt.** A paper or electronic document of title in which the ownership of the grain represented by the warehouse receipt is transferrable by delivery or endorsement.

**Net Weight.** The weight of grain after foreign material, 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 paper or electronic document that cannot be transferred by endorsement or delivery to another holder or person.

**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.

**Official Service Provider.** An agency and/or laboratory authorized by Federal Grain Inspection Service (FGIS) to provide official inspection and/or weighing services authorized under the United States Grain Standards Act, as amended (USGSA).

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

**Out-of-Condition Grain.** Grain with quality deterioration due to moisture migration, mold, insect damage, heat damage, or other factors.

**Persons.** Individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies, a State or a political subdivision of a State.

**Principal.** An officer, director, owner, partner, member, or key employee who has major oversight and managerial responsibilities within the company applying for or holding a USWA license.

**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 the Secretary for licensing, provider agreements, 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.

**Secretary.** The Secretary of the United States Department of Agriculture.

**Signature.** Any name, mark, or writing used with the intention of authenticating a document. It may be a hand-inscribed original, facsimile, digital, electronic, or any other form of authentication as approved by DACO.

**Split Sample.** The portion of a 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, stored within, or delivered out of the warehouse that is not classified as non-storage.

**Transfer of Grain.** When, under certain circumstances, the Warehouse Operator transfers or forwards grain by physical movement or by other methods to a Warehouse Operator for continued storage, subject to the approval of DACO.

**United States Standards.** The quality standards maintained for agricultural products regulated by either the Agricultural Marketing Act of 1946 as amended (AMA), or the USGSA.

**Unreceipted Obligations.** Grain deposited in the warehouse which is not represented by a warehouse receipt, but for which the Warehouse Operator has a storage obligation. This includes, but is not limited to, open storage grain, grain bank, and unsettled company-owned obligations.

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

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

**Warehouse Capacity.** The maximum quantity of grain that the warehouse will 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 lawfully engaged in the business of storing or handling agricultural products.

**Warehouse Receipt.** A document of title (receipt) issued in accordance with the USWA, including an electronic receipt, which evidences a Warehouse Operator's storage obligation to the depositor or owner of an agricultural product in the warehouse.



**Warehousing Activities and Practices.** Legal, operational, managerial, or financial duties that the Warehouse Operator has regarding grain handled or stored at the USWA warehouse.

### Section B - Qualifications

In general, the Warehouse Operator under the USWA shall (**each** of the following applies):

1. be a responsible person or principal with a good business reputation, who:
  - A. is in the business of public warehousing and has knowledge of, and experience in, generally accepted grain warehousing and handling practices.
  - B. is competent and willing to conduct such a warehouse in accordance with the USWA, Federal regulations, and this Agreement.
  - C. has not committed a fraudulent or criminal offense indicating a lack of business integrity or business honesty that seriously or directly undermines the person's responsibility as a Warehouse Operator.
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 and clean 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 inspection, sampling, classifying, and weighing of the grain in store; and
  - C. are under the Warehouse Operator's control, extending to the immediate surrounding property upon which the Warehouse Operator's facility is located.
3. have personnel or contractors available who:
  - A. have knowledge and experience in inspecting, sampling, classifying, and/or weighing of grain;
  - B. are licensed under the USWA to inspect, sample, classify, and/or weigh 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 allowable 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 allowable 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 covering all depreciable fixed assets and inventory claimed on their financial statement; and

C. that, if operating multiple warehouses under one or more licenses, the maximum capacity of **all** storage space under the 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. to have the required financial statements reviewed or audited by a certified public accountant or an independent public accountant, as approved by DACO.

E. that 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.

- F. that reviews and audits without a physical measurement of inventory and its resultant qualified opinion may subject the Warehouse Operator to an inventory determination by USDA personnel and the assessment of fees to compensate USDA.
- G. 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, subsections 1 and 2, subject to DACO approval, with (**any** of the following):

- A. consolidated financial statements of a parent company that separately identifies the financial position of the Warehouse Operator as a subsidiary; or
- B. guaranty agreement from a parent company submitted on behalf of a wholly-owned subsidiary which meets the requirements of subsections 1 and 2 of Section C; or
- C. guaranty agreement accompanied by an audit-level financial statement meeting the requirements of subsections 1 and 2 of Section C of an entity 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, \$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, with a minimum of \$50,000 and 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; and
- C. additional financial assurance, if DACO finds that conditions exist which warrant requiring additional

financial assurance.

## 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; and
  - (3) the deposit will **not** be released until one year after 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. an irrevocable letter of credit issued to DACO, on a form approved by DACO, to which **each** of the following apply:
  - (1) the letter of credit is issued for a term of not less than two (2) years, 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 ten (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) the letter of credit is 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; and
  - (3) its supporting funds on deposit are **not** considered an asset of the company.
- D. participation in, and coverage by, a State indemnity or insurance fund established and maintained by a State, as approved by DACO, provided that:
  - (1) the fund is backed by the full faith and credit of the State;
  - (2) the fund guarantees depositors in the USWA licensed warehouse full indemnification for any breach of any of the Warehouse Operator's obligations created under the terms of the USWA;
  - (3) the Warehouse Operator files with DACO a yearly certification of their participation and coverage in the fund;
  - (4) in the event of a deficiency in the Warehouse Operator's net worth to cover the total net worth requirement under the USWA, the certification of participation and coverage may be used only to cover deficiencies in net worth above the minimum net worth requirement; and
  - (5) the Warehouse Operator must, at all times, meet the minimum net worth requirement.

- E. other alternative instruments and forms of financial assurance approved 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 maintaining the standard of quality and quantity of grain in custody as a reasonably careful owner would exercise under the same circumstances and conditions, and to keep the grain from going out-of-condition;
- 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 authorized 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, among which grain may be transferred without weighing, 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. **ensure** that all grain claimed as company-owned is paid for or applied to fully executed contracts within 30 days of final delivery; 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 inspect, sample, classify and/or weigh that grain. (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 Inspection and/or Weight Certificate for each individual conveyance (or for multiple railcars provided that each railcar is identified separately) 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 United States Standards, USDA/GIPSA/FGIS, Food and Drug Administration (FDA), 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. **promptly cancel** warehouse receipts representing any grain **prior to** shipping or removing grain from licensed storage space;
  - K. **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;
  - L. **maintain** sufficient inventory, at all times, of grain in licensed storage space that reflects the quality and quantity represented by outstanding storage obligations (including warehouse-receipted and unreceipted grain). In the event the quality or quantity of stored grain becomes out of balance with quality or quantity represented by outstanding storage obligations, the Warehouse Operator is to effect the necessary corrective actions to regain a balanced position for quality and quantity in a timely manner;
  - 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.
- N. **assure** that the physical warehouse inventory record for each kind/class of grain equals the total outstanding warehouse receipt and storage liability obligation records (including company-owned) for the close of each business day and before the start of the next business day;
  - O. **not issue** a warehouse receipt for any grain product or co-product which would meet the definition of "screenings"; and

P. **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; and
- C. **securely affix** clearly discernible numbers to identify bulk grain bins and other authorized storage licensed under the USWA for storing 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. Other authorized storage 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 risk 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 identified during the risk assessment and that protects the safety and purity of the grain handled and stored under the 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 following conditions are 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 storage; and
  - (3) the grain is tendered in a manner consistent with the ordinary and usual course of the Warehouse Operator's business.
- B. The Warehouse Operator may enter into agreements with depositors or lawful owners to allocate available warehouse storage space.

### 6. Insurance

The Warehouse Operator agrees to each of the following requirements:

- (1) **secure**, in their own name, insurance on stored grain against loss or damage by 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 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 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 A, the estimated period during which the warehouse is to be closed and the contact information, including 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, but are not limited to, an accurate and concise Master Daily Position Record (DPR) by each kind and class of grain and supported by supplemental DPRs based on source documents that identify 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 or forwarded 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 storage 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.

- 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** records for each depositor showing the kind, class (and the subclass white club wheat), grade, specialty (such as waxy corn), 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 6 years after December 31 of the year in which the records were created. A longer retention period 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 6 years 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**, either electronically or on paper, an exact copy of each report submitted as a part of the records of the warehouse for a period of 6 years after December 31 of the year in which the document was created 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 6 years after December 31 of the year in which the warehouse receipt is canceled. A longer retention period 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 inspection and weight certificate for a period of 6 years after December 31 of the year in which the document was 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 (**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 receiving 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 implementing 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 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 fire, lightning, windstorm, cyclone, tornado, or inherent explosion and other special peril risks.

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

- (1) **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
- (2) **demand payment** of all accrued charges associated with the storage of grain to satisfy the Warehouse Operator's lien prior to delivering such grain to the depositor; or
- (3) **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;
- 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/or 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; and
- C. **ensure** that all samples submitted to FGIS or an independent agency are representative of the grain delivered.

## 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 weighed, 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; and
- B. **have** scales inspected and certified annually by an applicable regulatory or independent authority. Scales which have been tested and their performance 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.

## 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, 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) **enter into**, at the time of deposit, a special storage agreement with the depositor defining the terms and conditions of storage, including the amount of shrinkage or quality deterioration to be allowed while such grain is in storage;
  - (4) **maintain** the quality and quantity of such grain as stated within the terms of the applicable public tariff or special storage agreement entered into with the depositor(s); and
  - (5) **follow** good warehouse storage practices.
- 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 notifying the depositor.
  - (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 notifying the depositor(s).
  - (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.

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 the original inspection and/or weight 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 inspector and/or weigher or an official inspection certificate issued by an FGIS official service provider. The conditions for delivery are **(each)** of the following):

- A. **proper presentation** of documents of title; and
- B. **payment** of all accrued charges associated with the storage of grain, if requested by the Warehouse Operator.

#### 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 as part of the special storage agreement; or
- B. **commingled bulk grain**, at the request of the owner. An interim weight document must be issued by the shipping Warehouse Operator, clearly indicating 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) or depositor(s) and DACO;

Such notification shall include:

- (a) the warehouse location in which the grain is stored;
- (b) the quantity, kind, class, and grade of the grain at the time notification occurred;
- (c) the actual condition of the grain, as nearly as can be ascertained;
- (d) the reason for the current condition, if known;
- (e) the warehouse receipt information, if a warehouse receipt has been issued; and

- (f) a statement that the grain will be delivered upon the presentation of the warehouse receipt and payment of applicable charges.
- (2) **follow** instructions received from DACO;
- (3) **maintain** as warehouse records copies of all notices and correspondence associated with the out-of-condition grain; 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** authorized individuals to enter and inspect or examine any licensed warehouse on any business day during normal or posted business hours;
- B. **provide safe access** to authorized individuals to the extent reasonable to determine the quantity and quality of grain stored in the licensed warehouse;
- C. **provide** authorized individuals with notice of any safety or other company policies pertaining to the physical facility and grounds subject to examination or inspection;
- D. **provide** authorized individuals access to such books, records, papers, accounts, and their contents pursuant to the examination of a licensed warehouse;
- E. **furnish** authorized individuals with the assistance necessary to conduct an inspection or examination;
- F. **provide safe** and functioning equipment (e.g. 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 a warehouse examination cannot be conducted or completed because of unsafe equipment;
- 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; and
- H. **promptly respond** to violations noted on the examination. The response must include corrective action on items completed and a corrective action plan on items to be completed, including a timetable for completion.

## 22. Transfer of 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 part, 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 an approved Commodity Credit Corporation (CCC) storage agreement.

- B. The transferring Warehouse Operator agrees to (**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 (**each** of the following):
    - (a) **ensure** that the public tariff's rules and schedule of charges include 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 - Financials, subsection 1 A of this Agreement;
    - (g) **post** transferred grain positions to the DPR, as specified in Section E - Duties of the Warehouse Operator, subsection 8 - System of Records;
    - (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 subsection 22 Transfer of Grain, 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) **shall** 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. The transferring (shipping) Warehouse Operator shall execute a legal binding operational agreement 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 the warehouse by accepting the transfer;
  - (2) **not further move, transfer or** in any way offset the grain transferred to it to another warehouse and retain 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 shall be 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** a warehouse receipt 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(s);
  - (3) **list** only the Warehouse Operator as depositor if issuing collateral warehouse receipts; and
    - (a) ensure a sufficient quantity and quality of grain is owned by the Warehouse Operator to cover the obligation at the time of issuance and for the duration the collateral warehouse receipt is outstanding;
    - (b) endorse warehouse receipts to the financial institution or holder receiving the warehouse receipt;
    - (c) ensure that warehouse receipts are endorsed and dated by the financial institution or holder when returning the warehouse receipt (transferring title) to the Warehouse Operator, (**endorsements and date required**); and
    - (d) the Warehouse Operator and the financial institution or holder must have legal documentation clearly defining the terms and conditions for the issuance and acceptance of the collateral warehouse receipts.
  - (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 6 years after December 31 of the year in which issued. Certificates filed in the office of an independent inspection or weighing agency, 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 and Section F - Warehouse Receipts, subsection 2 E of this agreement;
- (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** more than one warehouse receipt with the same warehouse receipt number;
- (8) **state** within the written or printed terms of non-negotiable warehouse receipts that such a warehouse receipt is not negotiable; and
- (9) **issue** warehouse receipts consecutively within the assigned order of warehouse receipts as determined by DACO.

#### B. Persons Authorized to Sign Warehouse Receipts

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

- (1) **file** with DACO the name and genuine, facsimile, digital, 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, digital, 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;
- (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 authorized agent a written order to deliver the grain. Under this alternative method, a Warehouse Operator may deliver up to ninety percent (90%) of the quantity represented by the warehouse receipt. The warehouse receipt must be surrendered before the final ten percent (10%) 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 for which the original warehouse receipt has been canceled. The warehouse receipt issued for the remaining balance 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 USWA and 7 CFR Part 735, Subpart D, 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 or lawful owner;
- (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 (**each** of these apply):
  - (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) or as determined by an FGIS official service provider; 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 and foreign material, 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 or DACO;

- (p) a statement of the Warehouse Operator’s business organization type (e.g. sole proprietorship, corporation, partnership, limited liability company) and the name of the State whose laws govern that organization (e.g. “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 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 thereon. Every negotiable warehouse receipt issued must, in addition to conforming to the requirements of this subpart, 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.”
  - (3) A warehouse receipt may contain additional information, provided it does not contradict, mislead, conceal, or interfere with any required information or printed or written terms.
  - (4) Warehouse receipts must not be altered or defaced, except as authorized by DACO.

#### B. Copies of Paper Warehouse Receipts

The Warehouse Operator agrees to maintain at least one file copy of each warehouse receipt and clearly and conspicuously print or stamp on the face of such warehouse receipt the words “Copy-Not Negotiable” on its surface.

#### 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 to (**each** of the following apply):

- (1) **order** warehouse receipts on a form provided or by a method authorized by DACO;
- (2) **proofread** each order and review the 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 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 lawful owner applying therefore to make and file with the Warehouse Operator the following:
  - (a) an affidavit showing (**each** of the following):
    - (i) that the holder or lawful owner is lawfully entitled to possess the original warehouse receipt;
    - (ii) that the holder or lawful owner has not negotiated or assigned the original warehouse receipt to another person or entity;
    - (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, for a period of not less than 6 years, equal to an amount two times 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 (any 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;
    - (ii) a personal guarantee, made by at least two 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; or
    - (iii) other type of assurance, as approved by DACO.

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 (e.g. 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; and
- (7) **not ship** grain represented by an EWR until it is canceled in the EWR Provider's CFS.

### 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 USWA and Section F - Warehouse Receipts, subsection 1 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 and foreign material, as applicable;
  - (m) the rate of storage charges;
  - (n) prepaid storage and handling 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.
    - (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 authorized 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;
- (t) a statement of the Warehouse Operator's business organization type (e.g. sole proprietorship, corporation, partnership, limited liability company) and the name of the State whose laws govern that organization (e.g. "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 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
- (aa) paper warehouse receipt number (if applicable).

### Section G - Service Licenses

No person will in any way represent themselves as an inspector, sampler, classifier, and/or weigher licensed under the USWA unless such person holds a valid (neither suspended nor revoked) license issued under the USWA. DACO reserves the right to suspend or revoke any service license for due cause.

### FGIS official service providers are not required to obtain a service license under the USWA.

#### 1. Warehouse Operator's Responsibility

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

- A. **have** at least one person licensed to perform inspection, sampling, classifying, and/or weighing of grain at the warehouse;
- B. **notify** the Kansas City Commodity Office (KCCO) when a person holding a service license:



- (1) discontinues to provide service at the specific warehouse they serve; or
  - (2) is no longer employed by the Warehouse Operator.
- C. **post** conspicuously, at a publicly accessible location at the warehouse, including the grain-receiving area, a copy of the certificate of license or other DACO-approved evidence of licensing under the USWA for each person performing the service(s) at that location.
2. Applicant's Responsibility

The Applicant requesting a service license under the USWA:

- A. must make application for a license to inspect, sample, classify, and/or weigh grain as directed by DACO. **Each** application shall:
- (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 inspector, sampler, classifier, and/or weigher;
    - (a) If the applicant is seeking an inspection license, the Warehouse Operator or authorized agent shall certify that such applicant can correctly inspect, sample, and classify grain in accordance with the United States Standards or, in the absence of such standards, in accordance with standards accepted by DACO.
    - (b) If the applicant is seeking a weigher's license, the Warehouse Operator or authorized agent shall certify that such applicant can correctly weigh grain.
  - (3) **furnish** such additional information as requested by DACO.
- B. may be required to submit to an examination or test to demonstrate the ability to properly inspect, sample, classify, and/or weigh grain in accordance with the United States Standards.
- C. make available for inspection the equipment used or to be used to perform such duties.
3. Duties of the Licensed Inspector, Sampler, Classifier, and/or Weigher.

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

- A. **perform** the requested services for which licensed when given grain to inspect, sample, classify, and/or weigh, under conditions that permit proper inspection, sampling, classifying, and/or weighing, without discrimination, as soon as practicable and upon reasonable terms;
- B. **make accessible** to the depositor at the location of the licensed warehouse, a copy of the inspection certificate issued by the licensed inspector, as soon as possible after inspecting 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;
- C. **permit** any authorized individual 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 authorized individual in the inspection or examination into the performance of the duties of such inspector, sampler, classifier, and/or weigher licensed under the USWA;

- D. **file and retain** for a period of 6 years after December 31 of the year in which the documents were created, 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
- E. in addition to meeting the requirements in A through D of this part, the licensee shall be subject to suspension or revocation under conditions described in Section R - Warehouse Operator Failures and Defaults – Remedies, as determined by DACO.

#### 4. Service License Format

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. Proof copies of formats must be approved in advance by KCCO.

#### 1. Inspection 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 or is to be stored;
  - (4) whether the certificate 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 and dockage, if applicable;
  - (10) the grade of the grain, as determined by such duly licensed inspector, in accordance with the United States 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 inspected;
  - (11) the statement “Inspection not valid for purposes of the United States Grain Standards Act”;
  - (12) a statement that the certificate is issued by an inspector licensed under the USWA and the regulations; and
  - (13) the signature of the licensed inspector who inspected the grain.
- B. In addition to the provisions of part A, the inspection certificate may include other information consistent with the USWA or its regulations, if pre-approved by DACO.
- C. In lieu of a USWA inspection certificate in the form prescribed in part A (above) of this Section, an official

certificate issued pursuant to the AMA or the USGSA 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.

- D. When the inspection is performed by FGIS official service providers and the information is included on the USWA inspection certificate, the Warehouse Operator shall insert the language “**Inspection performed by an official service provider. Records on file.**” on the inspection certificate in the area that would normally show the name of the service license holder who performed the actions. Any reference on a USWA inspection certificate to a specific official service provider is not allowed.
- E. The Warehouse Operator will retain and file any documentation (log) of inspection of the grain prepared by the official service provider from which the USWA inspection certificate was prepared.

## 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;  
and
  - (9) the signature of the licensed weigher.
- B. In addition to the provisions of subsection 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 USWA weight certificate in the form prescribed in subsection A (above) of this Section, an official weight certificate issued pursuant to the AMA or the USGSA 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. Inspection and/or Weight Certificates

The kind, class, grade, and weight of any grain, ascertained by an inspector, sampler, classifier, and/or weigher licensed under the USWA may be stated on a certificate in compliance with the combined requirements of subsections 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 United States Standards

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

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

Until United States 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 industry generally in the locality in which the warehouse is located; or
- C. in the absence of the standards mentioned in parts 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 AMA or the USGSA, 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 as determined by DACO.

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, 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 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 delivered grain has been maintained 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 United States Standards, the appeal sample is to be secured and delivered to an office charged with providing official grain inspection services under the AMA or the USGSA. Procedures used to determine the grade of the grain will be as set forth in regulations issued under the AMA or the USGSA as 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 AMA or the USGSA.
- B. For grain not graded under United States 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 authorized agent of grain to store such grain with the Warehouse Operator after the appeal inspection. However, 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.

### Section K - Licensing of Emergency and Temporary Grain Storage

1. The Warehouse Operator may, under certain conditions, license emergency and temporary storage space for commodities deemed storable by DACO.
2. The Warehouse Operator agrees to (**each** of the following):
  - A. **request** and obtain licensing of emergency and temporary space prior to utilizing it for storage;
  - B. **operate** the emergency and temporary storage space in conjunction with the USWA-licensed warehouse;
  - C. **meet** all security, net worth, financial assurance, and insurance requirements as required in Sections C, D, and E of this Agreement;
  - D. **provide access** to the emergency and temporary storage space for examination purposes;
  - E. **maintain** separate inventory records of each commodity stored in emergency and temporary storage space, as well as accounting for such commodities in their DPR; and
  - F. **provide** written notification within 30 days of the date when all the commodities stored in temporary and emergency space have been removed.
3. For **emergency** storage, the Warehouse Operator agrees to (**each** of the following):
  - A. **provide** written justification that a need for emergency storage exists for the current crop year, in the local area including the exact location, kind of commodity, and quantity requested;

- B. **receive** authorization from DACO before using emergency storage space;
  - C. **move commodities** into their USWA-licensed warehouse by:
    - (1) March 31 following initial licensing for wheat, corn, grain sorghum, and other feed grains; and
    - (2) other dates, as established by DACO, for other commodities.
4. 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 of the following crop year for rice and soybeans;
    - (2) July 1 of the following crop year for wheat, corn, grain sorghum, and other feed grains; and
    - (3) other dates, as established by DACO, for other commodities.
  - F. **provide** written notification before reusing licensed temporary space for another crop year.
5. If the Warehouse Operator chooses to continue using the emergency and temporary 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** include that quantity of the commodity in any USWA warehouse examination.
6. The licensing of emergency and temporary storage space does **not** relieve the Warehouse Operator of obligations under the USWA. The Warehouse Operator is responsible throughout the authorized period for the quantity and quality of commodities stored in emergency and temporary storage space to the same extent as liability for licensed warehouse storage space. All commodities stored in approved emergency and temporary storage space are considered a part of the Warehouse Operator's commingled inventory during the authorized storage period.

#### **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 markets designated as futures contract markets 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 to, when applicable (**each** of the following applies):

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 authorized individuals 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 authorized individual in charge. Access is to be granted to the Warehouse Operator's business records for warehouse receipts, fire insurance, and inspection and weight certificates that are required to be issued pursuant to this Agreement. In lieu of such examination, DACO will furnish, at the option of exchange or board, 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.
  - 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 or be an FGIS official service provider.
  - 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.

**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, failure to perform the duties specified, or failure to meet the requirements of the USWA, the regulations, and/or this Agreement.
  - B. failure to maintain legal or operational 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.
  - F. failure to make timely settlement and payment to depositors.
  - G. any action by the Warehouse Operator that may place depositors and storage obligations at risk.
  - H. failure to provide a safe work environment or noncompliance with safety regulations of the Occupational Safety and Health Administration (OSHA).
  - I. failure to ensure adequate security or protection of stored or handled grain from tampering or adulteration.
  - J. failure to pay fees required under this Agreement.
  - K. failure to provide financial assurance.
2. Upon temporary suspension, the Warehouse Operator will:
  - A. **not create** further storage 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 inspect, sample, classify, and/or weigh 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** the warehouse 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;
  - (3) of the fact of an on-going review of the situation;
  - (4) of the time period for expected compliance;
  - (5) whether public notice will be made of a temporary suspension and of subsequent revocation of the USWA license;
  - (6) that revocation of the USWA license may be anticipated for noncompliance; and
  - (7) 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 corrections, 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:

In the event of (**any** of the following):

- A. failure to:

- (1) perform services required under this Agreement;
  - (2) maintain minimum financial requirements;
  - (3) provide proper financial statements;
  - (4) provide financial assurance; or
  - (5) maintain legal or operational control of the warehouse.
- B. commission of a fraudulent act.
2. Suspension, revocation, and liquidation shall be conducted in accordance with the adverse determination rules in 7 CFR Part 735.8, 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, the commission of a fraud, or at the Warehouse Operator's request, DACO may (take **any** of these actions):
    - A. seize and take possession of:
      - (1) the control of the warehouse facility(ies), office(s), 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;
      - (4) monetary or bartered proceeds of any unauthorized grain sale;
      - (5) any involved authorized or unauthorized conveyance and its contents; and/or
      - (6) any grain in transit.
    - B. liquidate the grain contained within the warehouse or controlled by the Warehouse Operator and use the proceeds to satisfy valid 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.
    - D. require the Warehouse Operator to continue to provide, to the extent possible:
      - (1) all utility services;
      - (2) required insurances;
      - (3) resources and assistance in obtaining labor necessary to operate the facility(ies) until all grain inventories have been liquidated, and
      - (4) equipment necessary for the operation of the warehouse.
    - E. exercise a claim on the letter of credit or other financial assurances executed in the name of USDA or in favor of the United States, if applicable.

5. Should liquidation become necessary, the following is the order of distribution of available liquidated funds:
  - A. validated warehouse-receipted and unreceipted storage obligation claims, excluding company-owned, for:
    - (1) commingled grain.
    - (2) grain segregated in storage because of special characteristics (may be joined with the other grain in-store).
  - B. disputed storage-obligation claims.
  - C. lien-holder claims for warehouse charges and warehouse-owned claims.
  - D. Claims for grain belonging to the Warehouse Operator or a Principal will be subordinate to all other claims.
6. If 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 DACO/USWA 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 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) licenses to inspect, sample, classify, and/or weigh grain.
  - C. fees for additional and/or special warehouse examination services.
    - (1) Reinstatement fees for suspended licenses are invoiced at the examination/inspection fee rate and may be required to be deposited in advance of reinstating the license.
    - (2) Additional fees may be charged to the Warehouse Operator for examinations performed for non-compliance with the USWA, the regulations and/or this Agreement.
    - (3) Special services performed by USDA-FSA representatives and requested by the Warehouse Operator are available at an hourly rate which is approved by DACO. These services are available for scheduling and invoicing from the KCCO office. (Please call for rates and services available and scheduling.)
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.

By signing this form, I (the Warehouse Operator) agree to all the terms and conditions set forth in the WA-402, Licensing Agreement for Grain and Rice Warehouse Operators and the regulations found at 7 CFR Part 735 and the statute found at 7 U.S.C. § 241 *et seq.* I understand that failure to comply with the provisions set forth in this Agreement and the regulations found at 7 CFR Part 735 and the statute, United States Warehouse Act, found at 7 U.S.C. § 241 *et seq.* may result in suspension, revocation, or liquidation.

This completes the requirements for licensing of USWA Master Code _____	
For:	Warehouse Operator
At:	Principal Place of Business
By:	Signature of Authorized Representative
Date signed	_____ Date (MM-DD-YYYY)
Accepted for Farm Service Agency By:	_____ Signature
Title	_____
Date	_____

Please sign this page 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

Fax: (816) 926-1548

Phone: (816) 926-6474

**NOTE:** *The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. 552a - as amended). The authority for requesting the information identified on this form is 7 CFR Part 735 and the United States Warehouse Act (7 U.S.C. § 241-273 et seq.). The information will be used to determine eligibility for initial licensing and continued licensing as identified in the terms and conditions set forth in this agreement between the Warehouse Operator and the Deputy Administrator for Commodity Operations. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated). Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of ineligibility for initial licensing and continued licensing as identified in the terms and conditions set forth in this agreement between the Warehouse Operator and the Deputy Administrator for Commodity Operations.*

*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.*

*The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. **RETURN THIS COMPLETED FORM TO THE KANSAS CITY COMMODITY OFFICE, POST OFFICE BOX 419205, MAIL STOP 9148, KANSAS CITY, MO 64141-6205.***

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