

United States Department of Agriculture  
Farm Service Agency

**USDA**  
**WA-404**  
**LICENSING AGREEMENT**  
**FOR**  
**TOBACCO**

The graphic consists of several dark green, curved, overlapping shapes that resemble stylized tobacco leaves or a field, positioned below the text.

License Number \_\_\_\_\_

Effective \_\_\_\_\_

LICENSING AGREEMENT FOR TOBACCO

Contents

- I. Definitions.....1
- II. Financials.....1
  - A. Financial Requirements.....1
  - B. Financial Reporting.....2
  - C. Accepting Other Financial Statements.....2
  - D. Special Cases – Assets and Liabilities.....3
  - E. Financial Special Conditions - Public Debt Obligations.....3
- III. Financial Assurance.....3
  - A. Financial Assurance Requirements – Computation.....3
  - B. Financial Assurance – Acceptable Forms.....4
- IV. Duties of Warehouse Operator.....4
  - A. General.....4
  - B. Insurance.....5
  - C. Records to be kept in a Safe Place.....5
  - D. Scales .....6
  - E. Warehouse Charges.....6
  - F. Business Hours.....6
  - G. System of Accounts.....7
  - H. Reports Required.....7
  - I. Inspections, Examinations of Warehouse.....7
  - J. Storage of Tobacco.....7
  - K. Delivery of Tobacco.....8
  - L. Out of Condition and Damaged Tobacco.....8
  - M. Warehouse Receipts.....8
- V. Paper Warehouse Receipts.....9
  - A. Issuance.....9
  - B. Form.....9
  - C. Persons Authorized to Sign Warehouse Receipts.....10
  - D. Copies of Warehouse Receipts.....10
  - E. Printing of Warehouse Receipts.....11
  - F. Return of Warehouse Receipts Prior to Delivery.....11
  - G. Balance Warehouse Receipts.....11
  - H. Lost or Destroyed Warehouse Receipts.....11
- VI. Service Licenses.....12
  - A. The Applicant.....12
  - B. Examination of Applicant.....12
  - C. Official Sampling Procedure.....12
  - D. Inspection Certificate.....13
  - E. Grade Certificates.....14
  - F. Weight Certificates.....14
  - G. Inspection, Grade and Weight Certificate.....15
  - H. Duties of Grader, Inspector, Sampler and Weigher.....15

**WA-404 (10-31-11)**

VII. Tobacco Grading.....	16
A. Standards of Grade for Tobacco.....	16
VIII. Tobacco Appeals.....	16
A. Appeal Procedure.....	16
B. Ability to Appeal.....	16
C. Owner Not Compelled to Store Tobacco.....	16
IX. Fees .....	17

## Licensing Agreement for Tobacco

As a condition of licensing under the United States Warehouse Act (the Act), administered by the Farm Service Agency (FSA), United States Department of Agriculture (USDA), the warehouse operator agrees to the conditions set forth in this agreement and the regulations found at 7 CFR Part 735:

### Definitions

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

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

**Condition.** Any state of tobacco which is not covered by form or grade and which has a material bearing on the value, including its keeping quality.

**Form.** The designation of the stage of preparation of tobacco, such as unstemmed, stemmed, stems, etc.

**Grade.** Any one of the divisions of a type that may be a combination of any of the factors: group, quality, color and length.

**Licensed sampler, inspector, grader and/or weigher.** A person licensed under the Act to sample, inspect, grade and/or weigh tobacco presented for storage in the licensed warehouse and to certificate its keeping quality, type, grade, form, condition and weight and to certificate or tag and seal samples of tobacco drawn by the license holder.

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

**Type.** Any one of the main classes of tobacco having certain peculiar characteristics which permits being divided into a single system of grades.

## II. Financials

### A. Financial Requirements

The warehouse operator agrees to have and maintain:

Total net worth of at least the amount obtained by multiplying \$5.00 by the warehouse capacity in 1,000 pounds; however, no person may be licensed or remain licensed as a warehouse operator unless that person has allowable net worth of at least \$5,000.00 (Any deficiency in net worth above the \$5,000.00 minimum may be supplied by an increase in the amount of the financial assurance). The warehouse operator need not provide financial assurance in excess of \$100,000.00.

Total allowable current assets equal to or exceeding total current liabilities or evidence acceptable to FSA that funds will be and remain available to meet current obligations.

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

#### Financial Reporting

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

2. These financial statements must include but not be limited to:
  - a. Balance sheet,
  - b. Statement of income (profit and loss),
  - c. Statement of retained earnings, and
  - d. Statement of cash flows.

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

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

#### C. Accepting Other Financial Statements

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

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

D. Special Cases – Assets and Liabilities

1. Subject to such terms and conditions as FSA may prescribe and for the purposes of determining allowable assets and liabilities, appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by a warehouse operator to conform with the requirements may be allowed if:
  - a. Prepared by independent appraisers acceptable to FSA, and
  - b. The assets are fully insured against casualty loss.
2. All tobacco purchased from and remaining in-store at another warehouse must be fully paid for and a warehouse receipt issued in the name of the purchasing warehouse operator for such quantity and quality as the warehouse operator's records or assets may state.

E. Financial Special Conditions – Public Debt Obligations

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

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

2. A deficiency in total allowable net worth as computed may be offset by the licensed warehouse operator furnishing acceptable financial assurance for the difference.
3. The deposit may be replaced or continued in the required amount from year to year.
4. The deposit will not be released until one year after cancellation or revocation of the license that it supports or until satisfaction of any claim against the deposit, whichever is later.

**I Financial Assurance**

Financial Assurance Requirements – Computation

The warehouse operator agrees:

To furnish financial assurance computed at the rate of \$5.00 per 1,000 pounds of storage space that the warehouse accommodates when stored in the manner customary to the warehouse as determined by FSA, but not less than \$5,000.00 nor more than \$50,000.00.

When applying for licenses to operate two or more warehouses in the same State, or multiple states, and at the warehouse operator's election, they may provide financial assurance meeting the requirements of the Act and the regulations to cover all these warehouses within the multiple states and the maximum of \$50,000.00 of financial assurance will apply for each State covered.

In case of a deficiency in net worth above the \$5,000.00 minimum required, to add to the amount of financial assurance determined in accordance with paragraph (1) of this section an amount equal to that deficiency. If a letter of credit is used for the amount of the deficiency, it must be issued for a period of not less than two years to coincide with the period of any deposit of obligations. Any letter of credit must be clean, irrevocable, issued by a commercial bank payable to Deputy Administrator for Commodity Operations (DACO) by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation or an institution in good standing regulated by the Farm Credit Administration. The deposit will not be considered an asset of the company.

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

#### B. Financial Assurance – Acceptable Forms

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

A warehouse operator's bond, or

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

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

In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by FSA, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouse operator under the terms of the Act and regulations, or

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

### IV. Duties of Warehouse Operator

#### General

The warehouse operator agrees to:

1. At all times exercise such care in regard to tobacco in custody as a reasonably careful owner would exercise under the same circumstances and conditions.
2. To not differentiate among depositors regarding use of and access to services, except that available storage space may be allocated.
3. Accept all tobacco and, at the request of the depositor, deliver out all tobacco, in accordance with the grades of that tobacco as determined by a person duly licensed to inspect that

tobacco and to certificate the condition, keeping quality, form, grade, type and the weight of that tobacco under the Act and the regulations.

4. If an appeal from the determination of an inspector has been taken, that tobacco will be accepted for and delivered out of storage in accordance with the grades as finally determined in the appeal.
5. Keep the warehouse reasonably clean at all times and free from detritus, rubbish, or accumulations of materials that will create a hazard or interfere with the handling of tobacco and provide a safe environment in and around the warehouse and will provide all necessary assistance in the execution of inspections and examinations by representatives of FSA.

Fumigate the warehouse with proper chemicals when appropriate to do so.

7. Apply for licensing at all facilities controlled by them at a specific location, among which tobacco may be transferred without weighing, unless those facilities are specifically exempted by FSA. The warehouse operator must not select, randomly, the space to be licensed unless that space is specifically exempted by FSA.

#### B. Insurance

##### 1. Requirements

The warehouse operator agrees to:

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

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

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

#### C. Records to be kept in a Safe Place

The warehouse operator agrees to:

Provide a fireproof safe, a fireproof vault, or a fireproof compartment in which to keep, when not in use, all records, books, and papers pertaining to the licensed warehouse, including a current warehouse receipt book, copies of warehouse receipts issued, and canceled warehouse receipts, except that, with the written consent of FSA, upon a showing

by the warehouse operator that it is not practicable to provide such fireproof safe, vault, or compartment, may keep such records, books, and papers in some other place of safety, approved by FSA.

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

Arrange canceled warehouse receipts in numerical order and otherwise in such manner as may be directed, for purposes of audit, by authorized officers or agents of the USDA and FSA.

#### D. Scales

The warehouse operator agrees to:

Be equipped with suitable weighing apparatus in good order, and so arranged that all tobacco can be weighed into the warehouse. These apparatus in any warehouse must be subject to examination by authorized officers or agents of the USDA and to disapproval by FSA. If disapproved, any weighing apparatus must not thereafter be used in ascertaining the weight of tobacco for the purposes of this Act, until such disapproval is withdrawn.

#### E. Warehouse Charges

The warehouse operator must:

Not make any unreasonable or exorbitant charge for services rendered.

Before a license to conduct a warehouse is granted under the Act, file, with FSA, a copy of their rules and a schedule of charges to be assessed depositors.

Before making any change in such rules or schedule of charges, file with FSA a new rule statement or schedule of charges.

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

#### F. Business Hours

The warehouse operator agrees to:

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

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

warehouse.

G. System of Accounts

The warehouse operator agrees to:

1. Have and maintain a system of accounts approved for the purpose by FSA.

Maintain a separate set of records for each package of tobacco including the name of the depositor, the package identification number, the weight, type, grade, form, condition, the location, the dates incoming and outgoing, the receipts issued and canceled, and an accounting which must include a detailed record of all money received and disbursed and, if applicable, all insurance policies taken out and canceled on request of each depositor. These records will be maintained accurately and concisely as activity occurs. The warehouse operator must retain these records for a period of six years after December 31 of the year in which they were created, and for such longer period as may be necessary for the purposes of any litigation which the warehouse operator knows to be pending, or as may be required by FSA in particular cases to carry out the purposes of the Act.

Reports Required

The warehouse operator agrees to:

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

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

Inspections, Examinations of Warehouse

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

J. Storage of Tobacco

The warehouse operator may not receive for storage any tobacco that is not properly packaged.

The warehouse operator will return to the package any tobacco drawn for the selection of a sample, except for the actual portion used for the sample.

The warehouse operator will store tobacco in such a way that the package of each depositor

can be readily removed for inspecting, weighing or delivering and so that the identification number is visible and accessible.

K. Delivery of Tobacco

The warehouse operator must, upon proper presentation of a warehouse receipt for any tobacco, and, if requested by the warehouse operator, upon payment of all accrued charges associated with the storage of the tobacco, deliver to the depositor, or lawful holder at the specific instruction of the owner of the warehouse receipt, the packaged tobacco deposited as evidenced by the marks or numbers on the packages.

L. Out of Condition and Damaged Tobacco

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

M. Warehouse Receipts

1. The warehouse operator when choosing the option to issue Electronic Warehouse Receipts (EWRs) instead of paper warehouse receipts for the agricultural product(s) stored in their warehouse agrees to:
  - a. Only issue EWRs through a provider whom FSA has approved.
  - b. Receive written authorization from FSA at least 30 calendar days before changing providers. Upon authorization a warehouse operator may request their current provider to transfer their EWR data from its Central Filing System (CFS) to the CFS of the approved provider whom they select. Warehouse operators must notify all holders of EWRs by inclusion in the CFS at least 30 calendar days before changing providers, unless otherwise required or allowed by the Agency. Warehouse operators may only change providers once a year.
  - c. Cancel EWRs only when they are the holder of the receipt(s).
  - d. Correct information on the EWR only with written notification to the provider.
  - e. Before issuing EWRs, request and receive from the FSA a range of consecutive warehouse receipt numbers which the warehouse operator will use consecutively for issuing their EWRs.
  - f. Issue warehouse receipts initially as EWRs.

Inform FSA of the identity of their provider 60 calendar days in advance of issuing EWRs through that provider. The FSA may waive or modify this 60 calendar day requirement as set forth under §735.2(b).

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

the following attributes that:

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.

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

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

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

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

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

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

Provisions of § 735.300(c) will be applicable to lost or destroyed EWRs.

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

## **V. Paper Warehouse Receipts**

### Issuance

The warehouse operator agrees to:

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

Prior to issuing any warehouse receipt under the Act, obtain a copy of the original weight certificate, original inspection certificate or original inspection and weight certificate representing the tobacco. The warehouse operator’s records must identify the certificate(s) used as the basis for issuing the receipt and retained for a period of three (3) years after December 31 of the year in which issued. Certificates filed in the office of an independent inspection or weighing agency or with a U. S. Registrar meet this requirement.

### B. Form

Every warehouse receipt, whether negotiable or non-negotiable, issued for tobacco stored in a licensed warehouse must, in addition to complying with the requirements of section 11 of

the Act, embody within its written or printed terms the following:

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

The license number of the warehouse operator.

The Commodity Credit Corporation (CCC) Contract code number, if any.

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

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.

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

The net weight of the tobacco.

In the case of tobacco the identity of which is to be preserved, its identification or location in accordance with the regulations.

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

2. Every negotiable warehouse receipt issued must, in addition to conforming with the requirements of paragraph (a), embody within its written or printed terms, a form of endorsement which may be used by the depositor, or their authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the tobacco covered by the receipt.
3. The grade stated in a warehouse receipt must be stated as determined by the inspector who last inspected and graded the tobacco or, if an appeal has been taken, the grade will be stated on such receipt in accordance with the grade as finally determined in such appeal.

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

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

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

The warehouse operator must file with FSA, the name and genuine signature of each person

authorized to sign warehouse receipts for the warehouse operator, promptly notify FSA of any changes as to persons authorized to sign, file the signatures of such persons, and will be bound by such signatures the same as if the warehouse operator had personally signed the receipt.

D. Copies of Warehouse Receipts

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

E. Printing of Warehouse Receipts

The warehouse operator agrees to issue only warehouse receipts that:

Are in a form prescribed by FSA.

Are on distinctive paper or card stock specified by FSA.

Printed by a printer with whom FSA has an agreement and bond for such printing.

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

F. Return of Warehouse Receipts Prior to Delivery

The warehouse operator agrees to:

Not deliver any tobacco for which they have issued a negotiable receipt until the receipt has been returned to them and canceled.

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

G. Balance Warehouse Receipts

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

H. Lost or Destroyed Warehouse Receipts

1. The warehouse operator may issue a new warehouse receipt subject to the same terms and conditions, and bearing on its face the number and the date of the original receipt when presented with the case of a lost or destroyed warehouse receipt.
2. Before issuing a replacement warehouse receipt, the warehouse operator must require the holder or other person applying therefor to make and file with the warehouse operator:
  - a. An affidavit showing that the holder is lawfully entitled to the possession of the original warehouse receipt; that the holder has not negotiated or assigned it; how the original

receipt was lost or destroyed; and, if lost, that diligent effort has been made to find the warehouse receipt without success.

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

### 3. Auditing Canceled Warehouse Receipts

The warehouse operator agrees to forward canceled receipts for auditing, as requested, to FSA.

## VI. Service Licenses

### A. The Applicant:

Must make application for license to grade, inspect, sample and/or weigh tobacco to FSA on forms furnished by the Agency. Each application must:

- a. Be signed by the applicant.
  - b. Contain or be accompanied by a statement from the warehouse that the applicant is acceptable to such warehouse operator .
  - c. If seeking inspection and/or grading licensing, certification that the applicant can correctly inspect and sample tobacco in accordance with the Official Standards of the United States, or in the absence of such standards, in accordance with any standards approved by FSA.
- a. If seeking weighing licensing, certification that the applicant can correctly weigh tobacco.
  - b. Furnish such additional information as requested by FSA.

### Examination of Applicant

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

### C. Official Sampling Procedure

The sampler will:

1. Have a sufficient quantity of tags of the kind and quality approved by the Agency for identifying samples drawn.

2. Use tags upon which are printed.
  - a. The number of the tag.
- a. The caption "Official Tobacco Sample Drawn under the United States Warehouse Act".

The name and location of the warehouse in which the tobacco is stored.
- a. The identification number of the package from which the sample is drawn.
- b. The date of the sampling.
  - f. A statement that the sample was "drawn by a sampler licensed under the authority of the Act."

3. Seal each sample drawn by them so as to prevent removal of the tag or separation of the sample without breaking the seal.

4. Each seal must show:

The name of the sampler.

The license number of the sampler.

The insignia "USWA".

D. Inspection Certificate

1. Each inspection certificate issued under the Act by an inspector must be in a form approved by FSA, and include the following information within its terms:
  - a. The caption "United States Warehouse Act, Tobacco Inspection Certificate,"
  - b. Whether it is an original, a duplicate, or other copy, and that it is not negotiable,
  - c. The consecutive number of the certificate,
  - d. The name and location of the warehouse in which the tobacco is or is to be stored,
  - e. The date of the certificate,
  - f. The location of the tobacco at the time of sampling,
  - g. A blank line for recording the package identification,
  - h. The keeping quality or condition of the tobacco at the time of inspection,
  - i. A blank line for recording any condition which may affect the keeping quality of the tobacco,

- j. A statement that the certificate is issued by a inspector licensed under the Act and the regulations, and
  - k. The signature of the inspector who inspected the tobacco.
2. In addition to the provisions of paragraph 1, the inspection certificate may include any other matter consistent with the Act or the regulations, provided the authorization of FSA is first secured.

E. Grade Certificates

Each grade certificate issued under the Act by an inspector must be in a form approved for the purpose by FSA, and include the following information within its terms:

- a. The caption "United States Warehouse Act, Tobacco Grade Certificate,"
  - b. Whether it is an original, a duplicate, or other copy,
  - c. The consecutive number of the certificate,
  - d. The name and location of the warehouse in which the tobacco is or is to be stored,
  - e. The date of the certificate,
  - f. The location of the tobacco at the time of grading,
  - g. A blank line for recording the package identification,
  - h. The grade, type, form and condition of each package of tobacco at the time of grading,
  - i. The number of each official sample, if graded upon sample,
- a. A statement that the certificate is issued by a grader licensed under the Act and the regulations,
- k. A blank line for recording remarks on the condition of the tobacco, and
  - l. The signature of the grader who graded the tobacco.
2. In addition to the provisions of paragraph 1, the inspection certificate may include any other matter consistent with the Act or the regulations, provided the authorization of FSA is first secured.

F. Weight Certificates

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

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

- b. Whether it is an original, a duplicate, or other copy,
  - c. The consecutive number of the certificate,
  - d. The name and location of the warehouse in which the tobacco is or is to be stored,
  - e. The date of the certificate,
  - f. The location of the tobacco at the time of weighing,
  - g. A blank line for recording the package identification,
  - h. The gross, tare and net weight of each package of tobacco,
  - i. A blank line for recording remarks on conditions which may affect the weight of the tobacco,
  - j. A statement that the certificate is issued by a weigher licensed under the Act and the regulations, and
  - k. The signature of the weigher who weighed the tobacco.
2. In addition to the provisions of paragraph 1, the weight certificate may include any other matter consistent with the Act or the regulations in this part provided the authorization of FSA is first secured.

#### G. Inspection, Grade and Weight Certificate

The condition, grade and weight of any tobacco, ascertained by an inspector, grader and/or a weigher, may be stated on a certificate meeting the combined requirements of subsections D, E and F, provided the form of the certificate is approved for the purpose by FSA.

#### H. Duties of Grader, Inspector, Sampler and Weigher

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

1. When given tobacco to grade, inspect, sample and/or weigh under conditions which permit proper inspection, grading, sampling and weighing, without discrimination, as soon as practicable and upon reasonable terms, perform the requested services for which licensed.

Issue a certificate of grade, inspection or weight for any tobacco only if the grading, inspection, sampling and/or weighing is based upon a correct and representative sample of the tobacco.

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

Keep the license to inspect, grade, sample and/or weigh conspicuously posted at the place

where those duties are performed or as directed by FSA.

5. Permit any authorized officer or agent of the USDA or FSA or their designee to inspect or examine, on any business day during the usual hours of business, their books, papers, records, and accounts relating to the performance of their duties under the Act and, with the consent of the warehouse operator concerned, assist any such officer or agent in the inspection or examination as far as it relates to the performance of the duties of such inspector or weigher under the Act.
6. Keep for a period of one year, in a place accessible to interested parties, a copy of each certificate issued and file the certificate with the warehouse in which the tobacco covered by the certificates is stored.

## **VII. Tobacco Grading**

Standards of Grade for Tobacco

Until Official Standards of the United States are fixed and established for the kind of tobacco to be inspected, the grade of the tobacco will be stated, subject to the authorization of:

In accordance with the standards, if any, established by FSA.

2. In accordance with standards adopted by any tobacco organization or be the tobacco trade generally in the locality in which the warehouse is located, subject to disapproval by FSA.

## **VIII. Tobacco Appeals**

Appeal Procedure

The warehouse operator or any person with a financial interest in the tobacco, may, after reasonable notice to the other parties, make an appeal as to the accuracy of an official sample, or the type, the condition, the grade, or the form of a lot of tobacco stored or to be stored in a warehouse. If the original inspection and/or grade certificate was issued by an inspector licensed under, or authorized by the Act, the appeal, including the amount of fees, will be governed by a committee appointed by FSA. The committee's decision will be final unless FSA directs a review of the question. Immediately, the committee will issue a certificate embodying their decision to all interested parties. If the decision is that it is not a representative sample of the package, the receipt or certificate will be returned to the licensee and canceled and replaced, in lieu, a new receipt or certificate with statements of type, grade, form or condition in accord with the findings of the committee. All expenses will be borne by the losing party.

### **B. Ability to Appeal**

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

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

### **C. Owner Not Compelled to Store Tobacco**

Nothing in this agreement will require the owner or agent to store such tobacco with the

warehouse operator after the appeal inspection, but if the tobacco is stored it will be accepted for and delivered out of storage in accordance with the certificate or receipt as finally determined in such appeal.

**IX. Fees**

The Office of the Secretary (delegated to the Deputy Administrator for Commodity Operations) (DACO) is authorized, by the enabling legislation, to collect fees to cover the administration of the warehouse activities. The rates of fees are set by DACO. 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 concerns. A schedule showing the current fees or any annual fee changes will be provided as an addendum to the licensing agreement.

**This agreement forms a part of the license,  
number**

**For**

\_\_\_\_\_  
License Number

**at**

\_\_\_\_\_  
Warehouse Operator

**and is effective**

\_\_\_\_\_  
Licensed Location

\_\_\_\_\_  
Date

\_\_\_\_\_  
Warehouse Operator

\_\_\_\_\_  
By

\_\_\_\_\_  
Date

\_\_\_\_\_  
Farm Service Agency

**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, the United States Warehouse Act (Pub. L. 106-472), and the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.). The information will be used to document tobacco warehouse operator agreement to abide by the terms and conditions set forth in the Licensing Agreement for Tobacco. 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) and USDA/FSA-3, Consultants File. Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of ineligibility to obtain new licensing or retain existing licensing under the United States Warehouse Act.*

*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, WAREHOUSE LICENSE AND EXAMINATION DIVISION, STOP 9148, P.O. BOX 419205, KANSAS CITY, MO 64141-6205.**

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

*1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.*