

United States Department of Agriculture  
Farm Service Agency



**WA-405  
LICENSING AGREEMENT  
FOR  
NUT WAREHOUSE OPERATORS**

License Number \_\_\_\_\_ Effective Date \_\_\_\_\_

## LICENSING AGREEMENT FOR NUT WAREHOUSE OPERATORS

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## Licensing Agreement for Nut Warehouse Operators

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

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

Any person engaged in the business of 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 USWA protections or coverages.

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

The following are included by reference:

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

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

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

United States Standards for Peanuts.

Peanut Quality and Handling Standards, as amended -- Authority: Secs. 1308, Pub. L. 107-171, 116 Stat. 178 (U.S.C. 7958) Part 996.

United States Standards for Filberts.

United States Standards for Pecans.

United States Standards for Walnuts.

### I. Definitions

**Bin.** A bin, tank, interstice, or other container in a warehouse in which bulk nuts may be stored.

**Business Day.** A calendar day excluding Saturdays, Sundays, or Federal holidays.

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

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

**Collateral Warehouse Receipts.** Those warehouse receipts issued by the Warehouse Operator to themselves that enables them to pledge unencumbered company-owned nuts stored within their licensed warehouse space, as loan security or collateral.

**Commingled.** The storage or handling of bulk nuts under any circumstance other than identity preserved.

**Company Owned Nuts.** Nuts for which title has passed to the Warehouse Operator.

**Control of the Facility.** 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 means of transportation (truck, railroad car, unit train, barge, or vessel) used in receiving or shipping nuts.

**Crop Year.** The 12-month period beginning with August 1 of any year and ending with July 31 of the following year.

**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.

**Depositor.** Person depositing nuts in a USWA warehouse for storage and maintains title to the nuts.

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

**Electronic Warehouse Receipt (EWR).** A warehouse receipt that is authorized by DACO to be issued or transmitted under the USWA in the form of an electronic document.

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

**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.** Those severe weather conditions, fire, explosion, flood, earthquake, nuclear incident, nuclear reaction, nuclear radiation, radioactive contamination, insurrection, riot, strike, labor dispute, acts of terrorism, act of civil or military, non-availability of transportation facilities, or any other cause beyond the control of the arehouse Operator that renders performance impossible.

**Holder.** The person that has possession in fact or by operation of law of a warehouse receipt, USWA electronic document, or any electronic document.

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

**Licensed Sampler and Weigher, And/or Inspector and Grader.** A person licensed under the USWA to sample and weigh, and/or inspect and grade nuts and certificate the grade and/or weight of nuts stored at a nut warehouse licensed under the USWA.

**Load Out.** Removing the nuts from the warehouse and loading the nuts into a conveyance.

**Lot.** The quantity of specific nuts received into a warehouse for which one inspection and weight certificate is issued by an licensed sampler and weigher, and/or inspector and grader at a nut warehouse licensed under the USWA.

**Net Weight.** The weight of nuts after foreign material and excess moisture weight have been deducted.

**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. FSA will determine what assets are allowable and under what conditions appraisals may be used.

**Non-Storage Nuts.** Those nuts received temporarily into a warehouse for conditioning, transferring or assembling for shipment, or specific lots of nuts moving through a warehouse for current merchandising or other use, against which no warehouse receipts are issued and no storage charges assessed.

**Nuts.** Unshelled nuts of the following kinds: American-grown peanuts, pecans, filberts and English or Persian walnuts; shelled American-grown peanuts, and such other products as are ordinarily stored in nuts warehouses, subject to the disapproval of DACO.

**Nut Type.** The generally known genetic varieties or types of nuts, as identified and determined by the licensed inspector.

**Open Storage Nuts.** Those nuts stored in the warehouse belonging to others which are not warehouse receipted or company owned.

**Peanut.** Runner Type, Spanish Type, Valencia Type, Virginia Type, or any other peanut type defined in the United States Standards for Peanuts or the Peanut Quality and Handling Standards.

**Peanut Standards.** United States Standards for Peanuts, by applicable type, and the Peanut Quality and Handling Standards as established and amended by the Agricultural Marketing Service (AMS).

**Quantity and Quality.** The legal, operational, managerial and financial duty that the Warehouse Operator has regarding their liability for the established value(s) of any nut obligation(s), including company owned nuts, handled or stored by the Warehouse Operator.

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

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

**Storage Nuts.** All nuts received into, stored in, or delivered out of the warehouse which are not classified as non-storage.

**Warehouse Capacity.** The maximum quantity of nuts that the warehouse will accommodate when stored in a manner customary to the warehouse, as determined by DACO.

**Warehouse Operator.** A person licensed under the USWA who owns or manages a nut warehouse.

**Warehouse Receipt.** A paper or electronic receipt, either negotiable or nonnegotiable, issued by the Warehouse Operator that evidences title to the nuts received by the Warehouse Operator for storage in their USWA licensed space.

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

## II. Qualifications

In general, licensees under the USWA are expected to have (**each** the following characteristics):

- A. Responsible persons and organizations, with a good business reputation, who:
  - 1. are in the business of public warehousing,
  - 2. have adequate financial resources to operate their business, and
  - 3. have knowledge of and experience in generally accepted warehousing practices for nuts.
- B. Have facilities that:
  - 1. are physically and operationally suitable for the protection of nuts in store,
  - 2. allow for the accurate and efficient weighing, sampling, and inspection of the nuts in store, and
  - 3. are within the control, extending to the immediate surrounding environment, of the Warehouse Operator.
- C. Have personnel available that:
  - 1. have knowledge and experience in sampling, inspection, weighing, and grading of nuts,
  - 2. are able to assist the FSA warehouse examiner with examinations, and
  - 3. have integrity, good judgement and proven performance.

## III. Financials

- A. Financial Requirements
  - 1. The Warehouse Operator agrees to have and maintain (**each** of the following):
    - a. total net worth of at least the amount obtained by multiplying the warehouse capacity by:
      - (i) \$25.00 per ton of peanuts;
      - (ii) \$.02 per pound of Walnuts or Filberts; or
      - (iii) \$.03 per pound of Pecans;

- (iv) however, no person may be licensed or remain licensed as a Warehouse Operator unless that person has a minimum allowable net worth of at least \$50,000.00. Any deficiency in net worth above the \$50,000.00 minimum may be supplied by an increase in the amount of the financial assurance.
- b. total allowable current assets equal to or exceeding total current liabilities or evidence acceptable to DACO that funds will be and remain available to meet current obligations.
- 2. If the 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 DACO, will be the capacity considered in determining whether the Warehouse Operator meets the net worth requirements.

#### B. Financial Reporting

- 1. The Warehouse Operator agrees to provide annually, within 90 days of the fiscal year end, or more frequently if required, to DACO, financial statements from the Warehouse Operator's records prepared according to generally accepted accounting principles. DACO may grant one 30 day extension to provide a financial statement.
- 2. These financial statements must include, but not be limited to (**each** of the following):
  - a. balance sheet,
  - b. statement of income (profit and loss),
  - c. statement of retained earnings, and
  - d. statement of cash flows.
- 3. Authorized representatives 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.
- 4. The Warehouse Operator must have the required financial statements, reviewed or audited by a certified public accountant or an independent public accountant as approved by DACO. Audits 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 notes of the financial statements must include a detailed list of company owned inventories including unpaid nuts.

#### C. Accepting Other Financial Statements

The Warehouse Operator may meet the financial and reporting requirements of Sections A and B, subject to DACO approval, with (**any** of the following):

- 1. consolidated financial statements of parent companies that separately identify the financial position of Warehouse Operators as subsidiaries, or
- 2. guaranty agreements from parent companies submitted on behalf of wholly-owned subsidiaries if parent companies submit financial statements which meet the Sections A and B requirements, or



3. guaranty agreements accompanied by audit level financial statements meeting the Sections A and B requirements of an entity with substantial interest in the Warehouse Operator.

D. Special Cases - Assets

1. Subject to such terms and conditions as DACO may prescribe and for the purposes of determining allowable 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 with the requirements may be allowed if **each** of the following conditions are met:
  - a. prepared by independent appraisers and according to established appraisal criteria acceptable to DACO, and
  - b. the assets are fully insured against casualty loss.
2. All nuts 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.

**IV. Financial Assurance**

A. Computation

The Warehouse Operator agrees to furnish:

1. financial assurance computed at the rate:
  - a. of \$25.00 per ton for the first 10 thousand tons of storage space for Peanuts and \$20.00 per ton for the balance of storage space;
  - b. of \$.02 per pound of storage space for Walnuts and Filberts;
  - c. of \$.03 per pound of storage space for Pecans;
  - d. that the warehouse accommodates when stored in the manner customary to the warehouse as determined by DACO, but not less than \$50,000.00 and a maximum of \$500,000.00.
2. additional financial assurance, if necessary, by adding to the amount of financial assurance an amount equal to any deficiency in net worth in excess of the \$50,000.00 minimum requirement,
3. additional financial assurance if DACO finds that conditions exist which warrant requiring additional financial assurance,
4. financial assurance, at the Warehouse Operators option, meeting the requirements of the USWA and the regulations to cover all the warehouses in the same State (or in multiple States in those cases where a single license covers capacity in multiple states).

## B. Acceptable Forms

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

1. a Warehouse Operator's surety bond, or
2. a deposit with DACO of 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 subject to each of the following restrictions:
  - a. the obligation deposited will **NOT** be considered a part of the Warehouse Operator's assets,
  - b. any deficiency in allowable net worth above the \$50,000 minimum may be offset by the Warehouse Operator furnishing acceptable financial assurance for the difference,
  - c. the deposit may be replaced or continued in the required amount from year to year, and
  - d. 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 or approved by DACO, or
3. a letter of credit issued to DACO, on a form approved by DACO, and each of the following apply:
  - a. for a period of not less than two years to coincide with the period of any deposit of obligations,
  - b. must be irrevocable, issued by a commercial bank payable to DACO, FSA by sight draft and insured by the Federal Deposit Insurance Corporation or by an institution in good standing regulated by the Farm Credit Administration, and
  - c. the deposit will not be considered an asset of the company, or
4. other forms of financial assurance as may be deemed acceptable by DACO.

## V. Duties of the Warehouse Operator

### A General

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

1. **exercise**, at all times, such care in regard to nuts in custody as a reasonably careful owner would exercise under the same circumstances and conditions,
2. **not differentiate** among depositors or lawful owners regarding use of and access to services, except that available storage space may be allocated,
3. **accept** for storage only storable nuts,
4. **not store** aflatoxin damaged nuts in contact with nuts that has not been so damaged,

5. **accept** all storage and non-storage nuts and, at the request of the depositor or lawful owner, deliver out all storage and non-storage nuts, other than specially-binned nuts, in accordance with the quality factors of those nuts as determined by a person duly licensed to inspect those nuts and to certificate the weight of those nuts under the USWA and the regulations,
6. **accept** and deliver out of storage nuts in accordance with the factors as determined in any appeal from the determination of a sampler and inspector,
7. **deliver**, unless prevented from doing so by force majeure, stored nuts without unnecessary delay,
8. **resolve** any claim for noncompliance with the shipping of nuts or any other dispute in a 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 nuts.
9. **keep** the warehouse reasonably clean at all times and free from materials that may create a hazard or interfere with the handling of nuts and to provide a safe environment in and around the warehouse,
10. **maintain** the warehouse(s) in sound physical condition consistent with good warehousing practices,
11. **provide** all necessary assistance in the execution of inspections and examinations by FSA warehouse examiners,
12. **maintain** sufficient inventory of nuts in licensed storage with respect to quality and quantity as evidenced by the outstanding storage obligations (warehouse receipted and unreceipted) and, in case the quality of stored nuts should get out of balance with quality represented by outstanding storage obligations, to effect the necessary corrective actions to regain a balanced position for quality and quantity. For quality of peanuts, maintain the obligated value, which is the total loan value represented on the warehouse receipt calculated using USDA's price table file for the applicable year,
13. **expect** to be notified in advance by the depositor or lawful owner of any special services required prior to delivery,
14. **cause** both bulk nut bins and compartments for sacked nuts licensed under the USWA to be identified by means of clearly discernible numbers securely affixed. The series of numbers must be approved by DACO. Bulk nut bins must be numbered so as to be easily identified at the openings on top and also on or near the outlet valves underneath. Compartments must be numbered in such a manner as clearly showing the space covered by each number.
15. **attach** tags to bags of nuts showing the:
  - a. lot number,
  - b. identification mark,
  - c. the warehouse receipt number,
  - d. number of sacks in the lot,
  - e. the quality factors, and

- f. gross weight of the nuts.

(Note: The tags must be visible and readily accessible enabling an accurate count.)

16. **have** a written security plan that includes measures to protect the nuts handled and stored under this Agreement,
17. **conduct** a facility vulnerability assessment and establish procedures that address (*each* of the following):
  - a. general security of the physical structures and grounds of the warehouse,
  - b. shipping and receiving procedures to ensure that nuts are not subject to tampering,
  - c. action to be taken in the event of a national emergency, and
  - d. contact information for local security authorities.
18. **post** certificates of licensing, and make available current tariffs and rules,
19. **maintain**, at all times, legal and operational control of all licensed storage space,
20. **report**, immediately, the occurrence of a disaster or loss and the extent of damage to DACO,
21. **update** inventory and insurance records upon receiving or shipping nuts and transmit the updated information to their provider, if applicable, that reflects changes and activities in their obligations,
22. **not redeliver, ship or remove** any nuts 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, having physical possession of the paper receipt or other document of release for such nuts,
23. **prohibit** any warehouse receipt or warehouse record to remain outstanding and uncanceled for any nuts shipped or removed from licensed storage space and no longer stored by the warehouse operator, and
24. **assure** that the warehouse inventory and warehouse receipt records are in balance and agreement before the start of the next business day.

#### B. Fair Treatment

1. The Warehouse Operator agrees to deal in a fair and reasonable manner with persons storing, or seeking to store, nuts in their warehouse if (each of the conditions is met):
  - a. tendered to the warehouse in a suitable condition for warehousing, and
  - b. tendered in a manner consistent with the ordinary and usual course of business.
2. The Warehouse Operator may enter into agreements with depositors or lawful owners to allocate available warehouse space.

## C. Insurance

## 1. Requirements.

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

- a. **secure**, in their own name, insurance on stored nuts against loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado or inherent explosion and other risk under forms of policies which automatically attach for the full replacement value of stored nuts, as soon as such nuts are placed in their legal custody, and continue such insurance in effect so long as the nuts remains in their legal custody. Arrangements between the Warehouse Operator and insurers concerning deductibles are acceptable as long as any loss is covered in full by the insurer.
- b. **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. These insurance policies may be issued by one or more insurance companies.
- c. **submit** such reports to underwriters as may be required under the terms of such policies,
- d. **submit** copies of such reports to DACO as required,
- e. **show**, in their rules and schedule of charges, to be posted at all delivery points, the conditions under which the nuts will be insured against loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado or inherent explosion and other risk, and
- f. **give DACO written notice**, not less than 30 calendar days, before their insurer(s) intends cancellation of their stock (inventory) coverage or warehouse facility coverage if it is claimed as a financial asset.

## D. Business Hours

The Warehouse Operator agrees to the following:

1. **be open** for the purpose of receiving nuts for storage and delivering nuts 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.,
2. **post** their business hours at the public entrance to both the office and licensed warehouse, or
3. **post** notice, in case the warehouse is not to be kept open as required, 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 nuts stored in the warehouse.

## E. System of Accounts

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

1. **have and maintain** a system of accounts approved by DACO. This system of accounts must include an **accurate and concise daily** position record (DPR) showing, **as activity occurs**, the total net quantity of each kind and type of nut in licensed space showing **each** of the following categories:

- a. total nuts unloaded into the warehouse,
- b. total nuts loaded out of the warehouse,
- c. total nut adjustments,
- d. total nuts remaining in the warehouse at the close of each business day,
- e. total obligations transferred to another warehouse, (physically moved or approved paper transfer.)
- f. direct shipments of non-receipted storage obligations or company owned nuts. Such shipments must be documented by inspection and/or weight certificates from the receiving warehouse and be maintained by the originating warehouse. Non-negotiable warehouse receipts marked "Held in Trust for Depositors of (name of warehouse)" as depositor will be issued by the receiving warehouse to accredit these shipments. Alternatively, in States where non-negotiable warehouse receipts are prohibited, certified deposit affidavits may be used. These direct shipments will be shown in the originating Warehouse Operator's DPR as "Direct Shipments" and not as part of the local nuts inventory. The storage obligation or company owned position will be shown. Do not include direct shipments in the in's and out's of the in-store inventory,
- g. total negotiable and non-negotiable warehouse receipts issued, canceled, and balance outstanding,
- h. total increase, decrease, and outstanding un-receipted obligations belonging to others,
- i. unpaid nuts,
- j. total nuts owned by the Warehouse Operator for which warehouse receipts have not been issued, and
- k. total nut obligations.

**Note:** Before preceding to the next day's DPR, the warehouse operator must accurately update the current day's DPR with all applicable changes that occurred that date by closing and locking that data. Any corrections to that data must be made and shown as an adjustment on the date that the correction is found and corrected. Daily position Items a, b and c must equal Item d; Items d, e and f must equal Item k; Items g, h and j must equal Item k.

2. **maintain** a separate set of records for each depositor showing the type, storage, status, and quantity of commingled nuts deposited or redelivered,
3. **maintain** a detailed record of all money received and disbursed,
4. **maintain** records accurately and concisely as activity occurs,
5. **retain** these records for a period of six years after December 31 of the year in which they were created, and for such longer period as may be necessary for the purposes of any litigation which the Warehouse Operator knows to be pending, or as may be required by DACO in particular cases to carry out the purposes of the USWA, and
6. **maintain** similar records and information for any non-storage nuts handled through the warehouse. Records required with respect to non-storage nuts must be retained, as a part of the records of the warehouse, for a period of one year after December 31 of the year in which the lot of non-storage nuts are delivered from the warehouse.

## F. Reports

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

1. **make** such reports, requested by DACO, on forms prescribed and furnished by FSA, concerning the condition, contents, operation, and business of the warehouse, and
2. **keep** on file an exact copy of each report submitted, as a part of the records of the warehouse, for a period of six years after December 31 of the year in which submitted.

## G. Records

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

1. **back up electronic records daily,**
2. **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 use, all records, books, back up records and papers pertaining to the licensed warehouse,
3. **retain** each canceled paper warehouse receipt for a period of six years after December 31 of the year in which the warehouse receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the Warehouse Operator knows to be pending, or as may be required by DACO in particular cases to carry out the purposes of the USWA,
4. **retain** a copy of each weight and grade certificate for a period of six years after December 31 of the year in which created, and
5. **arrange** canceled paper warehouse receipts, contracts and inspection and/or weight certificates in a sequential numerical order or as directed, for purposes of audit, by DACO.

## H. Schedule of Charges

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

1. **not make** any unreasonable or exorbitant charge for services rendered,
2. **file,** with DACO, a copy of their rules and schedule of charges to be assessed depositors before a license to conduct a warehouse is granted under the USWA,
3. **post,** conspicuously, where the depositor may access it at all delivery points, a copy of their current rule and schedule of charges, and
4. **file** with DACO a new rule statement or schedule of charges before making any permanent change in such rules or schedule of charges. No increase in their charges or rates shown in schedule of charges will apply to nuts in storage at the time the changes become effective for a period of one (1) year from the date deposited.

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

1. **demand** payment of all accrued charges at the close of each crop year. If, upon demand, the owner of the nuts refuses to pay such charges at the end of a season, action may be taken to enforce collection of its charges as permitted by the laws of the State in which the warehouse is located, or
2. **enter** into special arrangements regarding service rates and rules with depositors subject to the approval of DACO.

I. Scales and Weighing

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

1. **equip** the warehouse with scales and have them annually inspected and certified by any applicable regulatory or independent authority, and so arranged that all nuts for storage, can be weighed in and out of the warehouse. If rejected by the regulatory authority, any weighing apparatus must not thereafter be used in ascertaining the weight of nuts for the purposes of this USWA license, until such rejection is withdrawn,
2. **apply** for licensing at all facilities controlled by them at a specific location, among which nuts may be transferred without weighing, unless those facilities are specifically exempted by DACO,
3. **weigh** nuts, alternatively, at the nut buying points, with DACO approval, in which case, **each** the following apply,
  - a. the use of nut buying point originating weights requires the Warehouse Operator's control of the scales used to weigh nuts,
  - b. those nut buying point scales must be inspected and certified as accurate annually by any applicable regulatory or independent authority. If rejected by the regulatory authority, any weighing apparatus must not thereafter be used in ascertaining the weight of nuts for the purposes of this USWA license, until such rejection is withdrawn,
  - c. a copy of the inspection report must be maintained at the warehouse office for the FSA warehouse examiner's review,
  - d. the scales must be checked by the Warehouse Operator for accuracy on a routine basis, and
  - e. a copy of the USWA certificate of license of the person(s) licensed to perform weighing, sampling or similar service at the nut buying point for the Warehouse Operator must be posted at the point of service, and
4. **use**, upon agreement with the depositor, nut buying point of origin weights for nuts. Any nut buying point of origin weights shown on a warehouse receipt will be the official warehouse nut lot weight.



## J. Prompt Delivery

In the absence of a lawful excuse, the Warehouse Operator shall, without unnecessary delay, deliver the nuts stored or handled in the warehouse on a demand made by **(either)** of):

1. the holder of the receipt, or
2. the lawful owner of the nuts, if no receipt has been issued.

## K. Identity Preserved Nuts

1. The Warehouse Operator may elect **not** to accept and store identity preserved nuts.
2. If electing to accept and store bulk identity-preserved nuts, the Warehouse Operator agrees to **(each)** of the following):
  - a. **clearly mark** with identification each bag or container,
  - b. **maintain** records that clearly show the location of all identity-preserved nuts stored in the warehouse, and
  - c. **issue** warehouse receipts for the identity preserved nuts.
3. **The Warehouse Operator must deliver**, to the depositor or lawful owner, the identical nuts stored in the warehouse. The conditions for delivery are **(each)** of the following):
  - a. proper presentation of a warehouse receipt for any identity-preserved nuts, and
  - b. payment of all accrued charges associated with the storage of the nuts if requested by the Warehouse Operator.

## L. Storage Obligations

The Warehouse Operator, while authorized to commingle nuts in store, is liable to each depositor or lawful owner for the care and delivery of nuts stored as if the nuts were separately stored. The Warehouse Operator is free to store in any manner that results in their ability to deliver nuts, as a bailee for hire, that results in:

1. for peanuts, **the total Commodity Credit Corporation (CCC) loan value of the peanuts** represented on the warehouse receipt or the original delivery receipt (scale ticket), calculated using USDA's price table file for the applicable crop year, and
2. for other nuts, **meeting or exceeding the quantity and quality** represented on the warehouse receipt or the original delivery receipt (scale ticket).

## M. Containerized Nut Storage

The Warehouse Operator agrees to keep containerized nuts stored in an orderly manner so as to permit easy access to all lots and to facilitate inspecting, sampling, counting and identification of each lot. The Warehouse Operator must not select, randomly, the bins within the warehouse to be licensed unless specific bins are exempted by DACO.

## N. Delivery of Commingled Nuts

1. The Warehouse Operator must deliver upon demand to the depositor or lawful owner:
  - a. for peanuts, the total CCC loan value of the peanuts represented on the warehouse receipt or the original delivery receipt (scale ticket), calculated using USDA's price table file for the applicable crop year, and
  - b. for other nuts, the quantity and quality, as obligated.
2. Unless each party mutually agrees fully upon another settlement method, for settlement purposes with the depositor or lawful owner when shortages in quantity or deficiencies in quality prevent full delivery the Warehouse Operator shall make compensation based upon:
  - a. for peanuts, the total CCC loan value of the peanuts represented on the warehouse receipt or the original delivery receipt (scale ticket), calculated using USDA's price table file for the applicable crop year, and
  - b. for other nuts, the total current market value of the nuts represented on the warehouse receipt or original delivery receipt (scale ticket).
3. 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 the nuts if requested by the Warehouse Operator.

## O. Loading Out Without Weighing

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

1. **load out** identity-preserved nuts without weighing for which the owner has agreed to assume all shortages, provided that the warehouse receipts covering these nuts have been surrendered to the Warehouse Operator, or
2. **load out** commingled bulk nuts without weighing at the request of the owner provided destination weights are obtained and posted as soon as possible. Any interim weight certificate issued by the shipping Warehouse Operator must clearly show the weight as an estimate.

## P. Out of Condition and Damaged Nuts

1. The Warehouse Operator may refuse to accept nuts offered for storage if its condition is such that it will affect the condition of existing nuts in the warehouse unless the Warehouse Operator chooses to separately bin and condition the nuts.
2. When nuts are discovered to be going out of condition and the Warehouse Operator is unable to condition the nuts or stop the deterioration, the Warehouse Operator agrees to (**each** of the following):

- a. **immediately notify** the owners and DACO, and
- b. **follow** instructions received from DACO.

Q. Inspections and Examinations of Warehouse

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

1. that the USDA has the legal authority to unrestricted access to the physical plant,
2. to permit anyone authorized by USDA to enter and inspect or examine, on any business day during the usual hours of business, any warehouse for which they hold a license,
3. the books, records, papers, and accounts and the contents relating to the license are subject to inspection, and
4. to furnish the USDA representative the assistance necessary to conduct an inspection or examination.

R. Excess Storage and Transferring Nuts

1. The Warehouse Operator may, under certain circumstances, transfer nuts by physical movement or approved paper transfer to another receiving warehouse. For the purposes of this paragraph a receiving warehouse is (**any** of the following):
  - a. an active USWA licensed nut warehouse, or
  - b. a public nut warehouse currently licensed by a State regulatory authority which has financial, bonding, and examination requirements for the benefit of depositors, or
  - c. for peanuts, a warehouse holding a CCC approved Peanut Storage Agreement (PSA) in a State without a regulatory licensing program for public nut warehouses.
2. The Warehouse Operator agrees to (do **each** of the following):
  - a. **notify**, immediately, DACO in writing, by FAX or email, if the nuts stored in a specific warehouse exceed the licensed capacity of that warehouse and the location of the receiving warehouse,
  - b. if physically moving or paper transferring nuts to a receiving warehouse (do **each** of the following):
    - i. **ensure** that a notice is present in their rules and schedule of charges that the Warehouse Operator may transfer nuts according to conditions prescribed by DACO,
    - ii. **obtain** written permission from DACO, by FAX or e-mail, one business day in advance of movement of the nuts,
    - iii. **obtain** permission from CCC if nuts are owned by CCC or pledged as collateral for a CCC marketing assistance loan,
    - iv. **obtain** from the receiving warehouse a non-negotiable warehouse receipt or certified deposit affidavit executed stating, "Held in Trust for Depositors of 'name of warehouse' ", as depositor, for all transferred nuts,

- v. **not accept** nuts from another warehouse while any nuts are in a transferred position,
  - vi. **retain or increase** financial assurance, as specified in Section IV (A) (1) of this Agreement encompassing the warehouse capacity and the transferred nuts,
  - vii. **post** transferred nut positions in the daily position record,
  - viii. **retain** a storage obligation to the depositor or lawful owner for nuts originally deposited in their warehouse and, unless otherwise specified in Item *ix.* below, be prepared to redeliver the nuts deposited upon demand of the depositor or lawful owner, at the place where the nuts were first deposited for storage, and
  - ix. **expect** the depositor or lawful owner to make final settlement and take delivery of the storage obligation at the place where the nuts were 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 nuts were transferred.
3. Non-negotiable warehouse receipts received under Section (2) Item (*iv*) above:
- a. **must** have printed or stamped in large bold or outline letters diagonally across the face of the paper receipt from corner to corner the words “Not Negotiable” or be issued as an electronic warehouse receipt,
  - b. **are not** valid for collateral purposes,
  - c. **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
  - d. **will be subject** to the general requirements for warehouse receipts in their recording and retention.
4. In the case of nuts shipped to a warehouse in a State that does not allow issuance of non-negotiable warehouse receipts, the receiving warehouse will issue a certified deposit affidavit specifying the kind, quality, and quantity of the nuts received.
5. The receiving warehouse will (do **each** of the following):
- a. **not exceed** the licensed or approved capacity of their warehouse,
  - b. **not further move, transfer** or in any way offset the nuts transferred to it to another warehouse and retain a storage obligation to the transferring - shipping Warehouse Operator,
  - c. **fully insure** the transferred nuts, and
  - d. **promptly issue** a non-negotiable warehouse receipt or certified deposit affidavit for the nuts prepared and executed in the form, “Held in Trust for Depositors of ‘name of warehouse’ ”, as depositor, and return the receipt or affidavit promptly to the shipping Warehouse Operator.
6. The nuts covered by non-negotiable warehouse receipts and certified deposit affidavits are held in trust solely for the benefit of the shipping warehouse and its depositors or lawful owners whose nuts were transferred individually or collectively and for which they retain title.

## VI. Warehouse Receipts

### A. General

1. Issuance - The Warehouse Operator agrees to (**each** of the following):
  - a. **issue** warehouse receipts for any nuts received or stored in a warehouse at the request of a depositor or lawful owner,
  - b. **retain** a copy of the weight certificate, inspection certificate or inspection and weight certificate representing the nuts prior to issuing any warehouse receipt under the USWA. Warehouse Operator's records must identify the certificate(s) used as the basis for issuing the receipt and retained for a period of six years after December 31 of the year in which issued. Certificates filed in the office of an independent inspection or weighing agency or with a U. S. Registrar must meet this requirement.
  - c. **issue** collateral receipts with the Warehouse Operator as depositor and endorsed in favor of the financial institution receiving the warehouse receipt, (**ENDORSEMENT REQUIRED**)
  - d. **replace** lost or destroyed warehouse receipts in accordance with 7 CFR Part 735, and
  - e. **not issue** a warehouse receipt when another warehouse receipt representing the same specific identity preserved or commingled lot of nuts is outstanding. For warehouse receipts issued under this license, no two receipts issued by the Warehouse Operator may have the same receipt number.

2. Persons Authorized to Sign Warehouse Receipts

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

- a. **file** with DACO, the name and genuine, facsimile, or electronic signature of the person authorized to sign warehouse receipts for the Warehouse Operator,
- b. **promptly notify** DACO of any changes as to persons authorized to sign, file the genuine, facsimile, or electronic signature of such person, and will **be bound** by such signatures the same as if the Warehouse Operator had personally signed the receipt, and
- c. **agree** that filed signatures legally bind the Warehouse Operator.

3. Return of Warehouse Receipts Prior to Delivery

The Warehouse Operator agrees to deliver nuts (under **each** of the following conditions):

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

#### 4. Balance Warehouse Receipts

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

#### B. Paper Warehouse Receipts

##### 1. Form

- a. Every paper warehouse receipt, whether negotiable or non-negotiable, issued for nuts stored in a USWA warehouse must, in addition to complying with the requirements of Section 11 of the Act, embody within its written or printed terms, (**each** of the following):
  - i.* the name of the Warehouse Operator and the designation, if any, of the warehouse,
  - ii.* the location of the warehouse in which the nuts are stored,
  - iii.* the Warehouse Operator's license number,
  - iv.* the CCC PSA code number, if applicable,
  - v.* the issuance date of the receipt,
  - vi.* the consecutive number of the receipt,
  - vii.* the name of the depositor,
  - viii.* a statement whether the nuts received will be delivered to the holder, to a specified person, or their order,
  - ix.* prepaid warehouse charges,
  - x.* a description of the nuts received, showing the quantity, the grade of the nuts received and the standard or description in accordance with which such classification has been made,
  - xi.* foreign matter percentage, if applicable,
  - xii.* a statement that the receipt is issued subject to the USWA and this Agreement and the rules and regulations prescribed thereunder,
  - xiii.* if issued showing the Warehouse Operator as owner, either solely or jointly or in common with others, the fact of such ownership,
  - xiv.* a statement of the amount of advances made and of liabilities incurred for which the Warehouse Operator claims applicable charge: Provided, that if the precise amount of such advances made or of such liabilities incurred be at the time of the issuance of the receipt unknown to the Warehouse Operator or their agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient,
  - xv.* such other terms and conditions within the limitations of the USWA and this Agreement as may be required by the Secretary of Agriculture,

- xvi.* a statement whether the Warehouse Operator is incorporated or unincorporated, and if incorporated, under what laws,
  - xvii.* 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 is required,
  - xviii.* a statement conspicuously placed, that the nuts are insured by the Warehouse Operator against loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado or inherent explosion, or other risk,
  - xix.* the net weight, including Loose Shelled Kernels (LSK), if any, of the nuts,
  - xx.* the words "identity preserved" when the warehouse receipt represents nuts stored identity reserved,
  - xxi.* in the case of nuts the identity of which is to be preserved, its identification or location,
  - xxii.* the words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon. Every negotiable warehouse receipt issued must, in addition to conforming with the requirements of this subparagraph, 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 applicable charges, mortgages, or other encumbrances on the nuts covered by the receipt.
  - xxiii.* the signature of the Warehouse Operator, which may be made by their authorized agent: Provided, that unless otherwise required by State law in which the warehouse is located, when requested by the depositor of other than commingled bulk nuts, a receipt omitting compliance with subdivision, VIII of this section may be issued: Provided, however, that the Secretary of Agriculture may require that such receipt have plainly and conspicuously embodied in its written or printed terms a provision that such receipt is not negotiable, and
  - xxiv.* other information as may be required.
- b. The grade stated in a warehouse receipt must be the average of the grades on the applicable inspection certificate(s) 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.
  - c. Except in the case of identity preserved nuts, if, at the request of the depositor, the Warehouse Operator issues a receipt omitting the statement of grade, such receipt shall have clearly and conspicuously stamped or written on the face thereof, or included as part of the paper warehouse receipt, the following: "Not graded upon the request of the depositor."
  - d. If the Warehouse Operator issues a warehouse receipt 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 or "ILB" (Intentionally Left Blank) entered in the data field, and
  - e. A warehouse receipt may contain additional information, provided that this information does not interfere with the information required.

2. Copies of Paper 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".

3. Printing of Paper Warehouse Receipts

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

- a. in a form prescribed by DACO,
- b. by a printer with whom DACO has an agreement and bond for such printing, and
- c. on distinctive paper tinted in a manner specified in the agreement with the printer.

4. Details on the Printing of Paper Warehouse Receipts

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

- a. will order warehouse receipts on a form provided by DACO,
- b. will proofread the order for errors and omissions, and
- c. will pay the printer in a timely manner.

5. Lost or Destroyed Paper Warehouse Receipts

- a. 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.
- b. 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 (**each** of the following):
  - i. an affidavit showing (**each** of the following):
    - (a) that the holder is lawfully entitled to the possession of the original warehouse receipt,
    - (b) that the holder has not negotiated or assigned it,
    - (c) how the original receipt was lost or destroyed, and
    - (d) if lost, that diligent effort has been made to find the warehouse receipt without success.



- ii. an assurance, in the form of a bond or personal guarantee, equal to an amount double the value of the nuts represented by the lost or destroyed paper warehouse receipt. This assurance will be in a form approved by DACO and conditioned to indemnify the Warehouse Operator against any loss sustained by reason of the issuance of this warehouse receipt. The assurance may be **(either)** of the following:
  - (a) a bond, issued by a surety company. Such company must be authorized to do business, and be subject to administration of process in a suit on the bond, in the State in which the warehouse is located, unless a variance is granted by DACO, or
  - (b) a personal guarantee, made by at least 2 individuals who are residents of the state and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond.

6. Canceled Paper Warehouse Receipts:

The Warehouse Operator agrees to make available all canceled receipts for auditing as requested by DACO.

C. Electronic Warehouse Receipts

- 1. General - The Warehouse Operator, when choosing the option to issue EWRs instead of paper warehouse receipts for the nuts stored in their warehouse, agree to **(each)** of the following:
  - a. **issue** EWRs only through a provider approved by DACO,
  - b. **inform** DACO of the identity of their provider 60 calendar days in advance of issuing EWRs through that provider. DACO may waive or modify this 60-day requirement as set forth under 7 CFR Part 735,
  - c. **issue** warehouse receipts initially as EWRs,
  - d. **cancel** EWRs only when they are the holder of the warehouse receipt(s),
  - e. **correct** information on the EWR in accordance with the applicable provider agreement,
  - f. **request and receive** from DACO a range of consecutive warehouse receipt numbers which the Warehouse Operator will use consecutively for issuing their EWRs before issuing any EWRs, and
  - g. **receive** written approval from DACO at least 30 calendar days before changing providers. Upon approval the Warehouse Operator may request their current provider to transfer their EWR data from its CFS to the CFS of the approved provider whom they select. The Warehouse Operator 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 DACO. The Warehouse Operator may only change providers once a year.

## 2. Rights and Obligations

The Warehouse Operator will ensure that an issued EWR establishes the same rights and obligations with respect to nuts as a paper warehouse receipt, and possess **each** of the following attributes:

- a. 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,
- b. only the current holder of the EWR may transfer the EWR to a new holder,
- c. the identity of the holder must be included as required information for every EWR,
- d. an EWR will only designate one entity as a holder at any one time,
- e. an EWR may only be issued to replace a paper receipt if requested by the current holder of the paper warehouse receipt and with surrender of the paper warehouse receipt,
- f. allow 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, and
- g. only the current EWR holder may request a paper warehouse receipt in lieu of a EWR.

## 3. Data Requirements

- a. Every warehouse receipt, whether negotiable or non-negotiable, issued for nuts stored in a USWA warehouse must, in addition to complying with the requirements of Section 11 of the Act and Section VI (A), (B), and (C) (1) and (2) of this Agreement, embody **each** within its written or printed terms the following:
  - i. the name of the Warehouse Operator and the designation, if any, of the warehouse,
  - ii. the location of the warehouse in which the nuts are stored,
  - iii. the Warehouse Operator’s license number,
  - iv. the CCC PSA code number, if applicable,
  - v. the issuance date of the receipt,
  - vi. the consecutive number of the receipt,
  - vii. holder of the receipt,
  - viii. received from,
  - ix. cancellation date (if the receipt has been canceled),
  - x. location receipt issued (city and state),
  - xi. a statement whether the nuts received will be delivered to the holder, to a specified person or their order,

- xii.* the rate of storage charges,
  - xiii.* a description of the nuts received, showing the quantity, the grade of the nuts received and the standard or description in accordance with which such classification has been made,
  - xiv.* a statement that the receipt is issued subject to the USWA and this Agreement and the rules and regulations prescribed thereunder,
  - xv.* if issued showing the Warehouse Operator as owner, either solely or jointly or in common with others, the fact of such ownership,
  - xvi.* a statement of the amount of advances made and of liabilities incurred for which the Warehouse Operator claims applicable charges: Provided, that if the precise amount of such advances made or of such liabilities incurred be at the time of the issuance of the receipt unknown to the Warehouse Operator or their agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof shall be sufficient,
  - xvii.* such other terms and conditions within the limitations of the USWA and this Agreement as may be required by the Secretary of Agriculture,
  - xviii.* a statement whether the Warehouse Operator is incorporated or unincorporated, and if incorporated, under what laws,
  - xix.* 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,
  - xx.* a statement conspicuously placed, that the nuts are insured by the Warehouse Operator against loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado or inherent explosion, or other risk,
  - xxi.* all receipts must list the lot numbers, crop year, gross, tare, and net weight, including LSK, if any, of the nuts
  - xxii.* the words "identity preserved" and location when the warehouse receipt represents nuts stored identity persevered,
  - xxiii.* indicate if the receipt is "Not Negotiable," or "Negotiable," according to the nature of the receipt,
  - xxiv.* name of the person authorized to sign the warehouse receipt.
  - xxv.* paper receipt number (if applicable),
  - xxvi.* license type, "US" for USWA Licensee will precede or follow the warehouse receipt number.
- b. The grade stated in a warehouse receipt must be stated as determined by the inspector who last inspected and graded the nuts 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.

- c. Except in the case of identity preserved nuts, 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 the words "Not graded upon the request of the depositor."

## VII. Service Licenses

No person will in any way represent themselves to be a sampler or weigher, and/or inspector, grader licensed under the USWA unless holding an un-suspended and un-revoked license issued to that person under the USWA.

### A. Warehouse Operator's Responsibility

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

1. having at least one person licensed to perform needed services for the warehouse,
2. posting the certificate of license for all licensees, and
3. notifying the Kansas City Commodity Office (KCCO) **(either)** of these):
  - a. when a licensee discontinues service to the warehouse, or
  - b. when a licensee is no longer employed by the Warehouse Operator.

### B. Applicant's Responsibility

The Applicant for service licensing under the USWA:

1. must make application to DACO for license to sample and weigh, and/or inspect and grade nuts on forms furnished by FSA. Each application must **(each)** criteria must be met):
  - a. **be signed** by the applicant,
  - b. **be certified** by a statement from the Warehouse Operator that the applicant is competent and authorized to perform the duties of a licensed sampler, inspector, grader and/or weigher,
  - c. **be certified** by the Warehouse Operator that the applicant can correctly inspect nuts in accordance with the official standards of the United States, or in the absence of such standards, in accordance with any standards approved by DACO if seeking inspection licensing,
  - d. **be certified** by the Warehouse Operator that the applicant can correctly weigh nuts if seeking weighing licensing, and
  - e. **furnish** such additional information as requested by DACO,
2. may be required to submit to an examination or test to show ability to properly inspect, grade, and/or weigh nuts and also to make available for inspection copies of the standards of inspection and grading and the weighing apparatus used or to be used.

### C. Duties of the Licensed Sampler and Weigher, and/or Inspector and Weigher

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

1. **perform** the requested services for which licensed when given nuts to sample, inspect, grade and/or weigh under conditions which permit proper inspection and weighing, without discrimination, as soon as practicable and upon reasonable terms,
2. **issue** a certificate of grade for any nuts only if the inspection and grading is based upon a correct and representative sample of the nuts,
3. **make accessible** to the depositor at the location of the license, a copy of the inspection certificate issued by the licensed sampler, inspector as soon as possible after grading any nuts and not later than the close of business on the next following business day unless requested by the depositor,
4. **permit** any USDA authorized person 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 USWA and 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 USWA,
5. **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 nuts covered by the certificates is stored, and
6. **in addition** to meeting the requirements in 1 through 5 of this Sub-Section **shall be subject** to suspension or revocation under conditions described in Section XII. "Warehouse Operator Failures, Defaults - Remedies".

## VIII. Inspection and Weight Certificates

These certificates may be in paper or electronic format issued and maintained in accordance with the EWR and USWA documents provider agreement. Proof copies of formats must be approved by DACO.

### A. Inspection Certificate

1. Each inspection certificate issued under the USWA must be in a form approved by DACO, and include the following information within its terms:
  - a. the caption "United States Warehouse Act, Nut Inspection Certificate,"
  - b. whether it is an original, a duplicate, or other copy, and that it is not negotiable,
  - c. the name and location of the warehouse in which the nuts are or are to be stored,
  - d. a statement showing whether the inspection covers nuts moving into or out of the warehouse,
  - e. the date of the certificate,
  - f. the consecutive number of the certificate,
  - g. the approximate quantity of nuts covered by the certificate,
  - h. the kind of nut covered by the certificate,

- i. the quality factors or grade of the nuts, as determined by such duly licensed sampler and inspector, in accordance with the standards approved by DACO, and, in the case of nuts for which no official standards of the United States are in effect, the standards or description in accordance with which such nuts are graded,
  - j. a statement that the certificate is issued by a sampler and inspector licensed under the USWA, and
  - k. the signature of the sampler and inspector who inspected and graded the nuts.
2. In addition to the provisions of paragraph 1, the inspection certificate may include any other matter consistent with the USWA or the regulations, provided the approval of DACO is first secured.
3. In lieu of an inspection certificate in the form prescribed in paragraph one, an official inspection certificate issued pursuant to other USDA provisions on nuts stored or to be stored in a warehouse licensed under the USWA will be acceptable for purposes of the USWA and the regulations.

#### B. Weight Certificates

1. Each weight certificate issued under the USWA must be in a form approved by DACO, and include the following information within its terms:
  - a. the caption "United States Warehouse Act, Nut Weight Certificate,"
  - b. whether it is an original, a duplicate, or other copy, and that it is not negotiable,
  - c. the name and location of the warehouse in which the nuts are or are to be stored,
  - d. whether the nuts are weighed into or out of the warehouse,
  - e. the date of the certificate,
  - f. the consecutive number of the certificate,
  - g. the gross, tare, and net weight, including LSK, if any, of the nuts,
  - h. a statement that the certificate is issued by a weigher licensed under the U. S. Warehouse Act and the regulations thereunder, and
  - i. the signature of the weigher.
2. In addition to the provisions of paragraph 1, the weight certificate may include any other matter consistent with the USWA or the regulations in this part provided the approval of DACO is first secured.
3. In lieu of a weight certificate in the form prescribed in paragraph 1 of this section, an official weight certificate issued pursuant to any provisions of the USDA or an official weight certificate issued pursuant to the AMA of 1946, as amended, on nuts stored or to be stored in a warehouse licensed under the USWA is acceptable for purposes of the USWA.

C. Inspection and Weight Certificate

The quality and weight of any nuts, ascertained by a sampler, inspector, and/or a weigher licensed under the USWA, may be stated on a certificate meeting the combined requirements of subsections A and B, provided the form of the certificate is approved by DACO.

**IX. Determining Quality**

A. Official Nuts Standards of the United States

The United States Standards promulgated by AMS are the official standards for nuts under the USWA.

B. Peanut Standards

The Peanut Standards, as defined in Section I of this Agreement, are the standards for peanuts under the USWA.

C. Standards of Grade for Other Nuts

Until official standards are fixed and established for the kind of nut to be inspected, the grade of the nuts will be stated, subject to the approval of DACO: (any of the following):

1. in accordance with the State standards, if any, established in the State in which the warehouse is located,
2. 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 nut trade generally in the locality in which the warehouse is located, or
3. in the absence of the standards mentioned in paragraphs 1 and 2 of this section, in accordance with any standards approved by DACO.

**X. Nut Grading Appeals**

A. Ability to Appeal

1. No person licensed under the USWA, will, directly or indirectly by any means whatsoever, deter or prevent or attempt to deter or prevent any party from making an appeal.
2. 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.

B. Appeal Procedure

The depositor, holder of the warehouse receipt or the Warehouse Operator may make an appeal of grade of nuts stored or to be stored in a warehouse. If the original grade certificate was issued by an inspector licensed under, or authorized by the AMA, the appeal, including the amount of fees, will be governed by the regulations issued under AMS respectively; otherwise, the appeal, including fees will be governed by this Agreement.

C. Request for Appeal

1. The Warehouse Operator agrees to accept a request for an appeal inspection by a depositor or holder of the warehouse receipt made by written notice to the Warehouse Operator before the identity of the representative sample of nuts has been lost and not later than the close of business on the first business day after being furnished the results of the original inspection.
2. If the appeal is requested by the Warehouse Operator, notice must be given promptly to the owner of the nuts. Oral notice may be made if followed by written notice.
3. A representative sample must be retained for third party evaluation. That sample will not be destroyed until all parties are satisfied.
4. If the identity of the nuts are preserved and if the parties are unable to agree on such a sample, a sample drawn by a duly licensed sampler and inspector in the presence of the interested parties must be deemed binding. In no case will the sample be of less than 2000 grams by weight.

D. Appeal Samples

1. For nuts for which there are official U.S. Standards, the sample will be secured and delivered to the nearest office charged with providing official inspection service under the AMA. At this point, procedures to determine the grade of the nuts will be as set forth in regulations issued under the AMA, as is applicable.
2. For nuts for which there are no official U.S. Standards, the party requesting the appeal will apply directly to DACO for relief. DACO will determine the appeal based on approved standards and set the required fees, such determination will be binding on all interested parties.
3. The sample must be accompanied by (each) of the following:
  - a. a copy of the written request for appeal,
  - b. the nuts inspection certificate originally issued, and
  - c. an agreement to pay the costs of such inspection as prescribed by the AMA or DACO.
4. The sample of the nuts involved in the appeal must be submitted for inspection as soon as possible. The appeal certificate will supersede the original inspection certificate. The original or a copy of the appeal certificate will be sent to the party requesting the appeal with copies distributed to depositor or holder of the warehouse receipt, the Warehouse Operator and the licensed sampler and inspector executing the original certificate.

E. Owner Not Compelled to Store Nuts

Nothing in this Agreement will require the owner or agent to store such nuts with the Warehouse Operator after the appeal inspection, but if the nuts are stored it will be accepted for and delivered out of storage in accordance with the grade as finally determined in such appeal.



**XI. Dispute Resolution and Arbitration**

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

**XII. Fines and Penalties**

The Warehouse Operator 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 nuts from USWA licensed space, fraudulent adjustments or correction, and concealment of operational or financial condition and as such may be punishable by imprisonment, fines, and other penalties including but are not limited to the following: 18 U.S.C. 286, 287, 371, 641, 651, 1001, and 1014; and 31 U.S.C. 3729.

**XIII. Warehouse Operator Failures, Defaults - Remedies**

- A. DACO may initiate suspension and revocation of the Warehouse Operator's license and liquidation of nut storage:
  - 1. In the event of (**any** of these):
    - a. failure to (do **any** of these):
      - i.* perform services required in this Agreement,
      - ii.* maintain minimum financial requirements,
      - iii.* provide proper financial statements, or
      - iv.* maintain control of the warehouse,
    - b. commission of a fraudulent act.
- B. Suspension, revocation, and liquidation are taken in accordance with the adverse determination rules in 7 CFR Part 735 which provide for a hearing.
- C. The USWA Warehouse Operator may request cancellation of their license and, if appropriate, liquidation of obligations, in which case their USWA license will be revoked and liquidation accomplished, if appropriate.
- D. Upon a finding of failure, or Warehouse Operator's request, or commission of a fraud, DACO may (take **any** of these actions):

1. seize and take possession of (any of the following):
  - a. any nuts within the facilities licensed by the Warehouse Operator,
  - b. all books and papers and property used in the operation of the warehouse.
2. liquidate the nuts contained within the warehouse, and
3. recover necessary expenses for these close out procedures.

E. Bankruptcy

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.

- F. Should a liquidation become necessary, depositors or lawful owners will receive their claims in the following order:
1. warehouse receipted and verifiable un-receipted storage obligations claims,
  2. disputed storage obligation claims,
  3. lien holder claims for warehouse charges, and
  4. warehouse owned claims

**XIV. Fees**

FSA is authorized 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 fee changes is provided as an addendum to this Agreement. The fees for the nut warehouse and related service licenses are detailed in the attached addendum.

**NOTE:** Fees remaining unpaid subject the Warehouse Operator to suspension or revocation of their license.

This Agreement forms a part of license number \_\_\_\_\_ for  
License Number

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

\_\_\_\_\_ Licensed Location(s)

And is effective this \_\_\_\_\_ of \_\_\_\_\_  
Day Month Year

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

By \_\_\_\_\_  
Date

For Farm Service Agency By \_\_\_\_\_

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

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

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

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (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 USDA, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

**ADDENDUM I**

**FEEES**

**Fee Table -- Nut Warehouse Operators -- United States Warehouse Act (Eff. 08/15/03)**

<b>NUTS</b>	License Action Fee	Service License Fee	Inspection Fee	<b>ANNUAL USER FEES</b>		
				<i>Capacities (tons)</i>	<i>CCC Agree</i>	<i>W/O CCC Agree</i>
	\$ 80	\$ 35	\$8 / 100 SHORT TON OF PEANUTS	1 - 4,500	\$240	\$480
				4,501 - 7,500	\$390	\$780
				7,501 - 15,000	\$550	\$1,100
				15,001 - 22,500	\$710	\$1,420
				22,501 - 30,000	\$860	\$1,720
			MIN \$160 MAX \$1600	30,001 - 36,000	\$1,010	\$2,020
				36,001 - 45,000	\$1,160	\$2,320
				45,001 - 60,000	\$1,310	\$2,620
				60,001 - 75,000	\$1,460	\$2,920
				75,001 - 150,000	\$1,610	\$3,220
				150,001 - 225,000	\$1,750	\$3,500
				225,001 +	\$1,900	\$3,800