

United States Department of Agriculture
Farm Service Agency

WA-401
LICENSING AGREEMENT
FOR
COTTON WAREHOUSE OPERATORS



License Number _____ Effective Date _____

LICENSING AGREEMENT FOR COTTON WAREHOUSE OPERATORS

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Licensing Agreement for Cotton 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 Warehouse Operator but not licensed under 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 of 1946 (7 U.S.C. 1621-1627), as amended

United States Cotton Standards Act (7 U.S.C. 51)

I. Definitions

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.

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 cotton.

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.

Crop Year. The calendar year in which cotton is planted.

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 Warehouse 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.

Licensed sampler, classifier and weigher. A person licensed under the USWA to sample, classify and/or weigh and certificate the grade or other class and weight of cotton stored at a cotton warehouse licensed under the USWA.

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

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

Non-storage cotton. Those transit bales received temporarily into a warehouse for conditioning, transferring or assembling for shipment, or specific lots of cotton moving through a warehouse for current merchandising or mill use, against which no warehouse receipts are issued and no storage charges assessed.

Open Storage Cotton. Cotton stored in the warehouse belonging to others which are not warehouse receipted or company owned.

Reconcentrated or consolidated cotton. Those bales received into licensed storage space from one or more outside locations for the purpose of shipping such cotton as one unit, block or load.

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 cotton. Cotton received into, stored in, or delivered out of the warehouse which are not classified as non-storage.

Transit cotton. Those bales remaining less than 14 calendar days, that are unloaded into and reloaded from licensed storage space as a stop over point during transport from one destination to another.

Warehouse Capacity. The maximum quantity of cotton 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 cotton warehouse.

Warehouse Receipt. A receipt, either negotiable or nonnegotiable, issued by the Warehouse Operator that evidences title to the cotton received by the Warehouse Operator for storage in their USWA licensed space, including an EWR.

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 cotton.
- B. Have facilities that:
 - 1. are physically and operationally suitable for the protection of cotton in store,
 - 2. allow for the accurate and efficient weighing, sampling, and inspection of the cotton 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 weighing, sampling, and inspection of cotton,
 - 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 \$10.00 by the maximum number of bales that the warehouse accommodates when stored in the manner customary to each warehouse up to a maximum of \$250,000.00 per State included under any one license; however, no person may be licensed or remain licensed as a Warehouse Operator unless that person has minimum allowable net worth of at least \$25,000.00. (Any deficiency in net worth above the \$25,000.00 minimum may be supplied by an increase in the amount of the financial assurance). The Warehouse Operator need not have in excess of \$250,000.00 allowable net worth unless required by DACO.
 - 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 licenses or applies for a license to operate multiple warehouses, the maximum capacity of all licensed warehouses 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 calendar days of their 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 calendar day extension to provide a financial statement.
2. The required financial statements must include (**each** of the following but not be limited to):
 - a. a balance sheet,
 - b. a statement of income (profit and loss),
 - c. a statement of retained earnings, and
 - d. a 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.

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 the Warehouse Operator 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 a Warehouse Operator.

D. Special Cases – Assets

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 a Warehouse Operator to conform with the requirements may be allowed if **each** of the following conditions are met:

1. The appraisals are prepared by independent appraisers and according to established appraisal criteria acceptable to DACO, and
2. The assets are fully insured against casualty loss.

IV. Financial Assurance

A. Computation

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

1. to furnish financial assurance computed at the rate of ten dollars (\$10.00) per bale for the maximum number of bales that the warehouse accommodates when stored in the manner customary to the warehouse as determined by DACO up to a maximum of two hundred fifty thousand dollars (\$250,000.00) per State, but not less than twenty thousand dollars (\$20,000.00) in each State, and
2. to furnish additional financial assurance if DACO finds that conditions exist which warrant requiring additional financial assurance.

B. Acceptable Forms.

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

1. a Warehouse Operator's surety bond,
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 \$25,000.00 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.
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.
 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 cotton in custody as a reasonably careful owner would exercise under the same circumstances and conditions and not handle or store it in a manner that would damage or degrade it,
2. **not differentiate** among depositors regarding use of and access to services, except that available storage space may be allocated,
3. **attach** [if not already present] an identification tag to each bale, of a quality acceptable to DACO. These tags will contain a number, be attached in an orderly manner and clearly distinguishable from one another,
4. **assure** that all cotton accepted for storage is stored in licensed storage space,
5. **accept** for storage only storable bales of cotton,
6. **not store** fire damaged cotton in contact with cotton that has not been so damaged,
7. **keep** the warehouse reasonably clean at all times and free of materials that will create a hazard or interfere with the handling of cotton, provide a safe environment in and around the warehouse,

8. **maintain** the warehouse(s) in sound physical condition consistent with good warehousing practices,
9. **provide** all necessary assistance in the execution of inspections and examinations by FSA warehouse examiners,
10. **maintain** sufficient inventory as evidenced by outstanding storage obligations,
11. **deliver**, unless prevented from doing so by force majeure, stored cotton without unnecessary delay,
 - a. The Warehouse Operator will be considered to have delivered cotton without unnecessary delay, if, for the week in question, the Warehouse Operator has delivered or staged for scheduled delivery at least 4.5 percent of **either**:
 - i. their licensed storage capacity, or
 - ii. Commodity Credit Corporation (CCC) approved storage capacity or other storage capacity as determined by DACO to be in effect during the relevant week of shipment.
 - b. The Warehouse Operator will resolve any claim for noncompliance with the cotton shipping standard 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 cotton shipping standard.
12. **license** all facilities controlled by them at a specific location unless those facilities are specifically exempted by DACO,
13. **have** a written security plan that includes measures to protect cotton handled and stored under this Agreement,
14. **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 cotton is not subject to tampering,
 - c. action to be taken in the event of a national emergency, and
 - d. contact information for local security authorities.
15. **post** certificates of licensing, and make available current tariffs and rules,
16. **maintain**, at all times, legal and operational control of all licensed storage space,
17. **report**, immediately, the occurrence of a disaster or loss and the extent of damage to DACO,
18. **update** inventory and insurance records upon receiving or shipping cotton and transmit the updated information to their provider, if applicable, that reflects changes and activities in their obligations,

19. **not redeliver, ship or remove** any cotton 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 cotton,
20. **prohibit** any warehouse receipt or warehouse record to remain outstanding and uncanceled for any cotton shipped or removed from licensed storage space and no longer stored by the warehouse operator, and
21. **assure** that the warehouse inventory and warehouse receipt records are in balance and agreement before the close 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, cotton 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 to allocate available storage space.

C. Insurance

1. Requirements

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

- a. **secure**, in their own name, insurance on stored cotton 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 cotton, as soon as such cotton is placed in their legal custody, and continue such insurance in effect so long as the cotton 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 cotton 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 cotton for storage and delivering cotton 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 cotton 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. These records must include (**each** of the following):
 - a. Bale tag numbers,
 - b. Distinguishing mark or identifier,
 - c. Weight,
 - d. Location of the cotton bale in the warehouse,
 - e. Date received for storage,
 - f. Date delivered out of storage, and
 - g. Warehouse receipts issued and canceled, if applicable.
2. **maintain** records that enable cross check of bale tag number with a warehouse receipt,
3. **maintain** a detailed set of records of money received and disbursed,
4. **maintain** a record of insurance policies taken out and canceled,
5. **maintain** all records accurately and concisely as activity occurs, and
6. **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.

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 paper 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, and
4. **arrange** canceled paper warehouse receipts in numerical order and otherwise in such manner as may be 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,
4. **file** an amended schedule of charges and of their rule changes, if any, with DACO at or before the beginning of each season. The cotton season will commence not later than September 1 of each year, as the operator of the warehouse will select, and will notify DACO in writing not less than 10 calendar days preceding the date selected, and
5. **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 cotton 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):

6. **demand** payment of all accrued charges at the close of each cotton season. If, upon demand, the owner of the cotton 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
7. **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 cotton, whether for storage or for non-storage purposes, 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 cotton for the purposes of this USWA license, until such rejection is withdrawn,
2. **weigh**, by a weigher licensed under the USWA, cotton that comes into the warehouse. The weights must be certified,
3. **weigh** cotton, alternatively, at the gin, with DACO approval, in which case **each** of the following apply,
 - a. the use of gin originating weights requires the Warehouse Operator's control of the scales used to weigh cotton bales,
 - b. those gin scales must be annually inspected and certified as accurate 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 cotton 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 gin for the Warehouse Operator must be posted at the point of service,
4. **use**, upon agreement with the depositor, point of origin weights for single bale or lot stored cotton. Any point of origin weights shown on a warehouse receipt will be the official warehouse bale or lot weight, and
5. **preserve** the individual and collective identity of lot cotton tendered for storage on which a multiple bale warehouse receipt is issued during storage and shipment. If such lot is broken at the warehouse for the issuance of new receipts, each bale will be weighed at the warehouse by a licensed weigher before single bale warehouse receipts are issued.

J. Drawing of Samples

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

1. persons will be licensed under the USWA to draw samples from any cotton stored or to be stored in the licensed warehouse,
2. samples will be drawn if the owner of such cotton or any person having a legal right to have such cotton sampled requests that service, as directed by DACO,
3. samplers will perform their duties under the Warehouse Operator's supervision,
4. samples shall consist of two portions, each portion taken from opposite sides of the bale and drawn manually from between the ties (or bands). Each portion should be approximately 6 to 12 inches (150 – 300 mm) long and approximately 6 inches (150 mm) wide and should have approximately the same mass. The total sample submitted for testing should weigh approximately 8 ounces (225 grams), and be identified with a tag (coupon) rolled between the sides giving the bale number as prescribed by Agricultural Marketing Service (AMS) guidelines or other procedures recognized by DACO, and
5. each sample will be appropriately marked to show the tag number, mark, or identifier of the bale of cotton from which it was drawn.

K. Arrangement of Stored Cotton

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

1. **store** each bale of cotton received under the USWA in a manner acceptable to DACO,
2. **store** cotton in a lot or lots without regard to visibility of all tags on bales, if necessary and if each lot originally contained two or more bales. If a negotiable multiple bale receipt is issued, each bale entering into a lot must bear an individual bale identification and must be stored so that the number of bales within the lot may be accurately determined, and
3. **affix or mark**, conspicuously, for lot cotton an individual lot identification showing the lot number and the number of bales in the lot to each lot of cotton. After identifying the lot, the Warehouse Operator will (do **each** of the following):
 - a. **maintain** an office record showing the bale or tag number, mark, or identifier of each bale in the lot and the location of the lot in the warehouse,
 - b. **arrange** each lot to be readily distinguishable from each and every other lot, and
 - c. **disassemble** stacks or lots of cotton at the request of a FSA warehouse examiner engaged in making an examination of the warehouse as deemed necessary to conduct a proper examination. This activity will be at the Warehouse Operator's expense.

4. **when utilizing** any block piling storage of cotton, the Warehouse Operator will (**each** of the following):
 - a. **notify** the insurance underwriter of block piling storage and obtain written authorization and consent to insure such storage,
 - b. **obtain** DACO's written approval for block piling, and
 - c. **disassemble** block piled cotton for which single bale receipts have been or are to be issued at the request of a FSA warehouse examiner when making an examination of the warehouse.
5. **arrange** stored cotton so as not to obstruct free access and the proper operation of the sprinkler or other fire protection equipment.

L. Inspections and Examinations of Warehouse

The Warehouse Operator agrees: (**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 thereof relating to the license are subject to inspection, and
4. to furnish the USDA representative the assistance necessary to conduct an inspection or examination.

M. Removal of Cotton from Storage

Except as may be permitted by law or 7 CFR Part 735, the Warehouse Operator must not remove any cotton, from storage, from the licensed warehouse or a part thereof, if by such removal the insurance thereon will be impaired, without first obtaining the consent in writing of the holder of the receipt or lawful owner. Under no other circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts or lawful owners, will cotton be removed from the warehouse, and immediately upon any such removal the Warehouse Operator will notify DACO of such removal and the necessity therefor.

N. Excess Storage and Transferring Cotton

1. The Warehouse Operator may, under certain circumstances, transfer cotton by physical movement to another receiving warehouse. For the purposes of this paragraph a *receiving* warehouse is (**any** of the following):
 - a. an active USWA licensed cotton warehouse, or
 - b. a public cotton warehouse currently licensed by a State regulatory authority which has financial, bonding, and examination requirements for the benefit of depositors, or

- c. a warehouse holding a Commodity Credit Corporation (CCC) approved Cotton Storage Agreement (CSA) in a State without a regulatory licensing program for public cotton warehouses.
2. The Warehouse Operator agrees to (do **each** of the following):
 - a. **notify, immediately**, DACO in writing, by FAX or e-mail, if the number of bales they store exceeds the licensed capacity of the warehouse and of the location of the storage,
 - b. if physically transferring cotton 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 cotton according to conditions prescribed by DACO,
 - ii. **obtain** written permission from DACO, by FAX or e-mail, at least one business day in advance of movement,
 - iii. **transfer** all cotton bales in lots and list them by number and weight on a shipping document,
 - iv. **obtain** permission from CCC if cotton is owned by CCC or pledged as collateral for a CCC marketing assistance loan,
 - v. **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 cotton. A copy of the corresponding bill of lading for each lot of warehouse receipted or stored cotton which has been transferred,
 - vi. **retain** a storage obligation to the depositor of, lawful owner of or holder of warehouse receipt for cotton originally deposited in their warehouse and, unless otherwise specified in item vii. below, be prepared to redeliver the cotton bales deposited upon demand of the depositor, lawful owner or holder or their agent, at the place where the cotton was first deposited for storage,
 - vii. **expect** the depositor, lawful owner, holder or agent to make final settlement and take delivery of the storage obligation at the place where the cotton was first deposited for storage unless, with the consent of both, the transferring - shipping Warehouse Operator and the receiving Warehouse Operator, the depositor, lawful owner, holder or agent elects to take delivery at the warehouse to which the cotton was transferred, and
 - viii. **increase** financial assurance to cover physically transferred cotton to another warehouse.
 3. The receiving warehouse will (do **each** of the following):
 - a. **not further transfer** transferred cotton,
 - b. **not incur** storage obligations in excess of the licensed or approved capacity of that warehouse,
 - c. **fully insure** the transferred cotton,

- d. **promptly issue** a non-negotiable warehouse receipt or certified deposit affidavit for each lot of cotton stored and attach a copy of the corresponding bill of lading to each receipt and return the receipt/affidavit promptly to the shipping Warehouse Operator, and
 - e. **store** each such lot in accordance with part IV K of this Agreement.
4. The cotton covered by non-negotiable warehouse receipts and affidavits of certified deposit is not the property of either the shipping or receiving Warehouse Operator but held in trust solely for the benefit of depositors or lawful owners whose cotton was transferred individually or collectively and for which they or their agent retain title.

VI. Warehouse Receipts

A. General

1. Issuance - The Warehouse Operator agrees to (**each** of the following):
 - a. **issue** warehouse receipts for any cotton received or stored in a warehouse at the request of a depositor or lawful owner,
 - b. **replace** lost or destroyed warehouse receipts in accordance with 7 CFR Part 735, and
 - c. **not issue** a warehouse receipt when another warehouse receipt representing the same specific cotton 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 (do **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 file signatures legally bind the Warehouse Operator.
3. Return of Warehouse Receipts Prior to Delivery

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

- a. for which they have issued a negotiable receipt only after the receipt has been returned and canceled before the close of the next business day, and
- b. which they have issued a non-negotiable receipt only after the receipt has been returned.

B. Paper Warehouse Receipts

1. Single Bale Warehouse Receipts

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

- a. every single bale warehouse receipt, whether negotiable or non-negotiable, issued for cotton 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 or data fields, **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 (city and state) in which the cotton is stored,
 - iii. the Warehouse Operator's license number,
 - iv. the CCC CSA code number, if applicable,
 - v. the date of issue of the receipt,
 - vi. the number of the receipt,
 - vii. a statement whether the cotton received will be delivered to the bearer, to a specified person, or their order,
 - viii. the rate of storage charges,
 - ix. storage charges paid through date, if applicable,
 - x. receiving charges paid or due, if applicable,
 - xi. the tag identifier given each bale of cotton,
 - xii. bale location in the warehouse, if applicable,
 - xiii. a statement conspicuously placed, that the cotton is insured by the Warehouse Operator against loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado or inherent explosion, or other risk,
 - xiv. 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,
 - xv. a space designated for the grade and/or other classification, and the standard or description in accordance with which such classification has been made: Provided, that such grade or other class shall be stated according to the official standard of the United States applicable to such cotton as the same may be fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the Secretary of Agriculture,

- xvi. a statement indicating that the weight was determined by a weigher licensed under the USWA, except that if at the request of the depositor, the weight is not so determined or if the point of origin weight was determined as permitted the receipt shall contain a statement to that effect,
- xvii. a description of the cotton received, showing the quantity thereof, or, in case of cotton customarily put in bales or packages, a description of such bales or packages by marks, numbers, or other identification and the weight of such bales or packages,
- xviii. a statement that the receipt is issued in accordance with the USWA, its regulations and licensing agreements,
- xix. crop year,
- xx. the words "Not Negotiable," or "Negotiable," according to the nature of the receipt clearly and conspicuously noted thereon. 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, holder, lawful owner or their authorized agent, for showing the ownership of the cotton covered by the receipt,
- xxi. if issued showing the Warehouse Operator as owner, either solely or jointly or in common with others, the fact of such ownership,
- xxii. the signature of the Warehouse Operator, which may be made by their authorized agent,
- xxiii. a statement whether the Warehouse Operator is incorporated or unincorporated, and if incorporated, under what laws,
- xxiv. a statement that, except when an expiration date authorized by USDA is shown on the face of the negotiable receipt, every negotiable receipt issued for cotton stored in a licensed warehouse shall be effective until surrendered for delivery of the cotton,
- xxv. a statement that, except when an expiration date authorized by USDA is shown on the face of the non-negotiable receipt, every non-negotiable receipt shall be effective until surrendered for delivery of the cotton or until all cotton covered by the receipt has been delivered in response to proper delivery orders of the person rightfully entitled to the cotton,
- xxvi. nothing contained in this section shall prohibit a Warehouse Operator from legally selling the cotton when the accrued storage and other charges approach the current market value of the cotton, and
- xxvii. other information as may be required.

- b. In addition to complying with paragraph (a) of this section, if classing is included in a negotiable receipt issued for cotton stored in a licensed warehouse it must embody within its terms a statement identifying who classed the cotton and their authority to perform such services. The classification or other factors will be based upon a cotton sample consists of two portions. Each portion taken from opposite sides of the bale and drawn manually from between the ties (or bands). Each portion should be approximately 6 to 12 inches (150 – 300 mm) long and approximately 6 inches (150 mm) wide and should have approximately the same mass. The total sample for classing should weigh approximately 8 ounces (225 grams). Each sample must be representative of the bale from which drawn. Samples must not be dressed or trimmed and will be handled carefully in such manner as not to cause loss of leaf, sand, or other material, or otherwise change their representative character. Any sample which does not meet these requirements may be rejected,
 - c. If, at the request of the depositor, a 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. Multiple Bale Warehouse Receipts

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

- a. Every multiple bale warehouse receipt, whether negotiable or non-negotiable issued for cotton 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 or data fields **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 (city and state) in which the cotton is stored,
 - iii. the Warehouse Operator’s license number,
 - iv. the CCC CSA code number, if applicable,
 - v. the issuance date of the receipt,
 - vi. the number of the receipt,
 - vii. a statement whether the cotton received will be delivered to the bearer, to a specified person, or to a specified person or their order, if applicable,

- viii. the rate of storage charges,
- ix. lot location in the warehouse, if applicable,
- x. a statement conspicuously placed, that the cotton is insured by the Warehouse Operator against loss or damage by sprinkler malfunction, fire, lightning, windstorm, cyclone, tornado or inherent explosion, or other risk,
- xi. 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,
- xii. a statement indicating that the weight was determined by a weigher licensed under the USWA, except that if at the request of the depositor, the weight is not so determined or if the point of origin weight was determined as permitted, the receipt shall contain a statement to that effect,
- xiii. the bale number, gross, tare weight, net weight, and crop year for each bale if the receipt is negotiable,
- xiv. the total gross, total tare, total net weight and the total number of bales if the receipt is non-negotiable. A tag list must be attached with each bale number and its weight,
- xv. a statement that the receipt is issued in accordance with the USWA, its regulations and licensing agreements,
- xvi. the words "Not Negotiable," or "Negotiable," according to the nature of the receipt clearly and conspicuously noted thereon. 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, holder, lawful owner or their authorized agent, for showing the ownership of the cotton covered by the receipt,
- xvii. a statement indicating whether the receipt is issued for cotton of which the Warehouse Operator is owner, either solely or jointly or in common with others,
- xviii. the signature of the Warehouse Operator, which may be made by their authorized agent, and
- xix. a statement whether the Warehouse Operator is incorporated or unincorporated, and if incorporated, under what laws.

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

3. 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".

4. Printing of Paper Warehouse Receipts

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

- 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.

5. 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.
- c. will pay the printer in a timely manner.

6. 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, Warehouse Operators must require the holder, lawful person 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 cotton 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.

7. 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 Electronic Warehouse Receipts (EWRs) instead of paper warehouse receipts for cotton 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 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. 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 the cotton 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 the 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 single bale electronic warehouse receipt, whether negotiable or non-negotiable, issued for cotton stored in a licensed warehouse must, in addition to complying with the requirements of Section 11 of the Act and Section VI (A) and (B), (C)(1) and (2) of this Agreement, embody within its written or printed terms **each** of the following:
 - i. the holder of the receipt,
 - ii. received from,
 - iii. receipt status,
 - iv. receipt type (single bale or multiple bale),
 - v. cancellation date (if the receipt has been canceled),
 - vi. paper receipt number, (if applicable),
 - vii. compression status,
 - vi. compression paid or unpaid, (if applicable),
 - ix. gin code (only negotiable receipts - in case of transit cotton bales this element can be the previous storing warehouse code),

- x.* gin tag (in case of transit cotton bales this element can be the previous storing warehouse receipt number),
 - xi.* rail or truck, (if applicable),
 - xii.* license type, **US** for USWA Licensees will precede or follow the warehouse receipt number.
- b. Every multiple bale warehouse receipt, whether negotiable or non-negotiable, is sued for cotton stored in a licensed warehouse must, in addition to complying with the requirements of Section 11 of the Act and Section V (B)(2) of this Agreement, embody within its written or printed terms **each** of the following:
 - i.* the holder of the receipt,
 - ii.* received from,
 - iii.* receipt status,
 - iv.* receipt type (single bale or multiple bale),
 - v.* cancellation date (if the receipt has been canceled),
 - vi.* paper receipt number (if applicable),
 - vii.* compression status,
 - viii.* compression paid or unpaid, (if applicable),
 - ix.* gin code (only negotiable receipts - in case of transit cotton bales, this element can be the previous storing warehouse code),
 - x.* gin tag (only negotiable receipts - in case of transit cotton bales, this element can be the previous storing warehouse receipt number),
 - xi.* rail or truck, (if applicable),
 - xii.* license type, **US** if USWA Licensee will precede or follow the warehouse receipt number,
 - xiii.* the bale number, gross, tare weight, net weight, and crop year for each bale if the receipt is negotiable, and
 - xiv.* the total gross, total tare, total net weight and the total number of bales if the receipt is non-negotiable. A tag list must be attached with each bale number and its weight.

VII. Service Licenses

No person will in any way represent themselves to be a sampler, classifier, and/or weigher 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 (**any** of these):
 - a. when a licensee discontinues service to the warehouse, or
 - b. when a licensee is no longer used 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, classify and weigh cotton 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, classifier and/or weigher,
 - c. **be certified** by the Warehouse Operator that the applicant can correctly sample and/or classify cotton in accordance with the Official Standards of the United States,
 - d. **be certified** by the Warehouse Operator that the applicant can correctly weigh cotton, 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 sample, classify and/or weigh cotton and also make available for inspection copies of the standards of sampling, classifying or the weighing apparatus, used or to be used.

C. Duties of the Sampler, Classifier and Weigher

Each sampler, classifier and weigher whose license remains in effect must (do **each** the following as they apply):

1. **classify or weigh** and certificate the class or weight, respectively, of cotton stored or to be stored in the licensed warehouse to which the license applies without discrimination, as soon as practicable, upon reasonable terms, if such cotton is offered under such conditions as permit the proper performance of such functions; except that no class or weight certificate need be issued when the class or weight so determined is entered on a receipt by the licensed classifier or weigher making the determination,
2. **sample cotton** when requested, stored or to be stored in the licensed warehouse for which they hold a license, in accordance with the standards set forth in the regulations at 7 CFR Part 28. No class or weight certificate will be issued under the USWA, for cotton not in the custody of the Warehouse Operator for purposes of storage. Cotton not in the custody of the Warehouse Operator for such purpose may be sampled by a licensed sampler,
3. **keep** the license certificate to sample, classify and/or weigh conspicuously posted at the place where those duties are performed or as directed by DACO,
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 sampler, classifier 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 cotton 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. Weight Certificates

- A. Each weight certificate issued under the USWA by a licensed weigher must be in a form approved by DACO, and include **each** of the following information within its terms:
 1. the caption "United States Warehouse Act, Cotton Weight Certificate,"
 2. whether it is an original, a duplicate, or other copy, and that it is not negotiable,
 3. the name and location of the warehouse in which the cotton is or is to be stored,
 4. the date of the certificate,
 5. the consecutive number of the certificate,
 6. the location of the cotton at the time of weighing,
 7. the identification of each bale of cotton by the tag number given to the bale in accordance with this Agreement or if there is no such tag number by other marks or numbers,

8. the gross, or net and tare, weight of the cotton and a statement of such condition that is materially affecting its weight which may be added to the weigher's estimate of the number of pounds which should be allowed for such condition,
 9. A statement that the certificate is issued by a weigher licensed under the USWA, and
 10. The signature of the licensed weigher.
- B. In addition to the provisions of paragraph A, the weight certificate may include any other matter not inconsistent with the USWA or 7 CFR Part 735 provided the authorization of the DACO is first secured.

IX. Cotton Classification

A. Official Cotton Standards of the United States

The official cotton standards, established and promulgated under the United States Cotton Standards Act are hereby adopted as the official cotton standards for the purposes of the USWA and 7 CFR Part 735.

B. Access to the Cotton Standards

The Warehouse Operator and each licensed classifier will maintain, or have access to, a set of the official cotton standards of the United States, or such parts thereof as DACO may deem necessary for use in the locality in which the licensed warehouse is located.

X. Cotton Classing Appeals

If an appeal of the classing is made, the Warehouse Operator will assist in accordance with the standards set forth in the regulations at 7 CFR Part 28 and administered by the AMS.

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 a Warehouse Operator or 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 cotton 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 or revocation of a Warehouse Operator's license and liquidation of cotton 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 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 cotton 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 cotton inventory,
 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 cotton 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

_____ at
Warehouse Operator

_____ Licensed Location (s)

and is effective this _____ of _____
Day Month Year

_____ Warehouse Operator

By _____

_____ Date (MM-DD-YYYY)

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, 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

FEES

Capacity Range in Bales		With CCC Stg Agreement.	W/O CCC Stg Agreement.
1	20,000	\$560	\$1,115
20,001	40,000	730	1,460
40,001	60,000	895	1,790
60,001	80,000	1,125	2,245
80,001	100,000	1,400	2,800
100,001	120,000	1,680	3,355
120,001	140,000	1,955	3,915
140,001	160,000	2,240	4,475
	In excess of 160,000 B/C	\$2,240 plus \$60 per 5,000 b/c over 160,000 or fraction thereof	\$4,475 plus \$110 per 5,000 b/c over 160,000 or fraction thereof