

(b) *User fee charges.* Providers shall pay to the Service user fees set by the Service and announced annually prior to April of each calendar year.

(c) *Provider agreement.* The provider agreement shall contain, but not be limited to, the following basic elements:

(1) *Records.* The retention period for records.

(2) *Liability.* The liability of the provider.

(3) *Transfer of records.* The requirements for transferring EWRs to another provider.

(d) *Suspension and termination.* (1) The Secretary may suspend or terminate a provider's agreement for cause at any time.

(2) Hearings and appeals will be conducted in accordance with procedures that are contained in §§ 735.7 and 735.89.

(3) Without specific written authority by the Secretary, suspended or terminated providers may not accept, transfer, or execute any other function pertaining to EWRs during the pendency of any appeal or subsequent to such appeal if the appeal is denied.

(4) The provider or FSA may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to the termination.

(e) *Renewal.* Each provider agreement will be automatically renewed annually on April 30th as long as the provider complies with the terms contained in the provider agreement, the regulations in §§ 735.100 through 735.105 and the Act.

(f) *Application form.* Application for a provider agreement shall be made to the Secretary upon forms prescribed and furnished by FSA.

[59 FR 15039, Mar. 31, 1994, as amended at 62 FR 33540, June 20, 1997]

§ 735.103 Audits.

(a) The provider must submit to the Secretary an annual audit level financial statement that meets the requirements of § 735.5 with the exception of §§ 735.5(d)(1), (e), (g), and (h); and an electronic data processing audit. These audits shall encompass the provider's fiscal year. The completed audits shall be submitted to the Secretary no later than four calendar months following

the end of the provider's fiscal year. The electronic data processing audit shall result in an evaluation as to current computer operations, security, disaster recovery capabilities of the system, and other systems.

(b) The provider will grant the Secretary or his designees unlimited, free access at any time to all records under the provider's control relating to activities conducted under this part and as specified in the provider agreement.

[59 FR 15039, Mar. 31, 1994]

§ 735.104 Provider-user relationship.

(a) The provider shall not discriminate among its users regarding use of and access to its CFS and must charge fees on an equal basis to all users for its services.

(b) The provider must furnish the Secretary with copies of its current schedule of fees for all services and charges as they become effective.

(c) Fees charged any user by the provider must be in effect for a minimum period of one year.

(d) Providers must furnish the Secretary and all users a 60 calendar day advance notice of their intent to change any fee.

[59 FR 15039, Mar. 31, 1994]

§ 735.105 Security.

(a) Security must be in accordance with the standards set out in the provider agreement.

(b) Security copies of the system are to be maintained off-site. Both on-site and off-site record security must be maintained.

[59 FR 15039, Mar. 31, 1994]

PART 736—GRAIN WAREHOUSES

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§ 736.1

AUTHORITY: 7 U.S.C. 241 *et seq.*

SOURCE: 29 FR 15730, Nov. 24, 1964, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

EDITORIAL NOTE: Nomenclature changes to part 736 appear at 62 FR 33540, June 20, 1997.

CROSS REFERENCE: For official grain standards of the United States, see chapter VIII, part 810 of this title.

DEFINITIONS

§ 736.1 Meaning of words.

Words used in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 736.2 Terms defined.

For the purposes of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) *The act.* The United States Warehouse Act, approved August 11, 1916 (39 Stat. 486; 7 U.S.C. 241-273), as amended.

(b) *Person.* An individual, corporation, partnership, or two or more persons having a joint or common interest.

(c) *Department.* The United States Department of Agriculture.

(d) *Secretary.* The Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(e) *Designated representative.* The Administrator.

(f) *Administrator.* The Administrator of the Service or any other officer or employee to whom authority has heretofore lawfully been delegated, or may hereafter lawfully be delegated, to act in his stead.

(g) *Service.* The Farm Service Agency of the U.S. Department of Agriculture.

(h) *Regulations.* Rules and regulations made under the act by the Secretary.

(i) *Dockage.* Dockage in grain as defined by the official grain standards of the United States.

(j) *Grain.* All products commonly classed as grain such as wheat, corn, oats, barley, rye, flaxseed, rough, brown, and milled rice, sunflower seeds, field peas, soybeans, emmer, sor-

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ghum, safflower seed, triticale, millet and such other products as are ordinarily stored in grain warehouses, subject to the disapproval of the Administrator.

(k) *Nonstorage grain.* Grain received temporarily into a warehouse for conditioning, transferring, assembling for shipment, or lots of grain moving through a warehouse for current merchandising or milling use, against which no receipts are issued and no storage charges assessed: *Provided,* That merchandising or milling stocks held in storage as reserve stocks, or stored for use at an indefinite future date, may not be treated as nonstorage grain.

(l) *Warehouse.* Unless the context otherwise clearly indicates, any building, structure, or other protected inclosure licensed or to be licensed under the act, in which grain is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which grain is or may be stored.

(m) *Bin.* A bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored.

(n) *Warehouseman.* Any person lawfully engaged in the business of storing grain, who holds an effective warehouseman's license under the act, or who has applied for such a license.

(o) *License.* A license issued under the act by the Secretary, or his designated representative.

(p) *Warehouseman's bond.* The bond required by the act to be given by a warehouseman.

(q) *Inspector.* (1) A person licensed under the provisions of section 11 of the U.S. Warehouse Act, section 8 of the U.S. Grain Standards Act, or the provisions of the Agricultural Marketing Act of 1946 and (2) a Federal employee authorized under section 8 of the U.S. Grain Standards Act, or under the provisions of the Agricultural Marketing Act of 1946 to inspect, grade and/or certificate the grade of grain stored or to be stored in a warehouse licensed under the U.S. Warehouse Act (the terms "duly licensed to inspect" and "licensed inspector" shall be defined accordingly).

(r) *Weigher*. (1) A person licensed under the provisions of section 11 of the U.S. Warehouse Act, section 8 of the U.S. Grain Standards Act, or the provisions of the Agricultural Marketing Act of 1946 and (2) a Federal employee authorized under section 8 of the U.S. Grain Standards Act, or under the provisions of the Agricultural Marketing Act of 1946, to weigh and/or certificate the weight of grain stored or to be stored in a warehouse licensed under the U.S. Warehouse Act (the terms "duly licensed to weigh" and "licensed weigher" shall be defined accordingly).

(s) *Grain Standards Act*. The United States Grain Standards Act, approved August 11, 1916 (39 Stat. 482; 7 U.S.C. 71-87) as amended.

(t) *Agricultural Marketing Act of 1946*. The Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627) as amended.

(u) *Official Standards of the United States*. The standards of the quality or condition for grain, fixed and established under the U.S. Grain Standards Act or the Agricultural Marketing Act of 1946.

(v) *Receipt*. A licensed warehouse receipt issued under the act.

(w) *Net assets*. The difference remaining when liabilities are subtracted from allowable assets as determined by the Secretary after review of the warehouseman's financial statement. In determining total net assets, credit may be given for 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 tornado. Such insurance shall be in the form of lawful insurance policies issued by insurance companies authorized to do such business and subject to service of process in suits brought in the State in which the warehouse is located.

(x) *Warehouse capacity*. Warehouse capacity is defined as the maximum number of bushels of grain that the warehouse could accommodate when stored in the manner customary to the grain for the warehouse, as determined by the Secretary.

(y) *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.

(z) *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.

(aa) *Storage grain*. All grain received into, stored in, or delivered out of the warehouse which is not classified as nonstorage grain under § 736.19(c) of this part.

[29 FR 15730, Nov. 24, 1964, as amended at 41 FR 7751, Feb. 20, 1976; 42 FR 12143, Mar. 3, 1977; 43 FR 14006, Apr. 4, 1978; 45 FR 5661, Jan. 24, 1980. Redesignated and amended at 50 FR 1814, Jan. 14, 1985; further amended at 52 FR 37126, Oct. 5, 1987; 56 FR 40220, Aug. 14, 1991]

WAREHOUSE LICENSES

§ 736.3 Application form.

Applications for licenses and for amendments of licenses under the act shall be made to the Secretary upon prescribed forms furnished by the Service, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary, or his designated representative, shall find to be necessary to the consideration of his application.

§ 736.3a All facilities to be licensed or exempted.

All facilities within the same city or town used for the storage of grain by an applicant for a warehouse license must qualify for a license and be licensed under the act if the applicant is to be licensed to operate as a grain warehouseman in such city or town, unless the facilities which are not to be covered by a license are exempted by the Secretary or his designated representative upon a finding that, due to the exercise of adequate controls by some independent agency over the operation of the nonfederally licensed facilities, there would be no likelihood of interchange, substitution, or commingling of grain stored in such facilities with grain stored in the federally licensed facilities. If all such facilities

do not qualify for a license or for an exemption under this section, the applicant shall not be licensed under the act as a grain warehouseman in the city or town in which the facilities in question are located. Each applicant for a grain warehouse license must apply for a license covering all facilities operated by him for the storage of grain within the same city or town or for exemption as provided in this section. If a licensed grain warehouseman acquires any additional grain storage facilities within the same city or town in which his licensed warehouse is located, he shall file promptly an application for a license or an exemption of the additional facilities. No grain storage facility acquired by a licensed grain warehouseman, subsequent to the issuance of his license, in the same city or town as his licensed facilities, shall be used for the storage of grain until it qualifies for license and is licensed or is exempted as provided in this section. If any one of the licensed grain storage facilities operated by a warehouseman in the same city or town becomes ineligible for a license at any time for any reason, it shall not thereafter be used for the storage of grain until the condition making it ineligible is removed or an exemption is granted as provided in this section. The use for the storage of grain by a licensed warehouseman of a facility which is in the same city or town as his licensed facilities and is neither licensed nor exempted, or other violation of the provisions of this section, shall be cause for suspension or revocation of any license issued to the warehouseman for the storage of grain.

§ 736.4 Scales; bin numbers.

(a) Each warehouse must be equipped with suitable scales in good order, and so arranged that all grain, whether for storage or for nonstorage purposes, can be weighed in and out of the warehouse. The scales in any warehouse shall be subject to examination by representatives of the Department and to disapproval by the Administrator. If he disapproves any weighing apparatus, it shall not thereafter be used in ascertaining the weight of grain for the purposes of this act, until such disapproval be withdrawn.

(b) Both bulk grain bins and compartments for sacked grain of all warehouses licensed under the act shall be identified by means of clearly discernible numbers securely affixed thereto. The series of numbers to be used shall be approved by the Service. Bulk grain bins shall be numbered so as to be easily identified at the openings on top and also on or near the outlet valves underneath. Compartments shall be numbered in such a manner as to clearly show the space covered by each number.

§ 736.5 [Reserved]

§ 736.6 Financial requirements.

(a) Each warehouseman conducting a warehouse licensed, or for which application for a license has been made under the regulations in this part, shall maintain complete, accurate and current financial records.

(b) Each warehouseman conducting a warehouse for which application for license is made shall provide with this application and each warehouseman licensed under these regulations annually, or more frequently if required, shall furnish to the Secretary financial statements from the records required in paragraph (a) of this section prepared according to generally accepted accounting principles. Such statements shall include but not be limited to: (1) Balance sheet, (2) statement of income (profit and loss), (3) statement of retained earnings, and (4) statement of changes in financial position. The chief executive officer for the warehouseman shall certify under penalties of perjury that the statements as prepared accurately reflect the financial condition of the warehouseman as of the date named and fairly represent the results of operations for the period named.

(c) Each warehouseman conducting a warehouse licensed under these regulations shall have the financial statements required in paragraph (b) of this section audited by an independent certified public accountant. Alternatively, financial statements audited or reviewed by an independent public accountant will be accepted with the understanding that the warehouseman will be subject to an additional on-site examination by the Secretary and to

an audit by the Secretary. Audits and reviews by independent certified public accountants and independent public accountants specified in this section shall 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 such statements, if any, shall be furnished along with the statements. Licensees who cannot immediately meet these requirements may apply to the Secretary for a temporary waiver of this provision. The Secretary may grant such waiver for a temporary period not to exceed 180 days if the licensee can furnish evidence of good and substantial reasons therefor.

(d) Each warehouseman conducting a warehouse which is licensed under the regulations in this part, or for which application for such a license has been made, shall have and maintain:

(1) Total net assets liable and available for the payment of any indebtedness arising from the conduct of the warehouse of at least 25 cents multiplied by the warehouse capacity in bushels, however, no person may be licensed or remain licensed as a warehouseman under this part unless that person has allowable net assets of at least \$50,000. (Any deficiency in net assets above the \$50,000 minimum may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 736.14(c) of this part); and

(2) Total current assets equal to or exceeding total current liabilities or assurance that funds will be available to meet current obligations.

(e) In case a warehouseman is licensed or is applying for licenses to operate two or more warehouses under the regulations in this part, the maximum number of bushels which all such warehouses will accommodate when stored in the manner customary to the warehouses, as determined by the Administrator, shall be considered in determining whether the warehouseman meets the net assets requirements specified in paragraph (d) of this section.

(f) Subject to such terms and conditions as the Secretary may prescribe and for the purposes of determining al-

lowable assets and liabilities under paragraphs (d) and (e) of this section:

(1) Capital stock shall not be considered a liability;

(2) Appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by warehousemen to conform with paragraphs (b) and (c) of this section may be allowed by the Secretary if prepared by independent appraisers acceptable to the Secretary;

(3) Financial statements of a parent company which separately identifies the financial position of a wholly owned subsidiary and which meets the requirements of paragraphs (b), (c), and (d) of this section may be accepted by the Secretary in lieu of the warehouseman meeting such requirements; and

(4) Guaranty agreements from a parent company submitted on behalf of a wholly owned subsidiary may be accepted by the Secretary as meeting the requirements of paragraphs (b), (c), and (d) of this section, if the parent company submits a financial statement which qualifies under this section.

(g) In case a State agency licensed or applying for a license as provided in Section 9 of the Act has funds of not less than \$500,000 guaranteeing the performance of obligations of the agency as a warehouseman, such funds shall be considered sufficient to meet the net assets requirements of this section.

(h) In case a warehouseman files a bond in the form of a certification of participation in an indemnity or insurance fund as provided for in § 736.13(b), the licensed warehouseman shall have and maintain a minimum of \$25,000 in allowable net assets and any deficiency in assets above the \$25,000 minimum shall be covered by an acceptable and valid certificate.

(i) When a warehouseman files a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are unconditionally guaranteed as to both interest and principal by the United States as provided for in § 736.13(c):

(1) The obligation deposited shall not be considered a part of the warehouseman's assets for purposes of § 736.6(d), (1) and (2);

(2) A deficiency in total allowable net and current assets as computed for

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§ 736.6(d), (1) and (2) may be offset by the licensed warehouseman furnishing a corporate surety bond for the difference;

(3) The deposit may be replaced or continued in the required amount from year to year; and

(4) The deposit shall not be released until one year after termination (cancellation or revocation) of the license which it supports or until satisfaction of any claim against the deposit, whichever is later.

Nothing in these regulations shall prohibit a person other than the licensed warehouseman from furnishing such bond or additions thereto on behalf of and in the name of the licensed warehouseman subject to provisions of § 736.13(c).

[29 FR 15730, Nov. 24, 1964, as amended at 39 FR 41824, Dec. 3, 1974; 47 FR 23910, June 1, 1982; 49 FR 12667, Mar. 30, 1984. Redesignated at 50 FR 1814, Jan. 14, 1985; further amended at 52 FR 37126, Oct. 5, 1987]

§ 736.7 Grounds for not issuing license.

A license for the conduct of a warehouse, or any amendment to a license, under the regulations in this part, shall not be issued if it is found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of grain; that the warehouseman does not possess a good reputation, or does not have a net worth of at least \$50,000.00, or is incompetent to conduct such warehouse in accordance with the act and the regulations in this part; or that there is any other sufficient reason within the intent of the act for not issuing such license. If all the facilities operated for the storage of grain by the applicant within the same city or town are not to be licensed under the act, the applicant shall not be licensed as a grain warehouseman with respect to any of such facilities, unless an exemption of the facilities which are not to be licensed is granted as provided in § 736.3a.

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 23911, June 1, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985 and further amended at 52 FR 37127, Oct. 5, 1987]

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§ 736.8 Posting of license.

Immediately upon receipt of his license or of any modification or extension thereof under the act, the warehouseman shall post same, and thereafter, except as otherwise provided in the regulations in this part, keep it posted until suspended or terminated, in a conspicuous place in the principal office where receipts issued by such warehouseman are delivered to depositors.

§ 736.9 Warehouse license; suspension; revocation.

Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a warehouseman when such warehouseman—

(a) Does not have a net worth of at least \$50,000;

(b) Has parted, in whole or in part, with his control over the licensed warehouse;

(c) Is in process of dissolution or has been dissolved;

(d) Has ceased to operate such licensed warehouse;

(e) Has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse;

(f) Has made unreasonable or exorbitant charges for services rendered;

(g) Is operating in the same city or town in which his licensed warehouse facilities are located, any facility for storage of grain which is not covered by a license or an exemption as provided in § 736.3a; or

(h) Has in any other manner violated or failed to comply with any provision of the act or the regulations in this part. Whenever any of the conditions mentioned in paragraphs (a) through

(h) of this section shall come into existence, it shall be the duty of the warehouseman to notify the Administrator immediately of the existing condition. Before a license is revoked or suspended (other than temporarily pending investigation) for any violation of, or failure to comply with, any provision of the act or of the regulations in this part, or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or his designated representative, a written statement, specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 736.99.

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 23911, June 1, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985 and further amended at 52 FR 37127, Oct. 5, 1987; 53 FR 2477, Jan. 28, 1988]

§ 736.10 Return of suspended or revoked license.

In case a license issued to a warehouseman terminates or is suspended or revoked by the Secretary or his designated representative, such license shall be immediately returned to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the warehouseman to whom it was originally issued and it shall be posted as prescribed in § 736.8: *Provided*, That in the discretion of the Secretary, or his designated representative, a new license may be issued without reference to the suspension.

§ 736.11 Lost or destroyed warehouse license.

Upon satisfactory proof of the loss or destruction of a license issued to a warehouseman, a duplicate thereof, or a new license may be issued under the same number.

§ 736.12 Unlicensed warehousemen must not represent themselves as licensed.

No warehouse or its warehouseman shall be designated as licensed under the act, and no name or description conveying the impression that it or he is so licensed shall be used, either in a receipt or otherwise, unless such warehouseman holds an unsuspended and unrevoked license for the conduct of such warehouse.

WAREHOUSE BONDS

§ 736.13 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the Act shall, before such license is granted, file with the Secretary or his designated representative a bond either:

(a) In the form of a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall faithfully perform during the period of this bond all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products;

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act and regulations and contracts include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

This obligation shall be and remain in full force and effect for a minimum of one year beginning with the effective date and shall be considered a continuous bond thereafter until terminated as herein provided. The total liability of the surety is limited to the penal amount hereof, for liabilities that accrue during the term hereof.

This obligation shall be and remain in full force and effect from date of issue until one hundred twenty (120) days after notice in writing of cancellation shall have been received by the Secretary from the principal or surety. If said notice shall be given by the surety, a copy thereof shall be mailed on the

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same day to the principal. Cancellation of this bond and cancellation of any of its provisions shall not affect any liability accrued thereon at the time of said notice or which may accrue thereon during the one hundred twenty (120) days after such notice.

A bond in this form shall be subject to 7 CFR 736.6, and 736.14 through 736.17, and 31 CFR part 225, or

(b) In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Secretary, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouseman under the terms of the Act and regulations. A certificate of participation and coverage in such fund shall be furnished to the Secretary annually. If administration or application of the fund shall change after being approved by the Secretary, the Secretary may revoke his approval. Such revocation shall not affect a depositor's rights which have arisen prior to such revocation. Upon such revocation the licensed warehouseman then must comply with paragraph (a). Such certificate of participation shall not be subject to §§ 736.14 and 736.15, or

(c) In the form of a deposit with the Secretary as security, United States bonds, Treasury notes, or other public debt obligations of the United States or obligations which are unconditionally guaranteed as to both interest and principal by the United States, in a sum equal at their par value to the amount of the penal bond required to be furnished, together with an irrevocable power of attorney and agreement in the form prescribed, authorizing the Secretary to collect or sell, assign and transfer such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Obligations posted in accordance with this paragraph may not be withdrawn by the warehouseman until one year after license termination or until satisfaction of any claims against the obligations whichever is later. A bond in this form shall be subject to 7 CFR

736.6 and 736.14 through 736.17 and 31 CFR part 225.

[52 FR 37127, Oct. 5, 1987]

§ 736.14 Amount of bond; additional amounts.

(a) The amount of bond to be furnished for each warehouse under the regulations in this part shall be fixed at a rate of 20 cents per bushel for the first 1,000,000 bushels of licensed capacity; 15 cents per bushel for the next 1,000,000 bushels of licensed capacity; and 10 cents per bushel for all licensed capacity over 2,000,000 bushels: *Provided*, That in any case the amount of bond shall not be less than \$20,000 nor more than \$500,000, except as prescribed in paragraph (c) of this section. The licensed capacity shall be the maximum number of bushels of grain that the warehouse could accommodate as determined under § 736.6(d).

(b) In case a warehouseman is licensed or is applying for licenses to operate two or more warehouses in the same State he may give a single bond meeting the requirements of the Act and the regulations in this part to cover all his warehouses within the State. In such case the warehouses to be covered by the bond shall be deemed to be one warehouse only for purposes of determining the amount of bond required under paragraph (a) of this section.

(c) In case of a deficiency in net assets above the \$50,000 minimum required under § 736.6(d)(1), there shall be added to the amount of bond determined in accordance with paragraph (a) of this section an amount equal to such deficiency or a letter of credit in the amount of the deficiency issued to the Secretary for a period of not less than two years to coincide with the period of any deposit of obligation under 7 CFR 736.13(c). Any letter of credit must be clean, irrevocable, issued by a commercial bank, payable to the Secretary by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation. If the Secretary, or his designated representative, finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond as determined under the other provisions of

this section, a further amount to meet such conditions.

[29 FR 15730, Nov. 24, 1964, as amended at 39 FR 41824, Dec. 3, 1974; 47 FR 23911, June 1, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985, and further amended at 52 FR 37127, Oct. 5, 1987]

§ 736.15 Amendment to license.

In case an application is made for an amendment to a license and no bond previously filed by the warehouseman under §§ 736.13 through 736.17 covers obligations arising during the period covered by such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative, that his application for such amendment will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the act. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and the regulations in this part, may be filed in lieu of a new bond.

§ 736.16 New bond required each year.

A continuous form of license shall remain in force for more than one year from its effective date or any subsequent extension thereof, provided that the warehouseman has on file with the Secretary a bond meeting the terms and conditions as outlined in 7 CFR 736.13. Such bond must be in the amount required by the Secretary and approved by him or his designated representative. Failure to provide or renew a bond shall result in immediate and automatic termination of the warehouseman's license.

[52 FR 37127, Oct. 5, 1987]

§ 736.17 Approval of bond.

No bond, amendment, or continuation thereof shall be accepted for the purposes of the act and the regulations in this part until it has been approved by the Secretary, or his designated representative.

WAREHOUSE RECEIPTS

§ 736.18 Form.

(a) Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the following:

(1) The name of the warehouseman and the designation, if any, of the warehouse,

(2) A statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws,

(3) In event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship,

(4) A statement conspicuously placed, whether or not the grain is insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, tornado, or otherwise,

(5) The net weight, including dockage, if any, of the grain,

(6) In the case of grain the identity of which is to be preserved, its identification or location in accordance with § 736.45,

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

(8) That the holder of the receipt or the depositor of the grain shall demand the delivery of the grain not later than the expiration of one year from the date of the receipt.

(b) Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a warehouse shall specify a period, not exceeding one year, for which the grain is accepted for storage under the Act and the regulations in this part. Upon demand for issuance of a new receipt, surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified therein and an offer to satisfy the warehouseman's lien, the warehouseman, upon such lawful terms and conditions as may be granted by him to other depositors of grain in his warehouse, shall, in the absence of some lawful excuse, issue a new receipt for a

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further specified period, not exceeding one year.

(c) Every negotiable receipt issued shall, in addition to conforming with the requirements of paragraph (a) of this section, embody within its written or printed terms, a form of indorsement which may be used by the depositor, or his authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the grain covered by the receipt.

(d) The grade stated in a receipt shall be stated in accordance with § 736.76 as determined by the inspector who last inspected and graded the grain or if an appeal has been taken, the grade shall be stated on such receipt in accordance with the grade as finally determined in such appeal.

(e) If a warehouseman issues a receipt omitting the statement of grade on request of the depositor as permitted by section 18 of the act, such receipt shall have clearly and conspicuously stamped or written in the space provided for the statement of grade the words "Not graded on request of depositor."

(f) If a warehouseman issues a receipt under the act omitting any information not required to be stated, for which a blank space is provided in the form of the receipt, a line shall be drawn through such space to show that such omission has been made purposely by the warehouseman.

(Approved by the Office of Management and Budget under control number 0560-0120)

[29 FR 15730, Nov. 24, 1964, as amended at 45 FR 5661, Jan. 24, 1980; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.19 Grain must be inspected and weighed.

(a) Except in case of identity-preserved grain, when the grading is omitted at request of depositor, all storage and nonstorage grain received into the warehouse shall be inspected, graded and weighed by a licensed inspector and/or weigher—and no receipt may be issued under the Act or the regulations in this part until the grain covered by such receipt has been so inspected, graded and weighed.

(b) When requested by the depositor of grain the identity of which is to be preserved, a receipt omitting state-

ment of grade but not weight may be issued.

(c) Except as provided in § 736.27 of this part, all storage grain delivered out of a warehouse must be inspected, graded, and weighed by a licensed inspector or weigher, as applicable.

[40 FR 19011, May 1, 1975. Redesignated at 50 FR 1814, Jan. 14, 1985; amended at 56 FR 40220, Aug. 14, 1991]

§ 736.20 Copies of receipts.

At least one actual or skeleton copy of all receipts shall be made, and all copies, except skeleton copies, shall have clearly and conspicuously printed or stamped thereon the words "Copy—Not Negotiable." A copy of each receipt issued shall be retained by the warehouseman for a period of one year after December 31 of the year in which the corresponding original receipt is canceled.

(Approved by the Office of Management and Budget under control number 0560-0120)

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.21 Lost or destroyed receipts; bond.

(a) In the case of lost or destroyed receipts, if there be no statute of the United States or law of a State applicable thereto a new receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the receipt in lieu of which it is issued and a plain and conspicuous statement that it is a duplicate receipt issued in lieu of a lost or destroyed receipt, may be issued upon compliance with the conditions set out in paragraph (b) of this section.

(b) Before issuing such new or duplicate negotiable receipt the warehouseman shall require the depositor or other person applying therefor to make and file with him (1) an affidavit showing that the applicant is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the grain

represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such receipt, and shall have a surety thereon a surety company which is authorized to do business, and is subject to service of process in a suit on the bond, in the state in which the warehouse is located or at least two individuals who are residents of such 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.

(c) Before issuing such new or duplicate non-negotiable receipt, obtain a written statement from the holder that the original non-negotiable receipt is lost and requires the issuance of a duplicate non-negotiable receipt.

[29 FR 15730, Nov. 24, 1964. Redesignated at 50 FR 1814, Jan. 14, 1985, and amended at 57 FR 57648, Dec. 7, 1992]

§ 736.22 Printing of receipts.

No receipt shall be issued by a licensed warehouseman unless it is:

(a) In a form prescribed by the Administrator,

(b) Upon distinctive paper or card stock specified by the Administrator,

(c) Printed by a printer with whom the United States has a subsisting agreement and bond for such printing, and

(d) On paper and/or card stock tinted with ink in the manner prescribed by the agreement under paragraph (c) of this section.

[62 FR 33540, June 20, 1997]

§ 736.23 Partial delivery of grain.

If a warehouseman delivers a part only of a lot of grain for which he has issued a negotiable receipt under the act, he shall take up and cancel such receipt and issue a new receipt in accordance with the regulations in this part for the undelivered portion of the grain. The new receipt shall show the date of issuance and also indicate the number and date of the receipt first issued.

§ 736.24 Return of receipts before delivery of grain.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver any grain for which he has issued a negotiable receipt until the receipt has been returned to him and canceled; and shall not deliver grain for which he has issued a non-negotiable receipt until such receipt has been returned, or he has obtained from the depositor or the depositor's agent, a written order therefore and a receipt upon delivery.

[57 FR 57649, Dec. 7, 1992]

§ 736.25 Nonnegotiable receipts.

Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of grain covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of grain covered by a non-negotiable receipt until he has first ascertained that the person issuing the order has authority to order such release, and that the signature of the releasing party is genuine.

§ 736.26 Omission of grade; no compulsion by warehouseman.

No warehouseman shall, directly or indirectly by any means whatsoever, compel or attempt to compel the depositor of any grain stored or offered for storage in his warehouse to request the issuance of a receipt omitting the statement of grade.

§ 736.27 Loading out without weighing.

(a) When the lawful owner of an entire lot of identity preserved grain or a mass of grain stored in a single bin requests the warehouseman to deliver said lot or mass without reweighing said grain, the warehouseman may make such delivery if there is an accurate record of the weight of such grain when received. Such deliveries shall be made only when the lawful owner agrees to assume all shortages and other risks incidental thereto, and after the warehouse receipts covering all of the grain in the container have

been surrendered to the warehouseman and canceled. After the receipts covering such grain have been surrendered for cancellation no other grain shall be placed in the bin until the entire lot has been delivered.

(b)(1) When the lawful owner of fungible grain requests the warehouseman to deliver grain out of the warehouse without weighing, the warehouseman may, but is not compelled to, make such delivery provided the grain is to be moved into another warehouse in the United States where weights can be established. The weights established at the receiving warehouse must be supervised by an independent weighing agency unless the shipping warehouse and the receiving warehouse are operated by the same warehouseman, or unless destination weights are available within 24 hours of shipment. Whenever a warehouseman delivers fungible grain out of a warehouse without weighing, the weight of the grain unloaded at the receiving warehouse shall be the weight used to determine fulfillment of the shipping warehouseman's delivery obligations.

(2) When fungible grain is delivered out of the warehouse without weighing, the warehouseman shall estimate as accurately as possible the weight of the grain delivered out and shall promptly obtain destination weights from the receiving warehouse. Should the Administrator determine that such estimated weights are not reasonably accurate, or that destination weights are not promptly obtained, or that destination weights are not supervised by an independent weighing agency when required, he may thereafter require the warehouseman to weigh all fungible grain delivered out of the warehouse.

(3) Any weight certificate issued covering grain delivered out of the warehouse without being weighed must state in bold letters on the face of the certificate the fact that the weight is an estimated weight.

[40 FR 19011, May 1, 1975. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.28 Persons authorized to sign receipts.

Each warehouseman shall file with the Department the name and genuine signature of each person authorized to

sign warehouse receipts for the warehouseman, and shall promptly notify the Department of any changes as to persons authorized to sign and shall file the signatures of such persons, and each warehouseman shall be bound by such signatures the same as if he had personally signed the receipt.

§ 736.29 Receipts; basis for issuance.

Before issuing any receipt under the Act each warehouseman shall, unless he personally weighed, inspected, and graded, if graded, a lot of grain, first obtain either a copy of, or the original weight certificate, and inspection certificate, if any, covering said lot of grain. The warehouse records shall clearly identify the certificate(s) used as a basis for issuance of each warehouse receipt, and said weight and grade certificates shall be kept on file as a record in the warehouseman's office; provided that said filing requirements shall be deemed satisfied if copies of the certificates upon which warehouse receipts are based are filed in the office of a U.S. Registrar or in the office of an independent inspection or weighing agency which issued them, and are readily accessible for examination purposes. Such certificates shall be retained for a period of three years after December 31 of the year in which issued.

(Approved by the Office of Management and Budget under control number 0560-0120)

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.30 Receipts for stored grain.

Receipts must be issued for all grain stored in a warehouse. Receipts need not be issued against nonstorage grain, but each warehouseman shall keep accurate records of the weights, kinds, and grades of all lots of nonstorage grain received into and delivered from his warehouse. Whenever the purpose for which any lot of nonstorage grain was received into a warehouse is changed so that its approximate delivery period from the warehouse becomes indeterminate, receipts shall be issued to cover such grain. Records required under this section with respect to nonstorage grain shall 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 grain is delivered from the warehouse.

(Approved by the Office of Management and Budget under control number 0560-0120)

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.31 No receipts for screenings.

No receipt shall be issued for any product or byproduct which would fall under the term "screenings."

§ 736.32 Canceled receipts; auditing.

Each warehouseman, if requested by the Service, shall forward canceled receipts for auditing to an entity or office of the Service as may be designated from time to time.

[62 FR 33540, June 20, 1997]

DUTIES OF WAREHOUSEMAN

§ 736.33 Insurance; requirements.

(a) Each warehouseman, when so requested in writing as to any grain by the depositor thereof or lawful holder of the receipt covering such grain, shall, to the extent to which, in the exercise of due diligence, he is able to procure such insurance, keep such grain while in his custody as a warehouseman insured in his own name or arrange for its insurance otherwise to the extent so requested, against loss or damage by fire, lightning, and/or tornado. When insurance is not carried in the warehouseman's name, the receipts shall show that the grain is not insured by the warehouseman. Such insurance shall be covered by lawful policies issued by one or more insurance companies authorized to do such business, and subject to service of process in suits brought in the State where the warehouse is located. If the warehouseman is unable to procure such insurance to the extent requested, he shall, orally or by telegraph or by telephone immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all grain stored in his warehouse.

(b) Each warehouseman shall comply fully with the terms of insurance policies or contracts covering his licensed warehouse and all products stored therein, and shall not commit any acts, nor permit his employees to do anything, which might impair or invalidate such insurance.

(c) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 736.8, and at such other place as the Administrator or his representative may from time to time designate, a notice stating briefly the conditions under which the grain will be insured against loss or damage by fire, lightning, and tornado.

(d) Each warehouseman shall, in accordance with his contracts with insurance and bonding companies for the purpose of meeting the insurance and bonding requirements of the regulations in this part, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

(e) Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him for the purpose of meeting the requirements of the regulations in this part, and shall, as soon as collected, promptly pay to the persons concerned any portion of such moneys which they may be entitled to receive from him.

(f) If at any time a fire occurs at or within any licensed warehouse, it shall be the duty of the warehouseman to report immediately the occurrence of such fire and the extent of damage to the Administrator.

[29 FR 15730, Nov. 24, 1964, as amended at 62 FR 33540, June 20, 1997]

§ 736.34 Records; safe keeping.

Each warehouseman shall provide a fireproof safe, vault, or compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt book, copies of issued and canceled receipts, except that with the written consent of the Service, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe,

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vault, or compartment, he may keep such records, books and papers in some other place of safety, approved by the Service. Each canceled receipt shall be retained by warehouseman for a period of six years after December 31 of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the act. Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

(Approved by the Office of Management and Budget under control number 0560-0120)

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.35 Warehouse charges.

A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted under the act the warehouseman shall file with the Department a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such rules or schedule of charges he shall file with the Department a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 736.8, and at such other place, accessible to the public, as the Service may from time to time designate, a copy of his current rules and schedule of charges.

§ 736.36 Business hours.

(a) Each warehouse shall be kept open for the purpose of receiving grain for storage and delivering grain out of storage every business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m. except as provided in paragraph (b) of this section. The warehouseman shall keep conspicuously posted on the door of the public entrance to his office and to his licensed warehouse a notice showing the hours during which the warehouse

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will be kept open, except when such warehouse is kept open continuously from 8 a.m. to 6 p.m.

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he is to be found, and the telephone number, if any, who shall be authorized to deliver grain stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.

§ 736.37 System of accounts.

Each warehouseman shall have and maintain a system of accounts, approved for the purpose by the Service. This shall include a stock record showing for each lot of grain received for storage its net weight including dockage, if any, its grade when its grade is required to be, or is, ascertained, its location, the dates received for and delivered out of storage, the receipts issued and canceled, also a separate record for each depositor of his grain, which shall include a detailed record of all moneys received and disbursed and of all insurance policies taken out and canceled on request of each depositor. The warehouseman shall further keep a general insurance account showing the policy number, issuing company, amount, binding, and expiration dates of all fire, tornado, and other insurance policies taken out by him and in each instance show the property covered by such policies. These records shall also show similar information concerning any nonstorage grain handled through the warehouse. Such records shall be retained by the warehouseman for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

(Approved by the Office of Management and Budget under control number 0560-0120)

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.38 Reports required.

(a) Each warehouseman shall, from time to time, if requested by the Service, make such reports, on forms prescribed and furnished for the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse.

(b) Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted by such warehouseman under the regulations in this part.

(Approved by the Office of Management and Budget under control number 0560-0120)

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.39 Inspections; examination of warehouse.

Each warehouseman shall permit any officer or agent of the Department, authorized by the Secretary, or his designated representative, for the purpose, to enter and inspect or examine on any business day during the usual hours of business, any warehouse for the conduct of which such warehouseman holds a license, the office thereof, the books, records, papers, and accounts relating thereto, and the contents thereof and such warehouseman shall furnish such officer or agent the assistance necessary to enable him to make any inspection or examination under this section.

§ 736.40 Care of grain in licensed warehouses.

Each warehouseman shall at all times, including any period of suspension of his license, exercise such care in regard to grain in his custody as a reasonably careful owner would exercise under the same circumstances and conditions.

§ 736.41 Care of other grain and other commodities.

If, at any time, a warehouseman shall handle or store grain otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise care with re-

spect to it, as not to endanger the grain in his custody as a warehouseman or impair the insurance thereof or his ability to meet his obligations and perform his duties under the act and the regulations in this part.

§ 736.42 Excess storage.

(a) If at any time a warehouseman shall store grain in his warehouse in excess of the capacity for which it is licensed, such warehouseman shall immediately notify the Secretary of such excess storage, the reason therefor, and the location thereof.

(b) A warehouseman who lacks sufficient space and desires to transfer stored grain for which receipts have been issued to another licensed warehouse may do so either by physical movement or by other methods accepted as standard industry practice subject to the following terms and conditions:

(1) The transferring (shipping) warehouseman's accepted rules or schedule of charges must contain notice that the warehouseman may forward grain deposited on a commingled basis under such terms and conditions as the Secretary may prescribe.

(2) For purposes of this section of the regulations a licensed warehouse means a warehouse operated by a warehouseman who holds an unsuspended, unrevoked license under the U.S. Warehouse Act for grain, or a warehouse operated by a warehouseman who holds an effective warehouse license for the public storage of grain and/or rice issued by a State that has financial, bonding and examination requirements for the benefit of all depositors.

(3) Non-negotiable warehouse receipts shall be obtained promptly by the shipping warehouseman from the receiving warehouseman for all transferred grain. Such receipts shall have printed or stamped in large bold or outline letters diagonally across the face and covering the face from corner to corner the words "NOT NEGOTIABLE". Receipts are not valid for collateral purposes. They shall be retained by the shipping warehouseman to be presented to and used by Department examiners in lieu of an on-site inventory. The grain covered by such receipts is not the property of either the

receiving or shipping warehouseman but held in trust by both solely for the benefit of the depositors whose bailed grain was transferred individually or collectively and the depositor or the depositor's transferee retains title thereto.

(4) The shipping warehouseman's bond shall be increased to consider the addition of the transferred grain to the licensed capacity of the warehouse with the net asset requirements based on the total of the licensed capacity and the forwarded grain. The bond amount need not be more than \$500,000 unless necessary to cover a deficiency in net assets to meet requirements. The receiving warehouseman shall not incur storage obligations that exceed the licensed capacity of his warehouse.

(5) The shipping warehouseman continues to retain storage obligation to the owners of all grain deposited in the warehouse for a storage whether forwarded or retained and is, except as otherwise agreed upon under paragraph (b)(6) of this section, required to redeliver the grain upon demand to the depositor or the depositor's transferee at the warehouse where the grain was first deposited for storage.

(6) The owner of grain deposited for storage at the warehouse must make settlement and take delivery at the warehouse where the grain was first deposited for storage, unless the owner of the commodity, with the consent of both the shipping warehouseman and the receiving warehouseman, elects to take delivery at the warehouse to which grain was transferred under this section.

(7) Nothing in this section shall in any way diminish the right of the owner of the grain to receive on delivery, or the obligation of the warehouseman of a licensed warehouse from which the product is transferred, to deliver to the owner, grain in the amount, and of the kind, quality, and grade, called for by the warehouse receipts or other evidence of storage.

(8) Recording and retention of non-negotiable warehouse receipts received as a result of forwarding a commodity under this section shall be subject to the requirements for warehouse receipts specified elsewhere in these regulations.

(9) If it is the shipping warehouseman's obligation by terms of the warehouse receipt or otherwise to insure the grain subject to the transfer, he must in accordance with 7 CFR 736.33 keep such grain insured in his own name or transfer the grain only to a warehouse where the grain is fully insured.

(c) A warehouseman may transfer stored grain for which receipts have not and are not to be issued to another licensed warehouse for continued storage by complying with the provisions of paragraphs (b)(1), (2), (5), (6), (7), and (9) of this section. However, in no event shall the warehouseman's total storage obligations to others (not including stored receipted grain shipped under provisions of paragraph (b) of this section) exceed the shipping warehouseman's licensed capacity.

[52 FR 8057, Mar. 16, 1987]

§ 736.43 Removal of specially stored grain.

Except as may be required by law or the regulations in this part, a warehouseman shall not remove any grain for storage from the licensed warehouse or a part thereof in which it may be specially binned or stored for insurance purposes, and transfer the grain to another bin without first obtaining the receipt, canceling the same and issuing a new receipt for said grain following its transfer.

§ 736.44 Grades and weights; bulk grain.

Except as provided in § 736.27 each warehouseman shall accept all storage and nonstorage grain and shall deliver out all storage and nonstorage grain, other than specially binned grain, in accordance with the grades of such grain as determined by a person duly licensed to inspect and grade such grain and to certificate the grade thereof and in accordance with the weights of such grain as determined by a person duly licensed to weigh such grain and to certificate the weight thereof, under the Act, and the regulations in this part; or if an appeal from the determination of an inspector has been taken, such grain shall be accepted for and delivered out of storage in

accordance with the grades as finally determined in such appeal.

[45 FR 5661, Jan. 24, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.45 Storage of identity-preserved grain.

Upon acceptance for storage of bulk grain the identity of which is to be preserved, the warehouseman shall store such grain in a bin or bins, a compartment or compartments, or other container or containers identified by clearly distinguishable identification insignia permanently and securely affixed thereto, subject to such control by the Department as may seem administratively necessary to protect depositors or holders of receipts. If the grain is received in bags or other suitable containers, such bags or containers shall be so marked and so placed in the warehouse that the identity of the grain will not be lost while in storage. The warehouseman's records shall at all times clearly show the location of all identity-preserved grain stored in the warehouse.

§ 736.46 Sacked grain.

Each warehouseman shall keep sacked grain 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.

§ 736.47 Warehouses to be kept clean.

Each warehouseman shall keep his warehouse reasonably clean at all times and free from straw, rubbish, or accumulations of materials that will increase the fire hazard or interfere with the handling of grain.

§ 736.48 Delivery of fungible grain.

Except as may be provided by law or the regulations in this part, each warehouseman: (a) Upon proper presentation of a receipt for any grain other than identity-stored grain, and which grain has not at the request of the depositor or lawful holder of the receipt covering such grain or otherwise as permitted by law or the regulations in this part, been dried or otherwise conditioned by such warehouseman, and upon payment or tender of all advances

and legal charges, shall deliver to such depositor or lawful holder of such receipt grain of the grade and quantity named in such receipt; and (b) upon proper presentation of a receipt for any grain the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto, the identical grain so stored in his warehouse.

§ 736.49 Cleaning of grain.

Each warehouseman whose warehouse is equipped with machinery suitable for the purpose, shall clean all bulk grain, received for storage in such warehouse, on which the inspector at the request of the depositor or lawful holder of the receipt covering such grain has set dockage for cleaning.

§ 736.50 Grades; separate in storage.

A warehouseman may not mix lots of different grades of grain stored or received for storage except when the identity of the grain to be stored is to be preserved or when a depositor surrenders receipts covering two or more lots and requests the warehouseman to deliver the amount of grain represented by the canceled receipts in such a manner that they will become one lot. The balance, if any, of grain resulting from this operation, after weighing and inspecting, is to be stored with grain of like grade or its identity preserved.

§ 736.51 Stocks to be in balance by grades.

Warehousemen must keep stocks of grain in storage by grades in balance with the grades of grain represented by outstanding storage obligations for which receipts have been or are to be issued, except when the grain has unavoidably improved or deteriorated through natural causes. In case the grades of stored grain should get out of balance with grades represented by outstanding storage obligations for which receipts have been or are to be issued, the warehouseman shall effect proper adjustments.

§ 736.52 Out-of-condition and damaged grain.

(a) If the condition of any grain offered for storage is such that it probably will affect the condition of grain in the licensed warehouse, the warehouseman shall not receive such grain for storage or store such grain in his licensed warehouse, but, if the warehouse has separate bins or is equipped with proper conditioning apparatus, he may receive such grain for storage in such separate bins or he may condition it and then store it in such manner as will not lower the grade of other grain.

(b) In case the warehouseman or the Department shall find that storage of grain in direct contact with any part of the structure of the warehouse results, or is likely to result, in damage to the grain, the warehouseman shall not store grain in such part of the warehouse except in such manner and by the use of such material as will keep the grain in the same condition as when stored.

§ 736.53 Reconditioning grain.

In case the warehouseman considers that any portion of the grain in his warehouse is out of condition, or becoming so, he shall direct the inspector to examine the grain in question. If the inspector finds such grain to be out of condition or becoming so and he is of the opinion that by re-elevating, screening, blowing, cooling, or drying the grain can be brought back into condition or that further deterioration can be prevented, such warehouseman shall give immediate notice of the fact to the persons and in the manner specified in § 736.54. If, within 24 hours after the giving of such notice, the owners of such grain have not otherwise directed as to the disposition of same, such warehouseman, with the approval of the inspector, shall, in his warehouse to the extent to which it is equipped with machinery suitable for the purpose, or may in another warehouse or elevator so equipped to the extent to which his warehouse is not equipped with suitable machinery, subject the grain to any or all of the above-mentioned processes.

§ 736.54 Notice of condition of grain.

(a) If the warehouseman with the approval of the inspector, shall determine that the further deterioration of any grain can not be prevented by reconditioning, or after treating it in accordance with § 736.53, it is still out of condition, the warehouseman shall give immediate notice of the fact, in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state:

(1) The warehouse in which the grain is stored,

(2) The quantity, kind, and grade, if determined, of the grain at the time the notice is given,

(3) The actual condition of the grain as nearly as can be ascertained, and the reason, if known, for such condition,

(4) The oldest outstanding receipts covering the amount of grain out of condition, other than sacked or specially binned grain, upon which the grain will be delivered, giving the number and date of each such receipt and the quantity, the kind, and grade of the grain as stated in such receipts, or

(5) The outstanding receipts covering the grain out of condition the identity of which was to have been preserved, giving the number and date of each such receipt and the designation of the bin, container or location of such grain as stated in the receipt therefor, and

(6) That such grain will be delivered upon the return and cancellation of the receipts therefor.

(c) A copy of such notice shall be delivered in person or shall be sent by mail:

(1) To the persons holding the oldest receipts covering the grain in question mentioned in paragraphs (b)(4) and (5) of this section if known to the warehouseman,

(2) To any other person, including the persons mentioned in paragraph (d) of this section, known by the warehouseman to be interested in the grain,

(3) To the grain exchange, board of trade, or chamber of commerce, if any, in the city or town in or nearest to which the warehouse is located, and

(4) To the Administrator.

If the holders of the receipts and the owners of the grain are known to the

warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the warehouseman shall, whether or not requested so to do in accordance with paragraph (d) of this section, also immediately notify such persons by telegraph or telephone at their expense. Public notice shall also be given by posting a copy of such notice in a conspicuous place in the main office of the warehouse where receipts are issued. A copy of such notice shall be kept as a record of the warehouse.

(d) Any person, interested in any grain or the receipt covering such grain stored in a warehouse, may, in writing, notify the warehouseman conducting such warehouse, of the fact and nature of his interest, and such warehouseman shall keep a record of the fact. If such person requests, in writing, that he be notified regarding the condition of any such grain and agrees to pay the cost of any telegraph or telephone toll charge, such warehouseman shall notify such person in accordance with such request.

(e) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any grain after notification of its condition in accordance with this section.

(f) Records required to be kept by this section shall be retained, as a part of the records of the warehouse, for a period of six years after December 31 of the year in which created, and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the Act.

(Approved by the Office of Management and Budget under control number 0560-0120)

[29 FR 15730, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.55 Sale of grain at public auction.

If the grain, advertised in accordance with the requirements of § 736.54 has not been removed from storage by the owner thereof, within 10 days from the date of notice of its being out of condition, the warehouseman in whose warehouse such grain is stored may sell the same at public auction at the expense

and for the account of the owner after giving 10 days' notice in the manner specified in § 736.54(c).

§ 736.56 Identity-preserved grain; acceptance.

Subject to the provisions of section 13 of the act (39 Stat. 488; 7 U.S.C. 254), a licensed warehouseman may elect not to receive grain for storage the identity of which is to be preserved while in storage.

FEEES

§ 736.57 License fees.

(a) Fees are collected in advance for each original, amended, modified, extended, reinstated, or duplicate warehouseman's license; and for each original, duplicate, or modified license issued to inspect, sample, grade, classify, or weigh commodities.

(b) Fee changes, if applicable, will be announced by Notice in the FEDERAL REGISTER on or before July 1, and effective the following October 1.

[59 FR 51358, Oct. 11, 1994]

§ 736.58 Warehouse annual and inspection fees.

Warehousemen must pay:

(a) An annual fee which will be determined by computing the capacity for each warehouse location under a single license and adding those amounts together to determine the total due. The fee will be assessed and payable when the warehouse bond is furnished in accordance with these regulations, for acceptance by the Secretary and annually thereafter on the bond renewal date. The capacity for each identifiable location will be determined by the Secretary. The total capacity of all locations may not exceed the capacity stated in the current license. An identifiable location is a fully functional public warehouse as determined by the Secretary. The annual fee a licensed warehouseman is assessed may be adjusted by the amount Commodity Credit Corporation (CCC) pays, if CCC has a storage contract or agreement with the warehouseman.

(b) An inspection fee for each original and amendment inspection.

(c) An inspection fee at the rate of 100 percent of the annual fee charged

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warehouses without a CCC storage contract or agreement, in all cases where the license has been suspended and the warehouseman has requested reinstatement. No fee will be charged if the Secretary determines that the suspension was not justified.

(d) A fee for each inspection requested by the warehouseman at the rate of 100 percent of the annual fee charged warehouses without a CCC storage contract or agreement.

[59 FR 51358, Oct. 11, 1994]

§ 736.59 Advance deposit.

Before any license is granted, or an original examination or inspection is made, or reexamination or reinspection for modification of an existing license is made, or when the annual fee for the licensed warehouse is assessed, pursuant to the regulation in this part, the applicant or licensee shall deposit with the Service the amount of the fee prescribed. Such deposit shall be made in the form of a check, certified if required by the Service, draft, or post office or express money order, payable to the order of the Service.

[46 FR 63199, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985, as amended at 62 FR 33540, June 20, 1997]

§ 736.60 Return of excess deposit.

The Treasurer of the United States shall hold in his custody each advance deposit made under § 736.59 until the fee, if any, is assessed and he is furnished by the Service with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing same.

INSPECTORS AND WEIGHERS

§ 736.61 Inspectors' and weighers' applications.

(a) Application for licenses to inspect and grade or to weigh grain under section 11 of the act (46 Stat. 1464; 7 U.S.C. 252) shall be made to the Administrator on forms furnished for the purpose by him. Each application shall be in English, shall be signed by the applicant, and shall contain or be accompanied by a statement from the ware-

houseman for whom the applicant will inspect, grade, or weigh grain under the act, showing whether the applicant is competent and is acceptable to such warehouseman for the purpose.

(b) Each inspectors' application shall contain:

(1) Evidence that he can correctly grade grain in accordance with the official standards of the United States, or in the absence of such standards in accordance with any standards approved by the Administrator, and

(2) Satisfactory evidence that he will be provided with such means or facilities for inspecting and grading grain as may be deemed necessary, for use in the locality in which the applicant expects to perform services as a licensed inspector.

(c) Applications for licenses to weigh grain shall be on forms furnished for the purpose by the Administrator and shall give such information as will show the applicant's experience in weighing grain.

(d) A single application may be made by any person for a license as both inspector and weigher upon complying with the requirements of this section.

(e) An applicant shall at any time furnish such additional information as the Department shall find to be necessary to the consideration of his application.

[29 FR 15730, Nov. 24, 1964, as amended at 34 FR 12426, July 30, 1969; 40 FR 5347, Feb. 5, 1975; 43 FR 14006, Apr. 4, 1978. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.62 Examination.

Each applicant for license as an inspector or weigher and each inspector or weigher shall, whenever requested by an authorized agent of the Department, submit to an examination or test to show his ability properly to inspect and grade or to weigh grain.

§ 736.63 Posting of license.

Each inspector or weigher shall keep his license conspicuously posted in a place designated for the purpose by the Service unless authorized by the Service not to do so.

[43 FR 14006, Apr. 4, 1978. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.64 Duties of inspector and weigher.

Each inspector and each weigher whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect and grade or weigh and certificate the grade or weight of grain, stored or to be stored in a warehouse, for which he holds a license, if such grain be offered to him under such conditions as permit proper inspection and weighing and the determination of the grade or weight thereof. No inspector shall issue a certificate of grade for any grain unless the inspection and grading thereof be based upon a correct and representative sample of the grain.

§ 736.65 Inspection certificate; form.

(a) Except as provided in paragraph (b) of this section, each inspection certificate issued under the act by an inspector shall be in a form approved for the purpose by the Department, and shall embody the following information within its written or printed terms:

(1) The caption "United States Warehouse Act, Grain Inspection Certificate",

(2) Whether it is an original, a duplicate, or other copy, and that it is not negotiable,

(3) The name and location of the warehouse in which the grain is or is to be stored,

(4) A statement showing whether the inspection covers grain moving into or out of the warehouse,

(5) The date of the certificate,

(6) The consecutive number of the certificate,

(7) The approximate amount of grain covered by the certificate,

(8) The kind of grain covered by the certificate,

(9) The grade of the grain, as determined by such duly licensed inspector, in accordance with § 736.76, and, in the case of grain for which no official standards of the United States are in effect, the standards or description in accordance with which such grain is graded.

(10) A statement that the certificate is issued by an inspector licensed under the United States Warehouse Act and the regulations thereunder,

(11) A statement conspicuously placed to the effect that the certificate is not valid for the purposes of the United States Grain Standards Act, and

(12) The signature of the inspector who inspected and graded the grain.

In addition, the inspection certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Service is first secured.

(b) In lieu of an inspection certificate in the form prescribed in paragraph (a) of this section an official inspection certificate issued pursuant to the provisions of the United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) or the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) on grain which is stored or to be stored in a warehouse licensed under the U.S. Warehouse Act will be acceptable for purposes of the Act and the regulations in this part.

[29 FR 15730, Nov. 24, 1964, as amended at 42 FR 12143, Mar. 3, 1977; 45 FR 5662, Jan. 24, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.66 Copies of certificate to be accessible.

Each inspector shall, as soon as possible after grading any grain and not later than the close of business on the next following business day, make accessible to the parties interested in a transaction in which the grain is involved at the place designated in § 736.63 a true copy of the inspection certificate issued by him for such grain, or a record of each lot or parcel of grain inspected and graded by such licensed inspector showing the information contained on such inspection certificate.

§ 736.67 Weight certificate.

(a) Each weight certificate issued under the Act by a weigher shall be in a form approved for the purpose by the Service, and shall embody the following information within its written or printed terms:

(1) The caption "United States Warehouse Act, Grain Weight Certificate",

(2) Whether it is an original, a duplicate, or other copy, and that it is not negotiable,

(3) The name and location of the warehouse in which the grain is or is to be stored,

(4) Whether the grain is weighed into or out of the warehouse,

(5) The date of the certificate,

(6) The consecutive number of the certificate,

(7) The net weight, including dockage, if any, of the grain except as provided in § 736.27(b).

(8) A statement that the certificate is issued by a weigher licensed under the United States Warehouse Act and the regulations thereunder, and

(9) The signature of the weigher.

In addition, the weight certificate may include any other matter not inconsistent with the Act or the regulations in this part provided the approval of the Service is first secured.

(b) In lieu of a weight certificate in the form prescribed in paragraph (a) of this section, an official weight certificate issued pursuant to the provisions of the U. S. Grain Standards Act, or an official weight certificate issued pursuant to the Agricultural Marketing Act of 1946 on grain which is stored or to be stored in a warehouse licensed under the U.S. Warehouse Act is acceptable for purposes of the Act and the regulations in this part.

[42 FR 12143, Mar. 3, 1977, as amended at 43 FR 14006, Apr. 4, 1978. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.68 Certificate; grade and weight.

The grade and weight of any grain, ascertained by an inspector and a weigher, may be stated on a certificate meeting the combined requirements of §§ 736.65, 736.67, if the form of such certificate shall have been approved for the purpose by the Service.

§ 736.69 Copies of certificates to be kept.

Each inspector and each weigher shall keep for a period of 1 year in a place accessible to interested parties a copy of each certificate issued by him under the regulations in this part, and shall file a copy of each such certificate with the warehouse in which the grain covered by the certificates is stored.

§ 736.70 Inspections.

Each inspector and each weigher shall permit any authorized officer or agent of the Department to inspect or examine, on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the act and this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in § 736.39 as far as any such inspection or examination relates to the performance of the duties of such inspector or weigher under the Act and the regulations in this part.

§ 736.71 Reports.

Each inspector and each weigher shall, from time to time, if requested by the Service, make reports, on forms approved for the purpose by the Service, bearing upon his activities as such inspector or weigher.

§ 736.72 Licenses; suspension or revocation.

Pending investigation, the Secretary, or his designated representative, may, whenever he deems necessary, suspend the license of an inspector or weigher temporarily without hearing. Upon a written request or a satisfactory statement of reasons therefor, submitted by the inspector or weigher, the Secretary, or his designated representative, may, without hearing, suspend or revoke the license issued to such inspector or weigher. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or a weigher when such licensee: (a) Has ceased to perform services as such inspector or weigher, or (b) has in any other manner become incompetent or incapacitated to perform the duties of such inspector or weigher. As soon as it shall come to the attention of a warehouseman that either of the conditions mentioned under paragraph (a) or (b) of this section exists, it shall be the duty of such warehouseman to notify the Service in writing. Before the license of any inspector or weigher is permanently suspended or revoked pursuant to section

12 of the Act, such inspector or weigher shall be furnished by the Secretary, or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 736.99.

§ 736.73 Suspended or revoked license; termination of license.

(a) In case a license issued to an inspector or a weigher is suspended or revoked by the Secretary, or his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the inspector or weigher to whom it was originally issued and it shall be posted as prescribed in § 736.63.

(b) Any license issued under the Act and the regulations in this part to an inspector or weigher shall automatically be suspended as to any warehouse whenever the license of such warehouse shall be suspended and shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked. Upon either suspension or termination of any inspector's or weigher's license under this paragraph, such license shall be returned to the Department. In case such license shall apply to other warehouses, the Secretary, or his designated representative, shall issue to the licensee a new license, omitting the names of the warehouses for which licenses have been revoked or suspended. Such new license shall be posted as prescribed in § 736.63.

§ 736.74 Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to an inspector or weigher, a duplicate thereof may be issued under the same number, in the discretion of the Secretary, or his designated representative.

§ 736.75 Unlicensed inspectors and weighers.

No person shall in any way represent himself to be an inspector or weigher for purposes of the U.S. Warehouse Act unless he holds an unsuspended and unrevoked license or authorization in accordance with the provisions of paragraphs (q) and (r) of § 736.2.

[42 FR 12144, Mar. 3, 1977. Redesignated at 50 FR 1814, Jan. 14, 1985]

GRAIN GRADING

§ 736.76 Grade; statement.

Whenever the grade of grain is required to be or is stated for the purpose of the act or the regulations in this part, it shall be stated in accordance with §§ 736.77 through 736.79.

§ 736.77 Official Standards of the United States.

The Official Standards of the United States are hereby adopted as the official grain standards for the purposes of the Act and the regulations in this part.

[45 FR 5662, Jan. 24, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.78 Standards of grades for other grain.

Until official standards of the United States are fixed and established for the kind of grain to be inspected, the grade of the grain shall be stated, subject to the approval of the Administrator: (a) In accordance with the State standards, if any, established in the State in which the warehouse is located, (b) in the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the grain trade generally in the locality in which the warehouse is located, or (c) in the absence of the standards mentioned in paragraphs (a) and (b) of this section, in accordance with any standards approved for the purpose by the Service.

[45 FR 5662, Jan. 24, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.79 Grades based on inspection and sample.

Whenever the grade of grain is required to be or is stated for the purposes of the act or the regulations in this part, it shall be based upon a correct and representative sample of the grain and the inspection and grading thereof shall be made under conditions which permit the determination of its true grade.

GRAIN APPEALS

SOURCE: Sections 736.80 to 736.85 appear at 45 FR 5662, Jan. 24, 1980, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

§ 736.80 Appeal procedure.

The depositor, holder of receipt or the warehouseman may make an appeal as to the grade of a lot of grain stored or to be stored in a licensed warehouse. If the original grade certificate was issued by an inspector licensed under, or authorized by, the U.S. Grain Standards Act or the Agricultural Marketing Act, the appeal, including the amount of fees, shall be governed by the regulations issued under those Acts respectively; otherwise the appeal, including fees shall be governed by §§ 736.81 through 736.83.

§ 736.81 Request for appeal.

A request for an appeal inspection by a depositor or holder of receipt must be made by written notice to the warehouseman before the identity of the lot of grain has been lost and not later than the close of business on the first business day following furnishing of the statement of original grade or if the appeal is requested by the warehouseman, notice must be given promptly to the owner of the grain. Oral notice may be made if followed by written notice. Where is it not practical for a warehouseman to maintain the identity of all grain being received for storage until depositors receive a statement of grade and consequently opportunity for appeal, any depositor or his agent before or at the time of delivery of his grain may request the warehouseman to retain the identity of such lot until said depositor has been furnished with a statement of grade for

the lot and has waived or requested and received an appeal inspection grade. The warehouseman need not preserve the identity of the lot in the original carrier; but with the knowledge and consent of the depositor or agent may use other means to preserve such identity. Further, if compliance with such request would adversely affect receiving, storing or delivering the grain of other depositors, the warehouseman may defer unloading such grain until such time as would not disrupt service to other depositors but without unnecessary delay to the party making such request.

§ 736.82 Appeal sample—obtaining, preservation, delivery and examination.

(a) The lot of grain for which an appeal is requested shall be resampled in such manner and quantity as the depositor or holder of receipt and the warehouseman agree results in a representative sample of the lot acceptable to each for appeal purposes. Should they be unable to agree on such a sample, a sample drawn by a duly licensed inspector in the presence of both shall be deemed binding. In no case shall the sample be of less than 2000 grams by weight.

(b) The sample shall be packaged, to the satisfaction of the interested parties, so as to preserve its original condition.

(c) For grains for which there are official U.S. Standards the sample shall be secured and delivered to the nearest office charged with providing official inspection service under the U.S. Grain Standards Act and/or the Agricultural Marketing Act of 1946. At this point procedures as set forth in regulations issued under the U.S. Grain Standards Act or under the Agricultural Marketing Act of 1946 shall govern. For grain for which there are no official U.S. Standards the party requesting the appeal shall apply directly to the Administrator for relief. The Administrator or delegate thereof shall promptly determine the appeal based on approved standards and set the required fees. Such determination shall be binding on all concerned parties.

(d) The sample shall be accompanied by: (1) A copy of the written request for

appeal, (2) the grain inspection certificate originally issued, and (3) an agreement to pay the costs of such inspection as prescribed by the U.S. Grain Standards Act, the Agricultural Marketing Act or the Administrator.

(e) The sample of the grain involved in the appeal shall be examined as soon as possible. Such tests shall be applied as are necessary; and, unless the appeal is dismissed, a grade certificate shall be issued by the person determining the grade, showing the grade assigned by him to such grain. This certificate shall supersede the inspection certificate originally issued for the grain involved. The original or a copy of the new grade certificate shall be sent to the depositor or holder of receipt, the licensed warehouseman and the licensed inspector making the original determination of grade.

§ 736.83 Dismissal of appeal.

The departmental agency to whom the appeal has been made may dismiss such appeal without its determination upon request of the party initiating the appeal or for noncompliance with the regulations in this part.

§ 736.84 Freedom of appeal.

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

(b) No rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department or similar organization nor any contract, agreement, or understanding, shall be ground for refusing to determine any appeal.

§ 736.85 Owner not compelled to store.

Nothing in these regulations shall require the owner or his agent to store such grain with the licensed warehouseman after the appeal inspection, but if the grain is stored it shall be accepted for and delivered out of storage in accordance with the grade as finally determined in such appeal.

§§ 736.86-736.95 [Reserved]

MISCELLANEOUS

§ 736.96 Bonds required; re State warehouses.

Every person applying for a license, or licensed under section 9 of the act shall, as such, be subject to all portions of the regulations in this part, so far as they may relate to warehousemen. In case there is a law of any State providing for a system of warehouses owned, operated or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of grain and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with §§ 736.13 and 736.14, file with the Secretary, or his designated representative, a single bond meeting the requirements of the act and this part, in such form, and in such amount not less than \$5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of grain and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any amendments thereto. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State and its liability with respect to such warehouses. If the Secretary, or his designated representative, shall find the existence of conditions warranting such action, there shall be added to the amount of the bond, so fixed, a further amount, fixed by him, to meet such conditions.

§ 736.97 Publications.

Publications under the act and the regulations in this part shall be made in such media as may be deemed proper by the Administrator.

§ 736.98 Information of violations.

Every person licensed under the act shall immediately furnish the Department any information which comes to

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the knowledge of such person tending to show that any provision of the act or the regulations in this part has been violated.

§ 736.99 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating to appeals or arbitrations shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary under various statutes (7 CFR 1.130 through 1.151).

[45 FR 6775, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 736.100 One document and one license to cover several products.

A license may be issued for the storage of two or more agricultural products in a single warehouse. Where such a license is desired, a single application, inspection, bond, record, report or other paper, document or proceeding relating to such warehouse, shall be sufficient unless otherwise directed by the Administrator.

§ 736.101 Assets and bond; combination warehouses.

Where such license is desired, the amount of the bond, net assets, and inspection and license fees shall be determined by the Administrator in accordance with the regulations applicable to the particular agricultural product which would require the largest bond and the greatest amount of net assets and of fees if the full capacity of the warehouse was used for its storage.

§ 736.102 Amendments.

Any amendment to this part, unless otherwise stated, shall apply in the same manner to persons holding licenses at the time it becomes effective as it applies to persons thereafter licensed under the act.

TERMINAL AND FUTURES CONTRACT MARKETS

§ 736.103 Futures contract markets defined.

For the purpose of §§ 736.103 through 736.111 a futures contract market is any grain market designated as a futures contract market under authority of the

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Commodity Exchange Act (49 Stat. 1491, as amended; 7 U.S.C. 1-17a).

[29 FR 15730, Nov. 24, 1964. Redesignated at 50 FR 1814, Jan. 14, 1985, and amended at 53 FR 2477, Jan. 28, 1988]

§ 736.104 Licenses to weigh grain; futures markets.

Licenses to weigh grain into, out of, and within licensed warehouses, receipts of which are deliverable in satisfaction of futures contracts may be issued to the weighmaster and his deputies of such contract market.

§ 736.105 Registrar of warehouse receipts; futures contract market.

The Administrator may approve as registrar of warehouse receipts issued for grain in licensed elevators operating in any terminal market or in any futures contract market the official designated by the State in which such market is located, if such an official position has been created by law, or any other individual, provided such individual is not an employee of, or the owner of, any such licensed elevator, or the owner of, or an employee of the owner of, grain deposited in any such licensed elevator.

§§ 736.106—736.107 [Reserved]

§ 736.108 Additional bonding required.

In addition to the financial responsibility and the bonding requirements of §§ 736.6, 736.13 through 736.17, such additional bond shall be required for the protection of the public as will make the bonded responsibility of each licensed warehouseman equal to the maximum amount of bond required of nonlicensed warehousemen by the exchange, board of trade, or other agency within said market in which the licensed warehouseman is operating.

§ 736.109 Examination of warehouses; board of trade interest.

Annually or more frequently if desired, a duly authorized committee of any exchange or board of trade that has been designated as a contract market may enter any warehouse operating under the regulations in this part, when accompanied by U.S. warehouse examiners, to observe the official examination of the warehouse; or such

committee may participate in the making of such examination, under the supervision and direction of the U.S. warehouse examiner in charge. The committee shall be afforded full knowledge of the quantities, kinds, grades, and condition of all grain in the warehouse. The committee may also with the warehouse examiners have access to the warehouseman's records of receipts, fire insurance, weights and grades. In lieu of an examination by any committee of the exchange or board of trade the Department will furnish if desired to the secretary of the exchange or board of trade a summarized statement of its findings of conditions at each licensed warehouse operating within the market.

§736.110 Registration of public warehouse receipts; protection.

When a contract market designates any agency for the registration of public warehouse receipts and such agency is approved as provided for in §736.105, all warehouse receipts shall be registered with the registrar and any change in ownership of a warehouse receipt shall be reported to the registrar by the owner thereof, giving his name and address to the registrar. All registered receipts shall be entitled to the following protection:

(a)(1) Whenever any licensed warehouseman considers that any grain stored in his warehouse is out of condition, or becoming so, and should be loaded out in order to protect the interests of the parties concerned, such warehouseman shall notify the registrar and the Administrator, giving the location, approximate quantity, grades, and condition of such grain, and the specific reason which makes loading out necessary. The registrar shall immediately notify the chief sampler, if there be one, otherwise the chief inspector, of the contract market who shall at once proceed to the warehouse in which the grain is stored and examine it, in conjunction with the licensed warehouseman. If the chief sampler, or chief inspector, agrees with the warehouseman that the grain should be loaded out, he shall so notify the registrar and the Administrator. If the chief sampler does not agree with the warehouseman, the latter shall have

the right to appeal to the Administrator who shall appoint an appeals committee as provided in §736.107. If, on such appeal, the warehouseman is sustained, the registrar shall be notified and such warehouse receipts as are selected as provided in this section shall no longer be regular for delivery in satisfaction of futures contracts made under the rules and regulations of such contract market.

(2) The registrar shall thereupon select the oldest registered warehouse receipt for grain of the grade involved and such additional next oldest registered warehouse receipts in the order of their issuance as may be necessary to equal the total quantity of the grain involved, unless such grain has been stored identity preserved, and shall notify such holder or holders or their agents and the president of the contract market of the condition of the grain and the necessity for its being loaded out. When this information reaches the president of the contract market he shall appoint a committee consisting of five disinterested handlers of cash grain, and notify the Administrator of the appointment of said committee giving the name, address, and business of each member. Each member of said committee shall be subject to disapproval by the Administrator. If no exception is taken to the committee membership during the same business day by the Administrator, the committee shall meet at once, and after taking into consideration various factors that establish the value of the grade of grain called for by the receipts held by such owner or owners, shall determine the fair value of the grain on the basis of the market quotations for grain of the grade called for by the receipts on the day of the finding of the appeals committee that the grain should be loaded out, which price shall be paid to the owner or holder of each such receipt by the licensed warehouseman. If the price offered is not satisfactory to any such owner or holder, a committee appointed by the president of such contract market at the request of such owner or holder shall procure other offers for such grain and such offers shall be immediately reported to such owner or holder or to his agent. If the owner

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refuses to accept any such offers he shall have the 2 following business days to order and furnish facilities for loading such grain out of store and during this period the warehouseman shall be obliged to deliver the grain covered by the warehouse receipts, but not more than 3 days shall elapse after notification by the registrar to the holder of the receipts before satisfactory disposition shall have been made of the grain either by sale or by ordering out and furnishing facilities to load same, provided the amount of such grain does not exceed 100,000 bushels in any one elevator. If the amount of grain in question exceeds 100,000 bushels, the owner or owners of the warehouse receipts shall be allowed 48 hours of grace over and above the aforementioned 3 days for each 100,000 bushels or fraction thereof in excess of the first 100,000 bushels.

(b) In the event that the holder of the warehouse receipt or his agent fails to remove the grain or make other satisfactory disposition of same within the prescribed time it shall be held for his account and any loss in grade sustained shall likewise be for his account.

(c) Nothing in this section shall be construed as prohibiting the warehouseman from fulfilling contracts from other stocks under his control, subject to the U.S. Warehouse Act and regulations thereunder.

§ 736.111 Terminal markets.

Sections 736.103 through 736.111 apply only to warehousemen operating in such markets as may have been heretofore or may be hereafter designated as futures contract markets, and §§ 736.103 through 736.107 apply also to warehousemen operating in such markets as the Department may view as terminal markets, and the appointment heretofore or hereafter of a registrar of warehouse receipts, as provided in § 736.105 is conclusive that the Department views such market as a terminal market for purposes of the Warehouse Act. All other regulations issued under the act and applicable to grain warehousemen shall apply to warehousemen operating in such terminal or futures contract markets except

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as such regulations may conflict with §§ 736.103 through 736.111.

[29 FR 15730, Nov. 24, 1964. Redesignated at 50 FR 1814, Jan. 14, 1985, and amended at 53 FR 2477, Jan. 28, 1988]

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