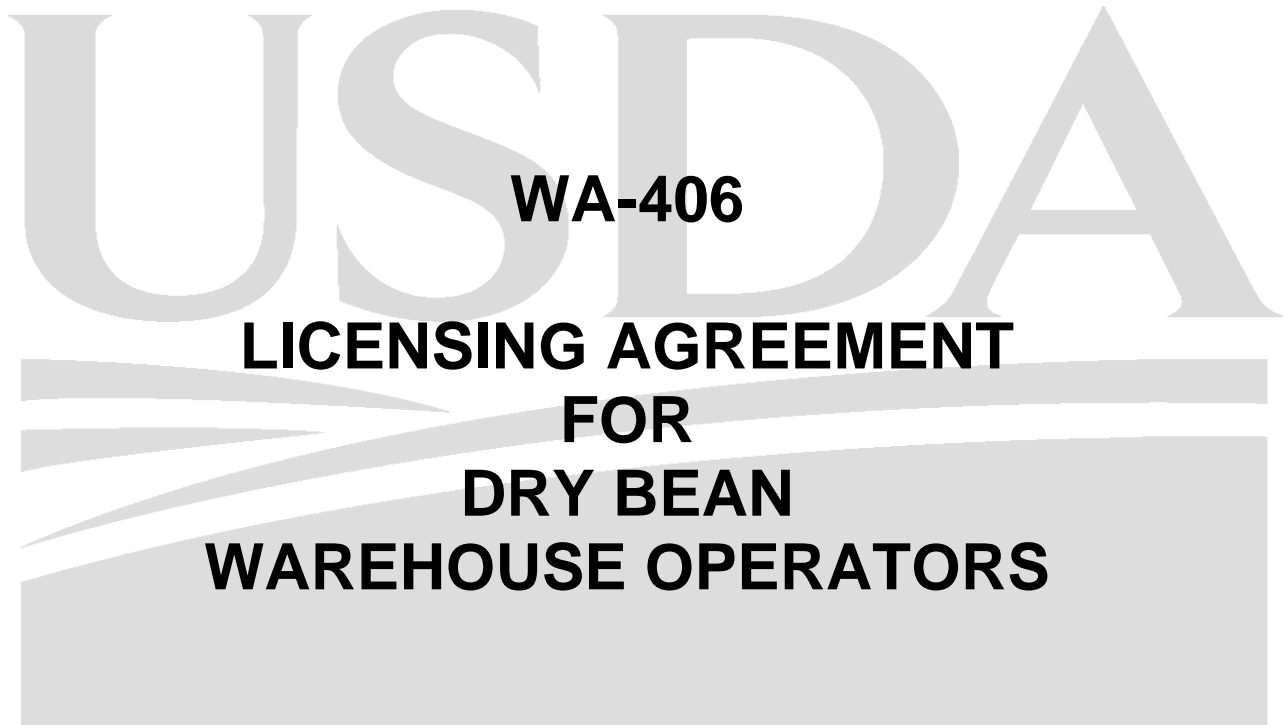


**UNITED STATES DEPARTMENT OF AGRICULTURE  
Agricultural Marketing Service**



**WA-406**

**LICENSING AGREEMENT  
FOR  
DRY BEAN  
WAREHOUSE OPERATORS**

## **LICENSING AGREEMENT FOR DRY BEAN WAREHOUSE OPERATORS**

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## Licensing Agreement for Dry Bean Warehouse Operators

As a condition of initial licensing and continued licensing under the United States Warehouse Act (USWA), administered by the Administrator of the United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), the Warehouse Operator agrees to the terms and conditions set forth in this WA-406 Licensing Agreement for Dry Bean Warehouse Operators (Agreement), the regulations found at 7 CFR Part 735, and the statute found at 7 U.S.C. § 241 *et seq.*

No person may represent themselves as licensed under the USWA unless holding a valid (neither suspended nor revoked) license under the USWA.

Any person engaged in business as a Warehouse Operator, but not licensed under the USWA, is barred from participation in or benefit from any USWA activity or its claimants from any of the USWA protections or coverage.

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

The following are included by reference:

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

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

United States Standards for Beans

Provider Agreement to Electronically File and Maintain Warehouse Receipts and United States Warehouse Act Documents (AMS form WA-460) and its applicable addenda and appendices.

## Section A - Definitions

**Administrator.** The AMS designee under whose general direction and supervision all provisions and activities regulated under the USWA are administered.

**Agricultural Marketing Service.** An agency of the USDA whose jurisdiction includes administration of the USWA.

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

**Beans.** Dry threshed field and garden beans, whole, broken, and split, commonly used for edible purposes.

**Bin.** A bin, tank, interstice, or other container in a warehouse or other space approved by AMS in which dry beans may be stored.

**Business Day.** A calendar day, excluding Saturday, Sunday, and federal holidays (unless business activity occurred).

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

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

**Class.** Beans are divided into classes as follows: Pea beans, Blackeye beans, Cranberry beans, Yellow beans, Pinto beans, Marrow beans, Great Northern beans, Small White beans, Flat Small White beans, White Kidney beans, Light Red Kidney beans, Dark Red Kidney beans, Small Red beans, Pink beans, Black beans, Mung beans, Miscellaneous beans, Large Lima beans, Baby Lima beans, Miscellaneous Lima beans, and Mixed beans, or any class of bean as defined by the United States Standards for Beans, Agricultural Marketing Service, Federal Grain Inspection Service (FGIS).

**Collateral Warehouse Receipts.** Negotiable warehouse receipts issued by Warehouse Operators to themselves that enable them to pledge unencumbered company-owned dry beans stored within their licensed warehouse space as loan security or collateral.

**Commingled.** The storage or handling of bulk dry beans in common, that are intermixed, mingled or blended. Beans stored and handled under any circumstance other than identity-preserved dry bean storage, including all depositor and company-owned dry beans transferred or delivered to a third-party Warehouse Operator for storage or handling.

**Company-Owned Dry Beans.** Dry beans for which legal title has passed to the Warehouse Operator.

**Composite Sample.** The combining and splitting of a depositor's representative dry bean sample drawn from multiple conveyances to determine the aggregate quality of a specific lot.

**Contract.** A legally binding agreement between the producer/depositor/owner and the Warehouse Operator that establishes certain specific legal obligations between the parties.

**Control of the Warehouse.** The Warehouse Operator's ultimate responsibility for the operation and integrity of the warehouse storage facility by ownership, lease, or operating agreement.

**Conveyance.** The individual transportation unit (truck, railroad car, unit train, barge, vessel, or other such unit) used in receiving or shipping dry beans.

**Crop Year.** The 12-month period following a crop's normal harvest period.

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

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

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

**Depositor.** The person or lawful owner depositing dry beans in a licensed warehouse for storage and who maintains title to the dry beans.

**Direct Shipments.** Dry beans delivered for the account of the Warehouse Operator at a location other than the Warehouse Operator's USWA-licensed warehouse facility.

**Dockage.** Small, underdeveloped dry beans, pieces of dry beans, and all matter other than dry beans which can be removed readily by the use of an FGIS-approved sieve. Large material, such as pods and stems from the dry beans remaining on top of the sieve, is picked out and added to the dockage passing through the screen.

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

**Electronic Warehouse Receipt (EWR).** A warehouse receipt authorized by AMS to be electronically issued or transmitted under the USWA.

**EWR Provider.** A person or entity authorized by AMS as a disinterested third party that maintains one or more confidential and secure electronic systems independent of any outside influence or bias in action or appearance.

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

**Field Run Dry Beans.** Dry beans from which dockage has not been removed.

**Field Warehouse Agreement.** A third-party financing and operational lease agreement whereby USWA Warehouse Operators relinquish partial or full control of their USWA-licensed facility to a field warehouse company (and its disinterested local third-party custodian) who may issue non-USWA warehouse receipts for commingled commodities, as financing collateral for the benefit of its specific client(s).

**Financial Assurance.** The surety bond or other financial obligation authorized by AMS that is a condition of receiving a license or authorization under the USWA.

**Force Majeure.** Severe weather conditions, fire, explosion, flood, earthquake, nuclear incident, nuclear reaction, nuclear radiation, radioactive contamination, insurrection, riot, strike, labor dispute, acts of terrorism, acts of civil or military authority, non-availability of transportation, or any other cause beyond the control of the Warehouse Operator or provider that renders performance impossible, as determined by AMS.

**Foreign Material.** The non-dry bean material remaining in the sample after removal of dockage as defined by the United States Standards for Beans.

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

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

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

**Lawful Owner.** The person or legal entity that has title to the dry beans.

**Load Out.** The removal of dry beans from the Warehouse Operator's licensed warehouse space.

**Lot.** The quantity and quality of single or multiple deliveries of dry beans received into a warehouse for which one inspection certificate is issued by a licensed inspector, sampler, classifier and/or weigher, at a warehouse licensed under the USWA.

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

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

**Net Weight.** The weight of dry beans after foreign material, dockage and excess moisture weight have been deducted. For screened dry beans, the weight of the dry beans after removal of dockage.

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

**Non-Negotiable Warehouse Receipt.** A paper or electronic document that cannot be transferred by endorsement or delivery to another holder or person.

**Non-Storage Dry Beans.** Dry beans received temporarily into a warehouse for conditioning, transferring or assembling for immediate shipment, or specific lots of dry beans moving through a warehouse for current marketing or other use, against which no warehouse receipts are issued and no storage charges assessed. Examples include, but are not limited to, custom drying of dry beans, cleaning of seed, etc.

**Official Service Provider.** An agency and/or laboratory authorized by FGIS to provide official inspection and/or weighing services authorized under the Agricultural Marketing Act (AMA) of 1946.

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

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

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

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

**Quality and Quantity.** The legal, operational, managerial, and financial liability of the Warehouse Operator for any dry bean obligation(s), including company-owned dry beans, handled or stored by the Warehouse Operator.

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

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

**Screened Dry Beans.** Dry beans after removal of dockage.

**Screenings.** The portion of dry beans, oilseeds or legume seed crop refuse remaining after cleaning that contains variable proportions of damaged, cracked and small whole kernels, weed seeds, forage residue, chaff, dirt, dust and/or other foreign materials.

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

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

**Split Sample.** The portion of a retained representative sample derived from dry beans delivered for, or into, storage in accordance with authorized dry bean-evaluation procedures. If an appeal of the original inspection result is requested pursuant to Section J of this Agreement, the split sample is to be provided to the official inspection agency conducting the appeal inspection for independent evaluation.

**Storage Dry Beans.** All dry beans received into, stored within, or delivered out of the warehouse that are not classified as non-storage.

**Transfer of Dry Beans.** When, under certain circumstances, the Warehouse Operator transfers or forwards dry beans by physical movement or by other method to another Warehouse Operator for continued storage, subject to the approval of AMS.

**United States Standards.** The quality standards maintained for agricultural products regulated by the AMA.

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

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

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

**Warehouse Capacity.** The maximum quantity of dry beans that the warehouse will accommodate when stored in a manner customary to the warehouse and within the limits of the amount of financial assurance that the Warehouse Operator provides, as determined by AMS.

**Warehouse Operator.** A person lawfully engaged in the business of storing or handling agricultural products.

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



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

### Section B - Qualifications

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

1. Be a responsible person or principal with a good business reputation, who:
  - A. Is in the business of public warehousing and has knowledge of, and experience in, generally accepted dry bean warehousing and handling practices.
  - B. Is competent and willing to conduct such a warehouse in accordance with the USWA, Federal regulations, and this Agreement; and
  - C. Has not committed a fraudulent or criminal offense indicating a lack of business integrity or business honesty that seriously or directly undermines the person's responsibility as a Warehouse Operator.
2. Have facilities that:
  - A. Are physically and operationally suitable for the proper storage of dry beans and that specifically:
    - (1) are of sound construction and in good repair;
    - (2) have adequate equipment, installed and maintained in good working order, for the movement of dry beans into, out of, and within the warehouse;
    - (3) have adequate ventilation, installed and maintained in good working order, for the proper storage and preservation of dry bean quality;
    - (4) have adequate lighting;
    - (5) are free from materials and substances that may adversely affect the quality of stored dry beans;
    - (6) have a safe and clean work environment; and
    - (7) ensure adequate security and protection of stored or handled dry beans from tampering or adulteration.
  - B. Allow for the accurate and efficient inspection, sampling, classifying, and/or weighing of the dry beans in store; and
  - C. Are under the Warehouse Operator's control, extending to the immediate surrounding property, upon which the Warehouse Operator's facility is located.
3. Have personnel or contractors available who:
  - A. Have knowledge and experience in inspecting, sampling, classifying, and/or weighing of dry beans.
  - B. Are licensed under the USWA to inspect, sample, classify, and/or weigh dry beans.
  - C. Have integrity, good judgment and proven performance; and
  - D. Are sufficiently knowledgeable to assist AMS warehouse examiners with inspections and examinations.

**Section C - Financials**

## 1. Financial Requirements

The Warehouse Operator agrees:

A. To have and maintain (**each** of the following):

- (1) total allowable net worth of at least the amount obtained by multiplying \$0.60 per hundredweight of the warehouse capacity; however, no person may be licensed or remain licensed as a Warehouse Operator unless that person has an allowable net worth of at least \$200,000. (Any deficiency in allowable net worth above the \$200,000 minimum may be supplied by an increase in the amount of the financial assurance); and
- (2) total allowable current assets equal to or exceeding total current liabilities or evidence acceptable to AMS that funds will be and will remain available to meet current obligations.

## B. To have adequate insurance covering all depreciable fixed assets and inventory claimed on their financial statement; and

C. That, if operating multiple warehouses under one or more licenses, the maximum capacity of **all** storage space under the licensed warehouses, as determined by AMS, will be the capacity considered in determining whether the Warehouse Operator meets the net worth requirements.

## 2. Financial Reporting

The Warehouse Operator agrees:

## A. To provide annually to AMS, within 90 calendar days of the fiscal year end, or more frequently if required, current financial statements from the warehouse operator's records prepared according to generally accepted accounting principles.

B. That the required financial statements will include, but not be limited to (**each** of the following):

- (1) a balance sheet;
- (2) a statement of income (profit and loss);
- (3) a statement of retained earnings;
- (4) a statement of cash flows; and
- (5) notes to the financial statement.

## C. That authorized representatives for the Warehouse Operator will certify under penalty of perjury that the statements, as prepared, accurately reflect the financial condition of the licensed warehouse as of the date designated, and fairly represent the results of operations for the period designated.

## D. To have the required financial statements reviewed or audited by a certified public accountant or an independent public accountant, as approved by AMS.

## E. That reviews and audits by independent certified public accountants and independent public accountants are to be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on this statement must be furnished along with the financial statements. The notes of the financial statements are to include a

detailed list of company-owned inventories, including unpaid dry beans.

- F. That reviews and audits without a physical measurement of inventory and its resultant qualified opinion may subject the Warehouse Operator to an inventory determination by USDA personnel and the assessment of fees to compensate USDA.
- G. That if any financial statement is restated, recalculated, or republished, the Warehouse Operator shall notify AMS immediately.

### 3. Accepting Other Financial Statements

The Warehouse Operator may meet the financial and reporting requirements of Section C, subsections 1 and 2, subject to AMS approval, with (any of the following):

- A. Consolidated financial statements of a parent company that separately identifies the financial position of the Warehouse Operator as a subsidiary; or
- B. Guaranty agreement from a parent company submitted on behalf of a wholly-owned subsidiary which meets the requirements of Section C, subsections 1 and 2; or
- C. Guaranty agreement accompanied by an audit-level financial statement meeting the requirements of Section C, subsections 1 and 2 of an entity with substantial interest in the Warehouse Operator.

### 4. Special Cases - Assets

- A. Subject to such terms and conditions as AMS may prescribe and for the purposes of determining allowable net assets, appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by the Warehouse Operator to conform to the requirements may be allowed if each of the following conditions are met:
  - (1) the assessment is prepared by independent certified appraisers and according to established appraisal criteria acceptable to AMS; and
  - (2) the assets are fully insured against casualty loss. The Warehouse Operator must provide written notice to AMS not less than 30 calendar days before the insurer(s) intends to cancel insurance coverage.
- B. All dry beans purchased in-store or at another warehouse location can only be shown as an asset to the limit of the verifiable equity paid, adjusted for current market value, as determined by AMS.

## Section D - Financial Assurance

### 1. Computation

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

- A. Financial assurance computed at the rate of \$0.60 per hundredweight of USWA-licensed dry bean warehouse capacity, with a minimum of \$50,000 and up to a maximum of \$500,000 for each State in which licenses are held;
- B. Additional financial assurance, if necessary, as determined by AMS, by adding to the amount of financial assurance an amount equal to any deficiency in net worth in excess of the \$200,000 minimum requirement; and
- C. Additional financial assurance, if AMS finds that conditions exist which warrant requiring additional financial assurance.

## 2. Acceptable Forms

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

- A. A Warehouse Operator's surety bond; or
- B. A deposit with AMS of U.S. bonds, U.S. Treasury notes or other public debt obligations of the United States, or obligations that are unconditionally guaranteed as to both interest and principal by the United States, subject to each of the following restrictions:
  - (1) the obligation deposited will not be considered a part of the Warehouse Operator's assets;
  - (2) any deficiency in allowable net worth exceeding the \$200,000 minimum may be offset by the Warehouse Operator furnishing an acceptable financial assurance for the difference. The deposit may be replaced or continued in the required amount from year-to-year; and
  - (3) the deposit will not be released until one year after revocation of the license that it supports, or until after satisfaction of any claim against the deposit, whichever is later or approved by AMS; or
- C. An irrevocable letter of credit issued to AMS, on a form approved by AMS, to which each of the following apply:
  - (1) the letter of credit is issued for a term of not less than two (2) years, provided that:
    - (a) the issuer of the letter of credit provides 120-day notification in the event the letter of credit will not be renewed; and
    - (b) USDA shall provide written notice that it will draw upon the letter of credit in full ten (10) days prior to its cancellation date if replacement financial assurance is not provided. These funds will be held until such time as all obligations are settled or replacement is provided.
  - (2) the letter of credit is issued by a commercial bank, payable to AMS, by sight draft and insured by the Federal Deposit Insurance Corporation or by an institution in good standing regulated by the Farm Credit Administration; and
  - (3) its supporting funds on deposit are not considered an asset of the company.
- D. Participation in, and coverage by, a State indemnity or insurance fund established and maintained by a State, and as approved by AMS, provided that:
  - (1) the fund is backed by the full faith and credit of the State;
  - (2) the fund guarantees depositors in the USWA licensed warehouse full indemnification for any breach of the Warehouse Operator's obligation created under the terms of the USWA;
  - (3) the Warehouse Operator files with AMS a yearly certification of their participation and coverage in the fund;
  - (4) in the event of a deficiency in the Warehouse Operator's net worth to cover the total net worth requirement under the USWA, the certification of participation and coverage may be used only to cover deficiencies in net worth above the minimum net worth requirement; and
  - (5) the Warehouse Operator must, at all times, meet the minimum net worth requirement.
- E. Other alternative instruments and forms of financial assurance approved by AMS.

**Section E - Duties of the Warehouse Operator**

## 1. In general

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

- A. Exercise at all times such care in regard to maintaining the standard of quality and quantity of dry beans in custody as a reasonably careful owner would exercise under the same circumstances and conditions, and to keep the dry beans from going out-of-condition.
- B. Not differentiate among depositors or lawful owners regarding use of and access to services, except that available storage space may be allocated.
- C. Provide all necessary assistance in the execution of inspections and examinations by authorized individuals.
- D. Maintain at all times, legal and operational control of all licensed storage space.;
- E. Apply for licensing all warehouse space or facilities controlled by the Warehouse Operator at a specific location, among which dry beans may be transferred without weighing, unless that space or those facilities are physically separated and specifically exempted from the license by AMS.
- F. Apply for an amendment to their license when adding or deleting bins, locations, or other space that alters the licensed storage capacity.
- G. Post, for public access at all locations, copies of certificates of licensing, current tariff, and any special rules.
- H. Report immediately the occurrence of a fire, disaster, or loss, and the extent of damage to AMS.
- I. Ensure that all dry beans claimed as company-owned are paid for or applied to fully executed contracts within 30 days of final delivery; and
- J. Ensure that contracts involving the application of producer open-storage or credit-sale dry beans are executed by both parties within 30 days of final application of the dry beans against the contract and fully reflect the terms of settlement.

## 2. Warehousing

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

- A. Accept for storage only storable dry beans.
- B. Accept all storage and non-storage dry beans and, at the request of the depositor or lawful owner, deliver out (other than in the case of specially-binned dry beans) all storage and non-storage dry beans in accordance with the weight, condition, and grade of those dry beans as determined by a person duly licensed to inspect, sample, classify and/or weigh dry beans. (Disputes are addressed in Section J – Dry Bean Grading Appeals).
- C. Accept and deliver out of storage dry beans in accordance with the factors determined as the result of an appeal of the original inspection results.
- D. Ensure all dry beans accepted for storage are stored in the Warehouse Operator's licensed warehouse space.
- E. Issue a USWA Inspection and/or Weight Certificate for each individual conveyance (or for multiple railcars provided that each railcar is identified separately) that delivers dry beans received for storage or

that is loaded out of the Warehouse Operator's licensed warehouse space.

- F. Deliver stored dry beans without unnecessary delay and in a commercially reasonable manner.
  - G. Not deliver infested or adulterated dry beans as defined under the official United States Standards, USDA/GIPSA/FGIS, Food and Drug Administration (FDA), Environmental Protection Agency regulations, or other Federal laws or standards.
  - H. Not load or deliver dry beans in a conveyance that places the quality or quantity of the dry beans at risk.
  - I. Not redeliver, ship, or remove warehouse-receipted dry beans from licensed storage space based on written or oral orders from the current holder or other lawful person without the Warehouse Operator first being made the final holder of the EWR or having physical possession of the paper warehouse receipt or other document of release for such dry beans.
  - J. Promptly cancel warehouse receipts representing dry beans prior to shipping or removing dry beans from licensed storage space.
  - K. Resolve any claim for noncompliance with the shipping of dry beans or any other dispute in a U.S. district court of competent jurisdiction or through mutually agreed-upon arbitration procedures. The arbitration procedures will be nondiscriminatory and provide equal access and protection relating to the shipping of dry beans.
  - L. Maintain sufficient inventory, at all times, of dry beans in licensed storage space that reflects the quality and quantity represented by outstanding storage obligations (including warehouse-receipted and unreceipted dry beans). In the event the quality or quantity of stored dry beans becomes out of balance with quality or quantity represented by outstanding storage obligations, the Warehouse Operator is to effect the necessary corrective actions to regain a balanced position for quality and quantity in a timely manner.
  - M. Attach, on any lot of bags, boxes, or totes of dry beans, durable tags or stencils in a manner that readily make possible the identification of the lot at all times. Such tags or stencils must show:
    - (1) lot number;
    - (2) warehouse receipt number issued for such dry beans, if warehouse receipt is requested;
    - (3) number of bags in the lot, if applicable;
    - (4) class of dry beans;
    - (5) quality factors and condition, if determined;
    - (6) weight of the dry beans in the container; and
    - (7) date dry beans entered storage, if applicable.
- Note: The tags on dry beans must be visible and readily accessible, enabling an accurate count.
- N. Assure that the physical warehouse inventory record for each class of dry beans equals the total outstanding warehouse receipt and storage liability obligation records (including company-owned) at the close of each business day and before the start of the next business day;
  - O. Not issue a warehouse receipt for any dry bean product or by-product which would be considered screenings.
  - P. Exercise due care with respect to non-storage dry beans while in the Warehouse Operator's custody.

### 3. Facilities

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

- A. Maintain the warehouse(s) in sound physical condition consistent with good warehousing practices.
- B. Keep the warehouse and the property on which it is located reasonably clean and safe at all times; and
- C. Securely affix clearly discernible numbers to identify bulk dry bean bins and other authorized storage licensed under the USWA for storing dry beans. The series of designated numbers must be pre-approved by AMS. Bulk dry bean bins must be numbered so as to be easily identified at the openings on top and also on or near the outlet valves underneath. Other authorized storage must be numbered in such a manner that clearly shows the space covered by each number.

### 4. Facility Security

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

- A. Conduct a facility risk assessment and establish written security procedures that address dry beans handled and stored under this Agreement with regard to (each of the following):
  - (1) general security of the USWA-licensed physical structures and property on which the licensed warehouse is located;
  - (2) shipping and receiving procedures to ensure that dry beans are not subject to tampering;
  - (3) action to be taken in the event of a national emergency; and
  - (4) contact information for local emergency responders and law enforcement authorities.
- B. Have a written facility security plan that includes measures which address the vulnerabilities identified during the risk assessment and that protects the safety and purity of the dry beans handled and stored under the license.

### 5. Fair Treatment

- A. The Warehouse Operator agrees to deal in a fair and reasonable manner with persons storing or seeking to store dry beans if each of the following conditions are met:
  - (1) the dry beans are of the class, type and quality customarily stored or handled in the geographic area;
  - (2) the dry beans have been tendered to the warehouse in a suitable condition for storage; and
  - (3) the dry beans are tendered in a manner consistent with the ordinary and usual course of the Warehouse Operator's business.
- B. The Warehouse Operator may enter into agreements with depositors or lawful owners to allocate available warehouse storage space.

## 6. Insurance

The Warehouse Operator agrees to each of the following requirements:

- A. Secure, in their own name, insurance on stored dry beans against loss or damage by fire, lightning, windstorm, cyclone, tornado, or inherent explosion and other special peril risks under forms of policies which automatically attach for the full replacement value of stored dry beans, as soon as such dry beans are placed in their legal custody and continue such insurance in effect so long as the dry beans remain in their legal custody. Arrangements between the Warehouse Operator and insurers concerning indemnification of waivers of deductibles are acceptable as long as an insurer covers any loss fully or the Warehouse Operator indemnifies deductibles with a letter of credit, additional bonding or other financial assurance in favor of USDA. AMS may accept consolidated blanket insurance policies of parent companies that separately identify the insurance coverage of the Warehouse Operator as a subsidiary and include the full replacement value of stored dry beans.
- B. Keep a general insurance account showing the policy number, issuing company, amount binding, exclusions, limits of liability, and expiration dates of all insurance policies and in each instance show the property covered by such policies. These insurance policies may be issued by one or more insurance companies.
- C. Submit reports to underwriters as required under the terms of such policies.
- D. Submit copies of reports to AMS, as required.
- E. Include in the rules and schedule of charges (tariff) the conditions under which stored dry beans will be insured against loss or damage by fire, lightning, windstorm, cyclone, tornado, or inherent explosion and other special peril risks; and
- F. Provide AMS with written notice not less than 30 calendar days before the insurer(s) intends to cancel property and/or stock (inventory) coverage.

## 7. Business Hours

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

- A. Be open for the purpose of receiving dry beans for storage and delivering dry beans out of storage and for settlement purposes each business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m., except as provided in C.
- B. Post business hours at a conspicuous, publicly accessible location at the licensed warehouse, including the dry beans receiving area; and
- C. Post notice in the event that the warehouse is not open during the hours specified in A, the estimated period during which the warehouse is to be closed and the contact information, including address and telephone number of the Warehouse Operator.

## 8. System of Records

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

- A. Develop and maintain a system of records, approved by AMS, on site, unless otherwise provided for in this Agreement's Addenda. These records shall include, but are not limited to, an accurate and concise Master Daily Position Record (DPR) by each class of dry bean and supported by supplemental DPRs based on source documents that identify the total quantity and quality of each class, grade, special grade, specialty traits, or use of dry beans stored and handled in USWA-licensed space showing **each** of the following categories on a daily basis:



- (1) total dry beans (as shown in the record of physical inventory) received into the warehouse;
- (2) total dry beans loaded out of the warehouse;
- (3) total adjustments to dry beans in the warehouse;
- (4) total dry beans remaining in the warehouse at the close of each business day;
- (5) total dry bean obligations transferred or forwarded to another warehouse;
- (6) total dry beans represented by negotiable and non-negotiable warehouse receipts issued and canceled, and the remaining outstanding balance;
- (7) total increase, decrease, and outstanding storage dry bean obligations, including open storage dry beans belonging to others;
- (8) total unpaid (unsettled) dry beans owned by the Warehouse Operator for which warehouse receipts have not been issued;
- (9) total paid and unpaid (unsettled) dry beans owned by the Warehouse Operator for which warehouse receipts have not been issued; and
- (10) total dry bean obligations.

Note: Before proceeding to the next day's DPR, the Warehouse Operator is to accurately update the current day's DPR with all applicable changes that occurred that date by closing and prevent subsequent changes to those data. Any corrections to that data must be made and shown as an adjustment on the date the error is found and corrected.

- B. Maintain a record of corrections and adjustments made to the DPR. This record may be included as footnotes in the DPR or a separate record may be maintained. The footnotes shall reference the date, the document used to make the adjustment, the nature of the adjustment, and the reason for the adjustment.

Note: Upward adjustments to the DPR are not permitted, except when verified by emptying the warehouse or a complete verifiable weigh-up, or as authorized by AMS. Under normal circumstances and conditions, dry beans do not increase in volume while in storage. Excesses of measured inventory over obligations are to be explained and not arbitrarily adjusted.

- C. Maintain records for each depositor showing the class, grade, specialty, and quantity of dry beans deposited or redelivered.
- D. Maintain records of direct-shipment and transferred dry beans. In the case of direct-shipment dry beans, such records shall include the inspection and/or weight certificates from the receiving warehouse(s). If direct-shipment dry beans are being substituted for storage dry beans, the storage dry beans must be shown on the DPR as a storage obligation. If direct-shipment dry beans are being substituted as sold or contracted, such dry beans must be shown in the Warehouse Operator's records as a monetary obligation. If the dry beans are transferred or forwarded and the Warehouse Operator is maintaining ownership, the dry beans shall be shown on the DPR as a storage obligation and shall comply with the requirements for transferring of dry beans.
- E. Maintain a detailed accounting system of all money received and disbursed.
- F. Maintain records accurately and concisely reflecting daily business activity, including weekend activity. If computerized, the DPR must be printed out and maintained for each day during which activity or transactions occurred, or converted to an unchangeable format and stored electronically.

- G. Retain these records for a period of 6 years after December 31 of the year in which the records were created. A longer retention period may be necessary for the purposes of any litigation which the Warehouse Operator knows to be pending or as may be required by AMS in particular cases to carry out the purposes of the USWA; and
- H. Maintain similar records and information for any non-storage dry beans handled through the warehouse. Records required with respect to non-storage dry beans must be retained as part of the records of the warehouse for a period of 6 years after December 31 of the year in which the lot of non-storage dry beans are delivered from the warehouse.

#### 9. Reports

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

- A. Make reports concerning the condition, contents, operation, and business of the warehouse available upon request by AMS on forms prescribed and furnished for that purpose by AMS; and
- B. Keep on file, either electronically or on paper, an exact copy of each report submitted as a part of the records of the warehouse for a period of 6 years after December 31 of the year in which the document was created or longer, if required by AMS.

#### 10. Records

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

- A. Back up and maintain an off-site copy of electronic records daily.
- B. Provide, unless an alternative is approved by AMS, at least a fireproof safe, a fireproof vault, or a fire-resistant compartment in which to keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including current warehouse receipt books, and copies of issued and canceled warehouse receipts.
- C. Retain each canceled warehouse receipt for a period of 6 years after December 31 of the year in which the warehouse receipt is canceled. A longer retention period may be necessary for the purposes of any litigation which the Warehouse Operator knows to be pending or as may be required by AMS in particular cases to carry out the purposes of the USWA.
- D. Retain a copy of each inspection and/or weight certificate for a period of 6 years after December 31 of the year in which the document was created; and
- E. Arrange for purposes of an audit, canceled paper or electronic warehouse receipts, contracts, and inspection and/or weight certificates in a sequential numerical order or as otherwise may be directed by AMS.

#### 11. Public Tariff and Schedule of Charges

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

- (1) not impose unreasonable or exorbitant charges for services rendered;
- (2) file with AMS a copy of the public tariff rules and schedule of charges to be assessed depositors before a license to operate a warehouse is granted under the USWA;
- (3) post conspicuously at a publicly accessible location where the depositor may access it at the warehouse, including the dry beans receiving area, a copy of the public tariff, including current rules and schedule of charges;

- (4) file with AMS a new public tariff rule statement or schedule of charges before implementing any change to such rules or schedule of charges. No increase in charges or rates shown in such schedule will apply to dry beans in storage at the time the changes become effective for a period of 1 year from the date such dry beans were deposited; and
- (5) include in the rules and schedule of charges the conditions under which the dry beans will be insured against loss or damage by fire, lightning, windstorm, cyclone, tornado, or inherent explosion and other special peril risks.

B. The Warehouse Operator may (any of the following):

- (1) demand payment of all accrued charges at the close of each crop year or other mutually agreed-upon date. If, upon demand, the owner of the dry beans refuses to pay such charges action may be taken to enforce collection as permitted by the laws of the State in which the warehouse is located; or
- (2) demand payment of all accrued charges associated with the storage of dry beans to satisfy the Warehouse Operator's lien prior to delivering such dry beans to the depositor; or
- (3) enter into mutually agreed upon special agreements with depositors that may include service rates and rules differing from the public tariff rules and schedule of charges. Such special arrangements shall be submitted by the Warehouse Operator to AMS prior to execution, and are subject to approval by AMS.

## 12. Grades and Dry Bean Quality Inspections

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

- A. Equip the warehouse with grading and quality-evaluation equipment necessary to determine the class, grade, condition, and quality of each class and specialty of dry beans received, handled, or accepted for storage.
- B. Ensure that all grading and quality-evaluation equipment is inspected and certified annually by an applicable regulatory or independent authority. Testing or quality-evaluation equipment whose performance is rejected and/or not certified shall not be used to ascertain the grade or quality of dry beans for the purposes of the USWA license, until such rejection is withdrawn by the applicable regulatory or independent authority; and
- C. Ensure that all samples submitted to FGIS or an independent agency are representative of the dry beans delivered.

## 13. Scales and Weighing

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

- A. Equip the warehouse with scales appropriate for the kind of dry beans being stored, and have them arranged in a manner that all dry beans, whether for storage or non-storage purposes, can be weighed in and out of the warehouse; and
- B. Have scales inspected and certified annually by an applicable regulatory or independent authority. Scales which have been tested and their performance rejected and not certified shall not thereafter be used in ascertaining the weight of dry beans for the purposes of the USWA license, until such rejection is withdrawn by the applicable regulatory or independent authority.

## 14. Prompt Delivery

In the absence of force majeure or a lawful excuse, the Warehouse Operator shall, as commercially reasonable and without unnecessary delay, deliver the dry beans stored or handled in the warehouse on a demand made by (either of the following):

- A. The holder of the warehouse receipt; or
- B. The lawful owner of the dry beans, if no warehouse receipt has been issued.

## 15. Identity-Preserved Dry Beans

- A. The Warehouse Operator may elect not to accept and store identity-preserved dry beans.
- B. If electing to accept and store dry beans in bagged or bulk form, the Warehouse Operator agrees to (each of the following):
  - (1) clearly identify and mark each bag or container, bin, or tank containing such dry beans;
  - (2) maintain records that clearly show the depositor of such dry beans, the quality characteristics, and internal storage location of each lot deposited and stored in the warehouse;
  - (3) enter into, at the time of deposit, a special storage agreement with the depositor defining the terms and conditions of storage, including the amount of shrinkage or quality deterioration to be allowed while such dry beans are in storage;
  - (4) maintain the quality and quantity of such dry beans as stated within the terms of the applicable public tariff or special storage agreement entered into with the depositor(s);
  - (5) follow good warehouse storage practices; and
  - (6) issue warehouse receipts showing the characteristics, special binning and any special provisions. Warehouse receipts issued for such dry beans expire no later than 12 months from the date of issuance, at which time the dry beans are to be returned to open storage reflecting shrinkage or quality changes or a new warehouse receipt is to be issued reflecting shrinkage or quality changes. Shrinkage will be determined in accordance with the agreement obtained in subsection 15.B. (3).
- C. Except as may be required by law or regulations in this part, the Warehouse Operator shall not remove or transfer identity preserved dry beans for storage from the licensed warehouse to another bin without first notifying the depositor.
- D. The Warehouse Operator shall deliver to the depositor(s) or lawful owner(s), upon demand, the actual dry beans deposited and stored in the warehouse. The conditions for delivery are (each of the following):
  - (1) proper presentation of title for any identity-preserved dry beans; and
  - (2) payment of all accrued charges associated with the storage and handling of such dry beans if requested by the Warehouse Operator.

## 16. Storage Obligations

The Warehouse Operator, while authorized to commingle dry beans in store, is liable for the care and redelivery of dry beans stored in licensed space to each depositor or lawful owner to the same extent and under the same circumstances as if the dry beans were separately stored. The Warehouse Operator, as a bailee for hire, is free

to store dry beans in any manner that enables dry beans to be delivered in a condition that meets or exceeds the quality and quantity represented on the warehouse receipt or the original inspection and/or weight certificate.

17. Containerized Dry Bean Storage

The Warehouse Operator agrees to keep bins or totes of dry beans stored in an orderly manner to permit easy access to all lots and to facilitate inspecting, sampling, counting, and identification of each lot.

18. Delivery of Commingled Dry Beans

The Warehouse Operator must deliver to the depositor or lawful owner, upon demand, dry beans of the quantity, numerical grade, and class as obligated or better, as determined by a licensed inspector, weigher or an official inspection certificate issued by an FGIS official service provider. The conditions for delivery are (each of the following):

- A. Proper presentation of documents of title.
- B. Payment of all accrued charges associated with the storage of dry beans, if requested by the Warehouse Operator.

19. Loading Out Without Weighing

The Warehouse Operator may load out without weighing (either of the following):

- A. Identity-preserved dry beans if the owner has agreed to assume all shortages as part of the special storage agreement; or
- B. Commingled dry beans, at the request of the owner. An interim weight document must be issued by the shipping Warehouse Operator, clearly indicating the weight as an estimate and must be posted to the DPR as activity occurs. Destination weights are to be obtained and adjustments posted to the DPR as soon as available.

20. Out-of-Condition and Damaged Dry Beans

- A. The Warehouse Operator may refuse to accept dry beans offered for storage if the condition is such that it will adversely affect the condition of dry beans customarily stored in the warehouse.
- B. When dry beans are discovered to be going out-of-condition and the Warehouse Operator is unable to condition the dry beans or stop the deterioration, the Warehouse Operator agrees to (each of the following):
  - (1) immediately notify the owner(s) or depositor(s) and AMS.

Such notification shall include:

- (a) the warehouse location in which the dry beans are stored;
- (b) the quantity, class, and grade of the dry beans at the time notification occurred;
- (c) the actual condition of the dry beans, as nearly as can be ascertained;
- (d) the reason for the current condition, if known;
- (e) the warehouse receipt information, if a warehouse receipt has been issued; and
- (f) a statement that the dry beans will be delivered upon presentation of the warehouse receipt and payment of applicable charges.

- (2) follow instructions received from AMS;
- (3) maintain as warehouse records copies of all notices and correspondence associated with the out-of-condition dry beans; and
- (4) submit to and reimburse the cost of a verification examination, if necessary.

## 21. Inspections and Examinations of Warehouse

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

- A. Permit authorized individuals to enter and inspect or examine the licensed warehouse on any business day during normal or posted business hours.
- B. Provide safe access to authorized individuals to the extent reasonable to determine the quantity and quality of dry beans stored in the licensed warehouse.
- C. Provide authorized individuals with notice of any safety or other company policies pertaining to the physical facility and grounds subject to examination or inspection.
- D. Provide authorized individuals access to books, records, papers, accounts, and their contents pursuant to the examination of a licensed warehouse.
- E. Furnish authorized individuals with assistance necessary to conduct an inspection or examination.
- F. Provide safe and functioning equipment (e.g. ladders, catwalks, lifts, or elevators) required to conduct a warehouse examination. The Warehouse Operator shall also provide advance notice to AMS of any special requirements or equipment required to perform an examination at the licensed warehouse. An examination will be stopped and an exception report prepared for removal of the facility from licensed space if a warehouse examination cannot be conducted or completed because of unsafe equipment.
- G. Provide notice, at the time of the examination, of any fumigation of bins in progress or where the fumigant is currently active, and to provide conspicuous written notification affixed to the fumigated storage structure of the date and type of fumigant used; and
- H. Promptly respond to violations noted on the examination. The response must include corrective action on items completed and a corrective action plan on items to be completed, including a timetable for completion.

## 22. Transfer of Dry Beans

- A. The Warehouse Operator may, under certain circumstances, transfer or forward dry beans by physical movement or other AMS-approved method to a receiving warehouse. For the purposes of this part, a **receiving** warehouse is (**any** of the following):
  - (1) an active USWA-licensed dry bean warehouse; or
  - (2) a public dry bean warehouse currently licensed by a State licensing authority that has financial, bonding, and examination requirements for the benefit of all depositors.
- B. The transferring Warehouse Operator agrees to (**each** of the following):
  - (1) provide written notification immediately to AMS by mail, FAX, or e-mail upon becoming aware that the dry bean obligations at a specific storing warehouse exceed the licensed or insured capacity of that warehouse, as well as the name and location of the receiving warehouse; and

- (2) if physically moving or transferring dry beans to a receiving warehouse (**each** of the following):
- (a) ensure that the public tariff's rules and schedule of charges include language that allows the Warehouse Operator to transfer dry beans according to conditions prescribed by AMS;
  - (b) obtain written permission from AMS, by mail, FAX or e-mail, in advance of movement or approved transfer of warehouse-receipted dry beans;
  - (c) obtain written permission in advance from Commodity Credit Corporation (CCC) if dry beans to be transferred are owned by CCC;
  - (d) obtain from the receiving warehouse a non-negotiable warehouse receipt or certified deposit affidavit or notarized deposit letter stating, "Held in Trust for Depositors of name of transferring warehouse," as legal depositor, for all transferred dry beans;
  - (e) not accept transferred dry beans from another warehouse while dry beans of the same class are in a transferred position;
  - (f) retain or increase financial assurance encompassing the warehouse capacity and the transferred dry beans, as specified in Section C – Financials, subsection 1.A. of this Agreement;
  - (g) post transferred dry bean positions to the DPR, as specified in Section E - Duties of the Warehouse Operator, subsection 8 - System of Records;
  - (h) retain a storage obligation to the depositor or lawful owner for dry beans originally deposited in the warehouse and, unless otherwise specified in Item (i) below, be prepared to redeliver the dry beans deposited upon demand of the depositor or lawful owner at the place where the dry beans were first deposited for storage; and
  - (i) provide an opportunity for the depositor or lawful owner to make final settlement and take delivery of the storage obligation at the place where the dry beans were first deposited for storage unless, with the consent of both the **transferring (shipping)** Warehouse Operator and the receiving Warehouse Operator, the depositor or lawful owner elects to take delivery at the warehouse to which the dry beans were transferred.
- C. Non-Negotiable warehouse receipts received under subsection 22 Transfer of Dry Beans, B. (2) (d) above:
- (1) must have conspicuously printed or stamped across the face of the paper receipt the words "Not Negotiable" or be issued as a "Non-Negotiable" electronic warehouse receipt;
  - (2) are not valid for collateral purposes;
  - (3) are retained by the **transferring (shipping)** Warehouse Operator to be presented for use by AMS in lieu of an on-site inventory of the receiving warehouse; and
  - (4) shall be subject to the general requirements for warehouse receipts in their recording and retention.
- D. For dry beans transferred to a warehouse in a State that does not allow or recognize the issuance of non-negotiable warehouse receipts, obtain from the receiving Warehouse Operator a certified deposit affidavit or notarized deposit letter specifying the class, numerical grade, specialty, and quantity of the dry beans received.
- E. The **transferring (shipping)** Warehouse Operator shall execute a legal binding operational agreement with the receiving Warehouse Operator that specifies that the receiving Warehouse Operator will (**each** of the following):

- (1) not exceed the licensed or approved capacity of the warehouse by accepting the transfer;
  - (2) not further move, transfer or in any way offset the dry beans transferred to it to another warehouse and retain a storage obligation to the depositors of the **transferring (shipping)** Warehouse Operator;
  - (3) fully insure the transferred dry beans; and
  - (4) promptly issue a non-negotiable warehouse receipt, certified deposit affidavit or notarized deposit letter for the transferred dry beans stating on the document that such dry beans are “Held in Trust for Depositors of the (name) **transferring** warehouse,” as the legal depositor and return the warehouse receipt or certified deposit affidavit or notarized deposit letter promptly to the **transferring (shipping)** Warehouse Operator.
- F. The dry beans covered by non-negotiable warehouse receipts, certified deposit affidavits, and notarized deposit letters shall be held in trust solely for the benefit of the shipping warehouse and its depositors or lawful owners whose dry beans were transferred individually or collectively and for which they retain title.

## Section F - Warehouse Receipts

### 1. General

#### A. Issuance - The Warehouse Operator agrees to (**each** of the following):

- (1) issue a warehouse receipt for any dry beans received or stored in a warehouse if requested by a depositor or lawful owner;
- (2) maintain a sufficient quantity and quality of dry beans as represented on the warehouse receipt(s);
- (3) list only the Warehouse Operator as depositor if issuing collateral warehouse receipts; and
  - (a) ensure a sufficient quantity and quality of dry beans is owned by the Warehouse Operator to cover the obligation at the time of issuance and for the duration the collateral warehouse receipt is outstanding;
  - (b) endorse warehouse receipts to the financial institution or holder receiving the warehouse receipt;
  - (c) ensure that warehouse receipts are endorsed and dated by the financial institution or holder when returning the warehouse receipt (transferring title) to the Warehouse Operator, (**endorsements and date required**); and
  - (d) the Warehouse Operator and the financial institution or holder must have legal documentation clearly defining the terms and conditions for the issuance and acceptance of the collateral warehouse receipts.
- (4) retain a copy of the weight certificate, inspection certificate, or inspection and weight certificate representing the dry beans prior to issuing any warehouse receipt to a depositor. The Warehouse Operator’s records must identify the certificate(s) used as the basis for issuing the warehouse receipt and be retained for a period of 6 years after December 31 of the year in which issued. Certificates filed in the office of an independent inspection or weighing agency, with a Board of Trade, or a U. S. Registrar must also meet this requirement;
- (5) replace lost or destroyed warehouse receipts in accordance with 7 CFR Part 735 and Section F - Warehouse Receipts, subsection 2 E of this agreement;
- (6) not issue a warehouse receipt when another warehouse receipt is outstanding that represents the same specific identity-preserved or commingled lot of dry beans;



- (7) not issue more than one warehouse receipt with the same warehouse receipt number;
- (8) state within the written or printed terms of non-negotiable warehouse receipts that such a warehouse receipt is not negotiable; and
- (9) issue warehouse receipts consecutively within the assigned order of warehouse receipts as determined by AMS.

B. Persons Authorized to Sign Warehouse Receipts

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

- (1) file with AMS the name and genuine, facsimile, digital, or electronic signature of the person(s) authorized to sign warehouse receipts on behalf of the Warehouse Operator;
- (2) promptly notify AMS of any changes or additions to the names of persons authorized to sign warehouse receipts on behalf of the Warehouse Operator, and file the genuine, facsimile, digital, or electronic signature(s) of such person(s);
- (3) be bound by the signatures of persons authorized to sign warehouse receipts, the same as if the Warehouse Operator personally signed the warehouse receipt; and
- (4) agree and verify that all filed signatures legally bind the Warehouse Operator.

C. Return of Warehouse Receipts Prior to Delivery

The Warehouse Operator agrees to deliver dry beans (under **each** of the following situations):

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

D. Balance Warehouse Receipts

The Warehouse Operator, upon request of the holder, may issue a warehouse receipt for previously warehouse-receipted dry beans for which the original warehouse receipt has been canceled. The warehouse receipt issued for the remaining balance must reference the number and issuance date of the original warehouse receipt.

2. Paper Warehouse Receipts

A. Content

- (1) Every paper warehouse receipt, whether negotiable or non-negotiable, issued for dry beans stored in a USWA warehouse, in addition to complying with the requirements of Section 11 of the USWA and 7 CFR 735, Subpart D, must embody within its written or printed terms (**each** of the following):
  - (a) the name of the Warehouse Operator and the designation, if any, of the warehouse facility;

- (b) the location of the warehouse in which the dry beans are stored;
- (c) the Warehouse Operator's license number;
- (d) the CCC storage agreement code number, if applicable;
- (e) the issuance date of the warehouse receipt;
- (f) the consecutive number of the warehouse receipt;
- (g) the name of the depositor or lawful owner;
- (h) a statement as to whether the dry beans received are to be delivered to the holder, to a specified person, or their order;
- (i) prepaid warehouse charges, if applicable;
- (j) a description of the dry beans received, including the quantity, class, grade, and the standard or description in accordance with which such classification has been made (**each** of these apply):
  - (i) The grade stated in a warehouse receipt must be the weighted average of the numeric grades as determined by the inspector and as indicated on the applicable inspection certificate(s) or as determined by an FGIS official service provider; however, if an appeal of the grade determination has been requested and obtained, the grade stated on such warehouse receipt shall be the final appeal grade; and
  - (ii) Except in the case of identity-preserved dry beans, if, at the request of the depositor, the Warehouse Operator issues a warehouse receipt omitting the statement of grade, such warehouse receipt shall have clearly and conspicuously stamped or written on the face thereof, or included as part of the paper warehouse receipt, the following statement: "Not graded at the request of the depositor."
- (k) Percentage of dockage and foreign material, if applicable;
- (l) a statement that the warehouse receipt is issued subject to the USWA, the regulations, and this Agreement and its rules;
- (m) a statement of the amount of advances, if made, and of liabilities incurred regarding warehouse storage, handling, and other charges claimed by the Warehouse Operator; however, if the precise amount of such advances made or of such liabilities incurred is unknown to the Warehouse Operator (or to the agent who issues it) at the time the warehouse receipt is issued, it is sufficient to include a statement that advances have been made or liabilities incurred, as well as their purpose;
- (n) if the Warehouse Operator is owner, either solely or jointly in common with others, the fact of such ownership;
- (o) such other terms and conditions within the limitations of the USWA and this Agreement, as may be required by the Secretary or AMS;
- (p) a statement of the Warehouse Operator's business organization type (e.g. sole proprietorship, corporation, partnership, limited liability company) and the name of the State whose laws govern that organization (e.g. "a Texas corporation");
- (q) in the event the relationship existing between the Warehouse Operator and any depositor is not that of a strictly disinterested custodianship, a statement setting forth the actual relationship;

- (r) a statement, conspicuously placed, that the dry beans are insured by the Warehouse Operator against loss or damage by fire, lightning, windstorm, cyclone, tornado, inherent explosion or other special peril risks;
  - (s) net weight of the dry beans;
  - (t) if the dry beans represented by the warehouse receipt are identity-preserved, the words “identity-preserved” and the specific bin(s) or warehouse location of such dry beans;
  - (u) the words “Negotiable” or “Non-Negotiable,” as appropriate to the nature of the warehouse receipt, clearly and conspicuously printed thereon. Every negotiable warehouse receipt issued must, in addition to conforming to the requirements of this subpart, embody within its written or printed terms, a form of endorsement that may be used by the depositor or authorized agent, for showing the current ownership of the dry beans and applicable charges, mortgages or other encumbrances on the dry beans represented by the warehouse receipt;
  - (v) the signature of the Warehouse Operator, which may be made by the authorized agent; and
  - (w) other information as may be required by AMS.
- (2) if the Warehouse Operator issues a warehouse receipt under the USWA omitting any information not required to be stated, for which a blank space is provided in the form of the warehouse receipt, a line shall be drawn through such space to show that such omission has been made purposely or “ILB” entered in the blank data field to indicate it has been “intentionally left blank.”
  - (3) a warehouse receipt may contain additional information, provided it does not contradict, mislead, conceal, or interfere with any required information or printed or written terms.
  - (4) warehouse receipts must not be altered or defaced, except as authorized by AMS.

#### B. Copies of Paper Warehouse Receipts

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

#### C. Printing of Negotiable and Non-Negotiable Paper Warehouse Receipts

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

- (1) in a form prescribed by AMS;
- (2) by a printer with which AMS has an agreement and bond for such printing; and
- (3) on distinctive paper tinted in a manner specified in AMS’s agreement with the printer.

#### D. Details on the Printing of Paper Warehouse Receipts

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

- (1) order warehouse receipts on a form provided or by a method authorized by AMS;
- (2) proofread each order and review the warehouse receipts received from the printer for errors and omissions; and

(3) pay the printer in a timely manner.

E. Lost or Destroyed Paper Warehouse Receipts

- (1) The Warehouse Operator may issue a replacement warehouse receipt subject to the same terms and conditions and bearing on its face the number and the date of the original warehouse receipt.
- (2) Before issuing a replacement warehouse receipt, the Warehouse Operator must require the holder or lawful owner applying therefore to make and file with the Warehouse Operator the following:
  - (a) an affidavit showing (**each** of the following):
    - (i) that the holder or lawful owner is lawfully entitled to possess the original warehouse receipt;
    - (ii) that the holder or lawful owner has not negotiated or assigned the original warehouse receipt to another person or entity;
    - (iii) how the original warehouse receipt was lost or destroyed; and
    - (iv) if lost, that diligent efforts were made to find the warehouse receipt without success.
  - (b) an assurance, in the form of a bond or personal guarantee, for a period of not less than 6 years, equal to an amount two times the value of the dry beans represented by the lost or destroyed paper warehouse receipt. This assurance shall be in a form approved by AMS and conditioned to indemnify the Warehouse Operator against any loss sustained as a result of issuing a replacement warehouse receipt. The assurance may be (**any** of the following):
    - (i) a bond issued by a surety company. Such company must be authorized to do business and be subject to administration of process in a suit on the bond in the State in which the warehouse is located, unless a variance is granted by AMS;
    - (ii) a personal guarantee, made by at least two individuals who are residents of the State and each of whom owns real property therein having a value, in excess of all exemptions and encumbrances, equal to the amount of the bond; or
    - (iii) other type of assurance, as approved by AMS.

F. Canceled and Voided Paper Warehouse Receipts

- (1) The Warehouse Operator agrees to make available all canceled and voided original warehouse receipts for auditing, as requested by AMS.
- (2) All canceled warehouse receipts shall be defaced with the word "CANCELED" written in large, bold lettering and shall reflect the date canceled and instrument of cancellation (e.g. check number, contract number, return to storage, etc). The date of cancellation shall not precede the date shown on the original or replacement warehouse receipt that is in the possession of the Warehouse Operator.
- (3) Voided original warehouse receipts must be defaced with the word "VOIDED" written in large, bold lettering.

### 3. Electronic Warehouse Receipts (EWRs)

#### A. General

The Warehouse Operator, when choosing the option to issue EWRs instead of paper warehouse receipts for dry beans stored in the warehouse, agrees to (each of the following):

- (1) issue EWRs only through a provider approved by AMS;
- (2) inform AMS of the identity of the Provider at least 60 calendar days before issuing EWRs through that Provider. AMS may waive or modify this 60-day requirement as set forth under 7 CFR Part 735;
- (3) request and receive from AMS, prior to issuing any EWRs, a range of consecutive warehouse receipt numbers, which the Warehouse Operator shall use consecutively when issuing EWRs;
- (4) cancel EWRs only when the Warehouse Operator is the holder of the EWR(s);
- (5) correct information on the EWR in accordance with the applicable Provider Agreement;
- (6) receive written approval from AMS at least 30 calendar days before changing Providers. Upon receiving notification of such approval, the Warehouse Operator may request that the current Provider transfer the EWR data from its CFS to the CFS of the new approved Provider selected by the Warehouse Operator. The Warehouse Operator shall instruct the new Provider to notify through its CFS all holders of outstanding EWRs of the identity of the new Provider at least 30 calendar days before changing Providers, unless otherwise authorized by AMS. The Warehouse Operator shall pay all charges, including transfer charges, due the current Provider before transferring EWRs to the new Provider. The Warehouse Operator may change Providers only once a year, unless otherwise authorized by AMS; and
- (7) not ship dry beans represented by an EWR until it is canceled in the EWR Provider's CFS.

#### B. Rights and Obligations

The Warehouse Operator shall ensure that an issued EWR establishes the same rights and obligations with respect to dry beans as a paper warehouse receipt and that (each of the following applies):

- (1) the person identified as the holder of a EWR will be entitled to the same rights and privileges as the holder of a paper warehouse receipt;
- (2) only the current holder of the EWR may transfer the EWR to a new holder;
- (3) the identity of the holder shall be included as required information for every EWR;
- (4) only one person or entity shall be designated as an EWR holder at any one time;
- (5) an EWR may only be issued to replace an existing outstanding paper warehouse receipt if requested by the current holder of the paper warehouse receipt, and shall be issued only after the relevant paper warehouse receipt is surrendered and canceled;
- (6) an EWR holder has the option to authorize any other user of a Provider to act on the holder's behalf with respect to activities engaged in with the Provider. Such authorization shall be in writing, and be acknowledged and retained by the Provider; and
- (7) only the current EWR holder may request a paper warehouse receipt in lieu of an EWR with respect to an agricultural product.

### C. EWR Data Requirements

Every EWR, whether negotiable or non-negotiable, issued for dry beans stored in a USWA warehouse, in addition to complying with the requirements of Section 11 of the USWA and Section F - Warehouse Receipts, subsection 1 of this Agreement, shall embody **each** of the following within its terms:

- (1) the name of the Warehouse Operator and the designation, if any, of the warehouse facility;
- (2) the location of the warehouse in which the dry beans are stored;
- (3) the Warehouse Operator's license type and license number ("US" - designating the EWR as being issued by the USWA licensee - is to precede the EWR receipt number);
- (4) the CCC storage agreement code number, if applicable;
- (5) the issuance date of the EWR;
- (6) the consecutive number of the EWR;
- (7) the name of the current holder of the EWR;
- (8) the name of the previous holder from which the EWR was received (if applicable);
- (9) cancellation date (if the EWR has been canceled);
- (10) warehouse location where the EWR was issued (city and state);
- (11) a statement whether the dry beans received will be delivered to the holder, to a specified person or to their order;
- (12) dockage and foreign material, as applicable;
- (13) the rate of storage charges;
- (14) prepaid storage and handling charges, if applicable;
- (15) a description of the dry beans received, including the quantity, class, grade, and the standard or description in accordance with which such classification has been made.
  - (a) The grade stated on the EWR must be the weighted average of the numeric grades as determined by the inspector and as indicated on the applicable inspection certificate(s); however, if an appeal of the grade determination has been requested and obtained, the grade stated on such EWR shall be the final appeal grade.
  - (b) Except in the case of identity-preserved storage dry beans, if, at the request of the depositor, the Warehouse Operator issues an EWR omitting the statement of grade, such EWR shall state clearly and conspicuously the following statement: "Not graded on request of the depositor."
- (16) a statement that the warehouse receipt is issued subject to the USWA, the regulations, and this Agreement and its terms and conditions;
- (17) a statement of the amount of advances, if made, and of liabilities incurred regarding warehouse storage, handling and other charges claimed by the Warehouse Operator; however, if the precise amount of such advances made or of such liabilities incurred is unknown to the Warehouse Operator

- (or to the authorized agent who issues it) at the time the EWR is issued, it is sufficient to include a statement that advances have been made or liabilities incurred, as well as their purpose;
- (18) if issued showing the Warehouse Operator as owner, either solely or jointly in common with others, the fact of such ownership;
  - (19) such other terms and conditions within the limitations of the USWA and this Agreement as may be required by AMS or the Secretary;
  - (20) a statement of the Warehouse Operator's business organization type (e.g. sole proprietorship, corporation, partnership, limited liability company) and the name of the State whose laws govern that organization (e.g. "a Texas corporation");
  - (21) in the event the relationship existing between the Warehouse Operator and any depositor is not that of a strictly disinterested custodianship, a statement setting forth the actual relationship;
  - (22) a statement, conspicuously placed, that the dry beans are insured by the Warehouse Operator against loss or damage by fire, lightning, windstorm, cyclone, tornado, inherent explosion or other special peril risks;
  - (23) net weight of the dry beans;
  - (24) if the dry beans are identity-preserved, the words "identity-preserved" and the specific bin(s) or warehouse location of such dry beans;
  - (25) the terms "Non-Negotiable" or "Negotiable," as appropriate to the nature of the warehouse receipt;
  - (26) name of the person whose electronic signature is authorized for the EWR; and
  - (27) paper warehouse receipt number (if applicable).

### Section G – Service Licenses

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

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

##### 1. Warehouse Operator's Responsibility

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

- A. Have at least one person licensed to perform inspection, sampling, classifying and/or weighing of dry beans at the warehouse.
- B. Notify the Warehouse and Commodity Management Division when a person holding a service license:
  - (1) discontinues to provide service at the specific warehouse they serve; or
  - (2) is no longer employed by the Warehouse Operator.
- C. Post conspicuously, at a publicly accessible location at the warehouse, including the dry bean receiving area, a copy of the certificate of license or other AMS-approved evidence of licensing under the USWA for each person performing the service(s) at that location.

## 2. Applicant's Responsibility

The Applicant requesting a service license under the USWA:

- A. Must make application for a license to inspect, sample, classify, and/or weigh dry beans as directed by AMS. **Each** application shall:
  - (1) be signed by the applicant;
  - (2) be certified by a statement from the Warehouse Operator that the applicant is competent and authorized to perform the duties of a licensed inspector, sampler, classifier, and/or weigher;
    - (a) If the applicant is seeking a license to inspect, the Warehouse Operator or authorized agent shall certify that such applicant can correctly inspect, sample, and classify dry beans in accordance with the United States Standards or, in the absence of such standards, in accordance with standards accepted by AMS;
    - (b) If the applicant is seeking a license to weigh, the Warehouse Operator or authorized agent shall certify that such applicant can correctly weigh dry beans.
  - (3) furnish such additional information as requested by AMS.
- B. may be required to submit to an examination or test to demonstrate the ability to properly inspect, sample, classify, and/or weigh dry beans in accordance with the United States Standards; and
- C. make available for inspection the equipment used or to be used to perform such duties.

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

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

- A. Perform the requested services for which licensed when given dry beans to inspect, sample, classify, and/or weigh, under conditions that permit proper inspection, sampling, classifying, and/or weighing, without discrimination, as soon as practicable and upon reasonable terms.
- B. Make accessible to the depositor at the location of the licensed warehouse, a copy of the inspection certificate issued by the licensed inspector, as soon as possible after inspecting any dry beans, and not later than the close of business on the next business day following the performance of such duties, unless requested otherwise by the depositor.
- C. Permit any authorized individual to inspect or examine, on any business day during the usual and customary hours of business, the books, papers, records, and accounts relating to the performance of their duties under the USWA, and to assist any such authorized individual in the inspection or examination into the performance of the duties of such inspector, sampler, classifier and/or weigher licensed under the USWA.
- D. File and retain for a period of 6 years after December 31 of the year in which the documents were created, each paper or electronic inspection or weight certificate issued, and make such certificates accessible upon request to interested parties at the warehouse location where the dry beans are stored; and
- E. In addition to meeting the requirements in A through D of this part, the licensee shall be subject to suspension or revocation under conditions described in Section Q - Warehouse Operator Failures and Defaults – Remedies, as determined by AMS.



#### 4. Service License Format

Service licenses will be issued in a form or format determined by AMS.

### Section H - Inspection and Weight Certificates

Inspection and weight certificates may be in paper or electronic format. Proof copies of formats must be approved in advance by AMS.

#### 1. Inspection Certificates

- A. Each inspection certificate issued under the USWA shall be on a form approved by AMS and shall include the following information within its terms:
- (1) the caption “United States Warehouse Act, Bean 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 dry beans are stored or will be stored;
  - (4) whether the certificate represents dry beans moving into or out of the warehouse;
  - (5) the date the certificate is issued;
  - (6) the consecutive number of the certificate;
  - (7) the quantity of dry beans represented by the certificate;
  - (8) the class of dry beans represented by the certificate;
  - (9) the amount of foreign material and dockage, if applicable;
  - (10) the grade and condition of the dry beans, as determined by such duly licensed inspector, in accordance with the United States Standards and, in the case of dry beans for which no official standards of the United States are in effect, the standards or description in accordance with which such dry beans are inspected;
  - (11) the statement “Inspection not valid for purposes of the Agricultural Marketing Act”;
  - (12) a statement that the certificate is issued by an inspector licensed under the USWA and the regulations;  
and
  - (13) the signature of the licensed inspector who inspected and issued a grade on the dry beans.
- B. The inspection certificate may include other information consistent with the USWA or its regulations, if pre-approved by AMS.
- C. In lieu of a USWA inspection certificate an official certificate issued pursuant to the AMA on dry beans stored or to be stored in a warehouse licensed under the USWA will be acceptable for purposes of the USWA and its regulations.
- D. When the inspection is performed by FGIS official service providers and the information is included on the USWA inspection certificate, the Warehouse Operator is to insert the language, “**Inspection performed by an official service provider. Records on file**” on the inspection certificate in the area that would normally show the name of the service license holder who performed the actions. Any reference on a USWA inspection certificate to a specific official service provider is not allowed.

- E. The Warehouse Operator will retain and file any documentation (log) of inspection of the dry beans prepared by the official service provider from which the USWA inspection certificate was prepared.

## 2. Weight Certificates

- A. Each weight certificate issued under the USWA shall be on a form approved by AMS and shall include the following information within its terms:

- (1) the caption "United States Warehouse Act, Bean 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 dry beans are stored or to be stored;
- (4) a statement indicating whether the dry beans are weighed into or out of the warehouse;
- (5) the date the certificate is issued;
- (6) the consecutive number of the certificate;
- (7) the weight of dry beans represented by the certificate;
- (8) a statement that the certificate is issued by a weigher licensed under the USWA and the regulations;  
and
- (9) the signature of the licensed weigher.

- B. The weight certificate may include any other information consistent with the USWA or its regulations in this part, if pre-approved by AMS.

- C. In lieu of a USWA weight certificate, an official weight certificate issued pursuant to the AMA, on dry beans stored or to be stored in a warehouse licensed under the USWA, will be acceptable for purposes of the USWA and its regulations.

## 3. Inspection and Weight Certificates

The class, grade, and weight of any dry beans, ascertained by an inspector, sampler, classifier, and/or weigher licensed under the USWA may be stated on a certificate in compliance with the combined requirements of subsections 1 and 2 of this Section, provided the form of the certificate is pre-approved for this purpose by AMS.

### Section I - Determining Quality

#### 1. Official United States Standards

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

#### 2. Standards of Class, and Grade for Other Dry Beans

Until United States Standards are established for the class and grade of dry beans to be inspected, the grade of the dry beans will be stated, subject to the acceptance by AMS (any of the following):

- A. In accordance with the standards, if any, established by the State in which the warehouse is located; or

- B. In the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the dry bean industry generally in the locality in which the warehouse is located; or
- C. In the absence of the standards mentioned in parts A and B of this subsection, in accordance with any standards accepted for the purpose by AMS.

## Section J - Dry Bean Grading Appeals

### 1. Ability to Appeal

- A. No person licensed under the USWA will, directly or indirectly, deter, prevent, or attempt to deter or prevent any party from requesting an appeal of the results of an inspection of dry beans.
- B. No rule, regulation, bylaw, or custom of any market, board of trade, chamber of commerce, exchange, inspection department or similar organization, nor any contract, agreement or understanding, will be grounds for refusing to determine an appeal.

### 2. Appeal Procedure

The depositor or holder of the warehouse receipt or the Warehouse Operator may request an appeal of the grade of dry beans stored, to be stored, or transferred into a warehouse. If the original inspection and/or grade certificate was issued by an inspector licensed under or authorized by the AMA, the appeal, including the amount of fees, will be governed by the regulations issued under that authority; otherwise, the appeal, including fees, will be governed by this Agreement as determined by AMS.

### 3. Request for Appeal

- A. The Warehouse Operator agrees to make available to a depositor or holder of a warehouse receipt a split sample representative of dry beans delivered for storage, in accordance with authorized dry bean evaluation procedures, before the identity of the representative sample of dry beans has been lost, provided a written request is received from the depositor or holder by no later than the close of business on the first business day after being furnished the results of the original inspection.
- B. If an appeal is requested by the Warehouse Operator, notice must be given promptly to the owner of the dry beans. Oral notice may be made, if followed by written notice within two business days.
- C. A representative sample must be retained for third-party evaluation. The identity of that sample is not to be compromised until the appeal inspection results are determined.
- D. If the identity of the dry beans is preserved and if the parties are unable to agree on such a sample, a sample drawn by a duly licensed sampler, inspector, and/or grader in the presence of the interested parties shall be deemed binding. In no case is the sample to weigh less than 2,000 grams.

### 4. Appeal Samples

- A. For dry beans graded under the United States Standards, the appeal sample is to be secured and delivered to an office charged with providing official dry bean inspection services under the AMA. Procedures used to determine the grade of the dry beans will be as set forth in regulations issued under the AMA, as applicable. The sample is to be accompanied by (each of the following):
  - (1) a copy of the written request for appeal;
  - (2) the original dry bean inspection certificate upon which the appeal is based; and
  - (3) an agreement to pay the costs of such inspection, as prescribed by the AMA.

- B. For dry beans not graded under United States Standards because such standards have not been established, the party requesting the appeal is to apply directly to AMS for consideration. AMS's determination shall be binding on all interested parties.
- C. The sample of the dry beans subject to the appeal shall be submitted for inspection as soon as possible. The certificate representing the appeal inspection result will supersede the original inspection certificate. The original or a copy of the appeal inspection certificate is to be sent to the party requesting the appeal, with copies distributed to the depositor or holder of the warehouse receipt, the Warehouse Operator, and the licensed sampler and inspector executing the original certificate.

#### 5. Owner Not Compelled to Store Dry Beans

Nothing in this Agreement requires the owner or authorized agent of dry beans to store such dry beans with the Warehouse Operator after the appeal inspection. However, if the dry beans are stored, they shall be accepted for and delivered out of storage in accordance with the final grade determined through such appeal, and are subject to the Warehouse Operator's lawful tariff for storage, handling, and other charges.

### Section K - Licensing of Emergency Dry Bean Storage

1. The Warehouse Operator may, under certain conditions, license emergency storage space for commodities deemed storable by AMS.
2. The Warehouse Operator agrees to (**each** of the following):
  - A. Request and obtain licensing of emergency space and provide written justification that a need for emergency storage exists for the current crop year in the local area, including the exact location, class of dry beans, and quantity requested.
  - B. Receive authorization from AMS before using emergency storage space.
  - C. Store in facilities that are physically and operationally suitable for the proper storage of dry beans, as determined by AMS.
  - D. Meet all security, net worth, financial assurance, and insurance requirements as required in Sections C, D, and E of this Agreement.
  - E. Provide access to the emergency storage space for examination purposes.
  - F. Operate the emergency storage space in conjunction with their USWA-licensed warehouse.
  - G. Maintain separate inventory records of each commodity stored in emergency storage space, as well as accounting for such commodities in the DPR.
  - H. Provide written notification within 30 days of the date when all the dry beans stored in emergency space have been removed; and
  - I. Move dry beans into the USWA licensed warehouse by March 31 following initial licensing.
3. If the Warehouse Operator chooses to continue using the emergency storage space for company-owned dry beans after the final date, the Warehouse Operator agrees to (**each** of the following):
  - A. Remove that quantity of the dry beans from the DPR.
  - B. Not use the dry beans to cover the storage or warehouse-receipted obligations of the warehouse; and

- C. Not include that quantity of the dry beans in any USWA warehouse examination.
- 4. The licensing of emergency storage space does not relieve the Warehouse Operator of obligations under the USWA. The Warehouse Operator is responsible throughout the emergency storage authorized period for the quantity and quality of dry beans stored in emergency storage space to the same extent as liability for licensed warehouse storage space. All dry beans stored in approved emergency storage space are considered a part of the Warehouse Operator's commingled inventory during the authorized storage period.

#### **Section L - Dispute Resolution and Arbitration**

- 1. A person may initiate legal action in any district court of the United States concerning a claim for noncompliance or an unresolved dispute with respect to activities authorized under the USWA.
- 2. Any claim for noncompliance or an unresolved dispute between the Warehouse Operator or USWA Provider and another party with respect to activities authorized under the USWA may be resolved by the parties through mutually-agreed upon arbitration procedures.
- 3. In no case will AMS provide assistance or representation to parties involved in a court or arbitration proceeding arising with respect to activities authorized under the USWA and the regulations.

#### **Section M - Temporary Suspension**

AMS may temporarily suspend the USWA license of the Warehouse Operator prior to an opportunity for a hearing.

- 1. The grounds for temporary suspension imposed by AMS include, but are not limited to:
  - A. Violations of, failure to perform the duties specified, or failure to meet the requirements of the USWA, the regulations, and/or this Agreement.
  - B. Failure to maintain legal and operational control of the warehouse.
  - C. Indication or commission of a fraudulent act.
  - D. Incapacity or incompetence of the Warehouse Operator.
  - E. Participation in a field warehousing agreement.
  - F. Failure to make timely settlement and payment to depositors.
  - G. Any action by the Warehouse Operator that may place depositors and storage obligations at risk.
  - H. Failure to provide a safe work environment or noncompliance with safety regulations of the Occupational Safety and Health Administration.
  - I. Failure to ensure adequate security or protection of stored or handled dry beans from tampering or adulteration.
  - J. Failure to pay fees required under this Agreement.
  - K. Failure to provide financial assurance.
- 2. Upon temporary suspension, the Warehouse Operator will:
  - A. Not create further storage obligations without approval of AMS. Specifically:
    - (1) no USWA inspection and/or weight certificates are to be issued;

- (2) no warehouse receipts are to be issued; and
- (3) licenses to inspect, sample, classify and/or weigh dry beans shall be temporarily suspended.
- B. Not remove or deliver from inventory any stored dry beans without prior approval of AMS.
- C. Take corrective action within the time frame specified in the temporary suspension.
- D. Not represent the warehouse as licensed in good standing or perform the functions of a licensed USWA Warehouse Operator.
- E. Be notified:
  - (1) by mail, email, phone or fax of the suspension;
  - (2) of the reason for the suspension;
  - (3) of the fact of an on-going review of the situation;
  - (4) of the time period for expected compliance;
  - (5) whether public notice will be made of a temporary suspension and of subsequent revocation of the USWA license;
  - (6) that revocation of the USWA license may be anticipated for noncompliance; and
  - (7) that progression from temporary suspension to revocation may be appealed as presented in Section Q - Warehouse Operator Failures and Defaults - Remedies.

#### **Section N - Unjust Enrichment**

Upon a finding by AMS that the Warehouse Operator received profits from the sale and replacement of dry beans not owned by the Warehouse Operator, the Warehouse Operator shall, when instructed by AMS, pay to the general group of depositors a pro-rata share of those profits attributed to the amount of depositor-owned dry beans in-store. The amount of profit will be determined by first-in, first-out inventory method. The profit will be calculated by comparing the price at which the dry beans were sold versus the price of the replacement dry beans. Any losses resulting from the sale and replacement of depositor-owned dry beans shall be for the account and the responsibility of the Warehouse Operator, and are not to be offset against profits paid to the general group of depositors.

#### **Section O - Unearned Storage**

Upon a finding by AMS that the Warehouse Operator received storage charges from depositors during any period that the Warehouse Operator's inventory was less than the Warehouse Operator's total warehouse-receipted and non-warehouse-receipted storage obligations, the Warehouse Operator shall, when instructed by AMS, reimburse storage charges to depositors on a pro-rated basis for the period that the shortage existed.

#### **Section P - Fines and Penalties**

Warehouse Operators and their employees are subject to the provisions of criminal and civil fraud statutes that apply to making a false certification or statement, illegal conversion, or removal of stored dry beans from USWA-licensed space, fraudulent adjustments or corrections, and concealment of operational or financial condition. Such violations may be punishable by imprisonment, fines, and other penalties, including, but not limited to, the following: 18 U.S.C. §§ 286, 287, 371, 641, 651, 1001 and 1014; and 31 U.S.C. § 3729.

**Section Q - Warehouse Operator Failures and Defaults - Remedies**

1. AMS may initiate suspension and revocation of the Warehouse Operator's license and liquidation of dry bean storage in the event of (any of the following):
  - A. Failure to:
    - (1) perform services required under this Agreement;
    - (2) maintain minimum financial requirements;
    - (3) provide proper financial statements;
    - (4) provide financial assurance; or
    - (5) maintain legal and operational control of the warehouse.
  - B. Commission of a fraudulent act.
2. Suspension, revocation, and liquidation shall be conducted in accordance with the adverse determination rules in 7 CFR Part 735, which provide for a hearing before AMS.
3. The Warehouse Operator may request revocation of their license and, if appropriate, liquidation of obligations, in which case the USWA license will be revoked and liquidation accomplished, if appropriate.
4. Upon a finding of failure, the commission of a fraud, or at the Warehouse Operator's request, AMS may (take any of these actions):
  - A. Seize and take possession of:
    - (1) the control of the warehouse facility(ies), office(s), and/or dry bean inventories involved;
    - (2) any dry beans controlled by the Warehouse Operator in any manner;
    - (3) all books, papers, and property used in the operation of the warehouse;
    - (4) monetary or bartered proceeds of any unauthorized dry bean sale;
    - (5) any involved authorized or unauthorized conveyance and its contents; and/or
    - (6) any dry beans in transit.
  - B. Liquidate the dry beans contained within the warehouse or controlled by the Warehouse Operator and use the proceeds to satisfy valid dry bean claims as determined by AMS.
  - C. Recover from the Warehouse Operator necessary expenses incurred by AMS as a result of these seizure and liquidation procedures.
  - D. Require the Warehouse Operator to continue to provide, to the extent possible:
    - (1) all utility services;
    - (2) required insurance;
    - (3) resources and assistance in obtaining labor necessary to operate the facility(ies) until all inventories

- have been liquidated, and
- (4) equipment.
- E. Exercise a claim on the letter of credit or other financial assurances executed in the name of USDA or in favor of the United States, if applicable.
5. Should liquidation become necessary, the following is the order of distribution of available liquidated funds:
- A. Validated warehouse-receipted and unreceipted storage obligation claims, excluding company-owned, for:
- (1) commingled dry beans; and
- (2) dry beans segregated in storage because of special characteristics (may be joined with the other dry beans in-store).
- B. Disputed storage-obligation claims;
- C. Lien-holder claims for warehouse charges and warehouse-owned claims; and
- D. Claims for dry beans belonging to the Warehouse Operator or a Principal will be subordinate to all other claims.
6. If bankruptcy occurs, certain terms and conditions of this Agreement may be subject to the authority of a Federal Bankruptcy Court's jurisdiction regarding the disbursement of liquidated inventory proceeds and associated expenses and charges.

#### Section R - Fees

1. AMS is authorized to collect fees to cover the administration of the USWA-licensed warehouse activities. The schedule of fees is set by AMS.

Warehouse Operators shall pay:

- A. Annual fees. Fees are determined by computing capacity by location (as defined by AMS) and applying the Annual Schedule of Fees (see Fee Schedule on AMS/USWA Web Page). Annual fees are invoiced and paid prior to license issuance and annually thereafter. Fee changes will be published in the **Federal Register**.
- B. Licensing fees. Such fees are invoiced and payable for the following and are paid in advance of service:
- (1) original and amendment licensing actions, and
- (2) licenses to inspect, sample, classify, and/or weigh dry beans.
- C. Fees for additional and/or special warehouse examination services as noted.
- (1) reinstatement fees for suspended licenses are invoiced at the examination/inspection fee rate and may be required in advance of reinstating the license.
- (2) additional fees may be charged to the Warehouse Operator for examinations performed for non-compliance with the USWA, the regulations and/or this Agreement.
- (3) special services performed by USDA-AMS representatives and requested by the Warehouse Operator are available at an hourly rate which is approved by AMS. These services are available for scheduling and invoicing from AMS. (Please call for rates and services available and scheduling.)



2. Fees paid in excess of actual fees owed will be refunded to the Warehouse Operator.
3. All fees collected under this Agreement will be credited to the account that incurs the costs of administering the warehousing activities and are available without further appropriation and without regard to fiscal year limitations. A schedule of fees showing the fees described in this Section are detailed in a **Federal Register** notice.
4. Fees remaining unpaid will subject the Warehouse Operator to **suspension or revocation** of the license upon notification by AMS.

By signing this form, I (the Warehouse Operator) agree to all the terms and conditions set forth in the WA-406, Licensing Agreement for Dry Bean Warehouse Operators and the regulations found at 7 CFR Part 735 and the statute found at 7 U.S.C. § 241 *et seq.* I understand that failure to comply with the provisions set forth in this Agreement and the regulations found at 7 CFR Part 735 and the statute, USWA, found at 7 U.S.C. § 241 *et seq.* may result in suspension, revocation or liquidation.

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

Please sign this page and return to:

Warehouse and Commodity Management Division  
 Mail Stop 9148  
 Post Office Box 419205  
 Kansas City, Missouri 64141-6205  
 Phone: (816) 926-6474  
 Fax: (844) 930-0174

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

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0305. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.*

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

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](http://www.ascr.usda.gov/complaint_filing_cust.html) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov). USDA is an equal opportunity provider, employer, and lender.*