

## Farm Service Agency, USDA

## § 735.40

submitted by such warehouseman under the regulations in this part.

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

[29 FR 15720, Nov. 24, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

### § 735.37 Inspections and examinations of warehouses.

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

### § 735.38 Weighing of cotton; weighing apparatus.

(a) Before being stored in a licensed warehouse, all cotton shall be weighed at the warehouse by a licensed weigher, and the weight so determined shall be stated on the warehouse receipt. Point of origin weights may be used for single bale or lot stored cotton by agreement with the depositor. Any point of origin weights shown on a warehouse receipt will be the official warehouse bale or lot weight. Lot cotton tendered for storage on which a multiple bale warehouse receipt is issued must be maintained so as to preserve its individual and collective identity during storage and shipment, provided that if such lot is broken at the warehouse, for the issuance of new receipts, each bale shall be weighed at the warehouse by a licensed weigher before single bale warehouse receipts are issued.

(b) Each licensed warehouse shall be equipped with scales acceptable to the Department for weighing cotton into and out of the warehouse. The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for cotton stored in a licensed warehouse, shall be subject to examination by an officer or agent of

the Department designated by the Administrator for the purpose. If the Department shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight of any cotton for the purposes of the act and the regulations in this part.

[33 FR 14699, Oct. 2, 1968. Redesignated at 50 FR 1814, Jan. 14, 1985, as amended at 64 FR 54511, Oct. 7, 1999]

### § 735.39 Loose cotton.

Each warehouseman shall keep his warehouse reasonably free of loose cotton, except in a space or container separate and apart from other cotton.

### § 735.40 Excess storage.

(a) If at any time a warehouseman shall store cotton in his licensed warehouse in excess of the capacity thereof as determined in accordance with 7 CFR 735.12, such warehouseman shall so arrange the cotton as not to obstruct free access thereto and the proper operation of the sprinkler or other fire protection equipment provided for such warehouse, and shall immediately notify the Secretary of such excess storage, the reason therefor and the location thereof.

(b) A warehouseman who lacks space and desires to transfer at his own expense, identity preserved depositor stored cotton, for which receipts have been issued to another licensed warehouse may physically do so subject to the following terms and conditions:

(1) The transferring (shipping) warehouseman's accepted rules or schedule of charges must contain notice that the warehouseman may forward cotton deposited on an identity preserved bases with the written permission of the depositor under such terms and conditions as the Secretary may prescribe;

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

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all depositors at least equal to the requirements of this section;

(3) The shipping warehouseman must transfer all identity-preserved cotton in lots and must list on a Bill of Lading all forwarded bales by receipt number and weight. The receiving warehouseman shall promptly issue a non-negotiable warehouse receipt for each lot of cotton stored and shall attach a copy of the corresponding Bill of Lading to each receipt and return the receipt promptly to the shipping warehouseman. The receiving warehouseman will store each such lot intact, and will attach a header card to the lot showing the receipt number, number of bales, and a copy of the Bill of Lading with the individual tag numbers, marks, or identifiers to the stored lot. Such non-negotiable warehouse receipts issued for forwarded cotton shall have printed or stamped diagonally in large bold outline letters across the face of the receipt the words: "NOT NEGOTIABLE."

(4) The shipping warehouseman's bond shall be increased to consider the addition of the transferred cotton to the licensed capacity of the warehouse with the net asset requirements based on the total of the licensed capacity and the forwarded cotton (The bond amount need not be more than \$250,000 unless necessary to cover a deficiency in net assets to meet requirements. The receiving warehouseman must not incur storage obligations that exceed the licensed capacity of the receiving warehouse);

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

(6) The owner of cotton deposited for storage at the warehouse must make settlement and take delivery at the warehouse where the cotton was first deposited for storage, unless the owner of the cotton, with the consent of both the shipping warehouseman and the receiving warehouseman, elects to take

delivery at the warehouse to which cotton was transferred under this section;

(7) Nothing in this section diminishes the right of the owner of the cotton to receive or the obligation of the warehouseman of a licensed warehouse from which the product is transferred, to deliver to the owner the same cotton, identity preserved, called for by the warehouse receipt or other evidence of storage;

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

(9) If it is the shipping warehouseman's obligation by terms of the warehouse receipt or otherwise to insure the cotton subject to the transfer, he must in accordance with 7 CFR 735.23 keep such cotton insured in his own name or transfer the cotton only to a warehouse where the cotton is fully insured.

[Amdt. 2, 53 FR 27150, July 19, 1988, as amended at 64 FR 54511, Oct. 7, 1999]

**§ 735.41 Removal of cotton from storage.**

Except as may be permitted by law or the regulations in this part, a warehouseman shall not remove any cotton, for storage, from the licensed warehouse or a part thereof designated in the receipt for such cotton, if by such removal the insurance thereon will be impaired, without first obtaining the consent in writing of the holder of the receipt, and indorsing on such receipt the fact of such removal. Under no other circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, shall cotton be removed from the warehouse, and immediately upon any such removal the warehouseman shall notify the Administrator of such removal and the necessity therefor.

**§ 735.42 Storage of wet and fire-damaged cotton.**

A warehouseman shall not place any bale of cotton that is excessively wet in contact with any other cotton in the licensed warehouse. A warehouseman