

Farm Service Agency, USDA

§ 735.5

WAREHOUSE LICENSES

§ 735.3 Application forms.

Applications for licenses under sections 4 and 9 of the act and for amendments of licenses under section 5 of the act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Service, shall be in English, shall truly state the information therein contained, and shall be signed by the applicant. The applicant shall at any time furnish such additional information as the Secretary or the Administrator shall find to be necessary to the consideration of his application.

§ 735.3a All facilities to be licensed or exempted.

All facilities within the same city or town used for the storage of cotton by an applicant for a warehouse license must qualify for a license and be licensed under the act if the applicant is to be licensed to operate as a cotton warehouseman in such city or town, unless the facilities which are not to be covered by a license are exempted by the Secretary or his designated representative upon a finding that, due to the exercise of adequate controls by some independent agency over the operation of nonfederally licensed facilities, there would be no likelihood of interchange or substitution of cotton stored in such facilities with cotton stored in the federally licensed facilities. If all such facilities do not qualify for a license or for an exemption under this section, the applicant shall not be licensed under the act as a cotton warehouseman in the city or town in which the facilities in question are located. Each applicant for a warehouse license must apply for a license covering all facilities operated by him for the storage of cotton within the same city or town or for exemption as provided in this section. If a licensed cotton warehouseman acquires any additional cotton storage facilities within the same city or town in which his licensed warehouse is located, he shall file promptly an application for a license or an exemption of the additional facilities. No cotton storage facility acquired by a licensed cotton warehouseman, subsequent to the issuance

of his license, in the same city or town as his licensed facilities, shall be used for the storage of cotton until it qualifies for license and is licensed or is exempted as provided in this section. If any one of the licensed cotton storage facilities operated by a warehouseman in the same city or town becomes ineligible for a license at any time for any reason, it shall not thereafter be used for the storage of cotton until the condition making it ineligible is removed or an exemption is granted as provided in this section. The use for the storage of cotton by a licensed warehouseman of a facility which is in the same city or town as his licensed facilities and is neither licensed nor exempted, or other violation of the provisions of this section, shall be cause for suspension or revocation of any license issued to the warehouseman for the storage of cotton.

§ 735.4 Grounds for not issuing a license.

A license for the conduct of a warehouse, or any amendment to a license, under the regulations in this part, shall not be issued if it is found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of cotton; that the warehouseman does not possess a good reputation, or does not have a net worth of at least \$25,000, or is incompetent to conduct such warehouse in accordance with the act and the regulations in this part; or that there is any other sufficient reason within the intent of the act for not issuing such license. If all the facilities operated for the storage of cotton by the applicant within the same city or town are not to be licensed under the act, the applicant shall not be licensed as a cotton warehouseman with respect to any of such facilities, unless an exemption of the facilities which are not to be licensed is granted as provided in § 735.3a.

[29 FR 15720, Nov. 24, 1964. Redesignated at 50 FR 1814, Jan. 14, 1985, and amended at Amdt. 2, 53 FR 27148, July 19, 1988]

§ 735.5 Financial requirements.

(a) Each warehouseman conducting a warehouse licensed under the Act or for which application for a license

under the Act has been made must maintain complete, accurate, and current financial records which shall be available to the Secretary for review or audit at the Secretary's request.

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

(c) Each warehouseman conducting a warehouse licensed under these regulations shall have the financial statements required in paragraph (b) of this section audited or reviewed by an independent public accountant. The Secretary may, at his discretion, require an audited financial statement prepared by an independent certified public accountant. He may also, at his discretion, require an on-site examination and an audit by USDA personnel. Audits and reviews by independent certified public accountants and independent public accountants specified in this section must be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on such statements, if any, must be furnished along with the financial statements. Licensees who cannot immediately meet these requirements may apply to the Secretary for a temporary waiver of this provision. The Secretary may grant such waiver for a period not to exceed 180 days if the licensee can furnish evidence of good and substantial reasons therefor.

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

(1) Total net assets liable and available for the payment of any indebtedness arising from the conduct of the warehouse of at least the amount obtained by multiplying \$10.00 by the warehouse capacity in bales to a maximum of \$250,000 in each State; however, no person may be licensed or remain licensed as a warehouseman under this part unless that person has allowable net assets of at least \$25,000 in each State, (Any deficiency in net assets above the \$25,000 minimum may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 735.12(c) of this part); and

(2) Total current assets equal to or exceeding total current liabilities or evidence acceptable to the Secretary that funds will be and remain available to meet current obligations.

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

(f) Subject to such terms and conditions as the Secretary may prescribe and for the purposes of determining allowable assets and liabilities under paragraphs (d) and (e) of this section:

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

(2) Appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by a warehouseman to conform with paragraphs (b) and (c) of this section may be allowed if (i) prepared by independent appraisers acceptable to the Secretary and (ii) the assets are fully insured against casualty loss;

(3) Financial statements of a parent company which separately identifies the financial position of the warehouse as a wholly owned subsidiary and

which meets the requirements of paragraphs (b), (c), and (d) of this section may be accepted by the Secretary in lieu of the warehouseman meeting such requirements; and

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

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

(h) If a warehouseman files a bond in the form of a certification of participation in an indemnity or insurance fund as provided for in § 735.11(b), the certification may only be used to satisfy any deficiencies in assets above \$25,000.

(i) When a warehouseman files a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are unconditionally guaranteed as to both interest and principal by the United States as provided for in § 735.11(c):

(1) The obligation deposited shall not be considered a part of the warehouseman's assets for purposes of § 735.5(d), (1) and (2);

(2) A deficiency in total allowable net and current assets as computed for § 735.5(d), (1) and (2) may be offset by the licensed warehouseman furnishing a corporate surety bond for the difference;

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

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

Nothing in these regulations shall prohibit a person other than the licensed warehouseman from furnishing such bond or additions thereto on behalf of and in the name of the licensed ware-

houseman subject to provisions of § 735.11(c).

[Amdt. 2, 53 FR 27148, July 19, 1988]

§ 735.6 License shall be posted.

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

§ 735.7 Suspension or revocation of warehouse licenses.

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

(a) Does not have a net worth of at least \$25,000;

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

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

(d) Has ceased to conduct such licensed warehouse;

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

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

(g) Is operating in the same city or town in which his licensed warehouse facilities are located, any facility for storage of cotton which is not covered by a license or an exemption as provided in § 735.3a; or

(h) Has in any other manner violated or failed to comply with any provision