

§ 736.37

depositor thereof or the holder of the receipt therefor, as the case may be.

§ 736.37 System of accounts.

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

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

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

§ 736.38 Reports required.

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

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

7 CFR Ch. VII (1-1-02 Edition)

submitted by such warehouseman under the regulations in this part.

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

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

§ 736.39 Inspections; examination of warehouse.

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

§ 736.40 Care of grain in licensed warehouses.

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

§ 736.41 Care of other grain and other commodities.

If, at any time, a warehouseman shall handle or store grain otherwise than as a licensed warehouseman, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise care with respect to it, as not to endanger the grain in his custody as a warehouseman or impair the insurance thereof or his ability to meet his obligations and perform his duties under the act and the regulations in this part.

§ 736.42 Excess storage.

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

excess storage, the reason therefor, and the location thereof.

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

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

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

(3) Non-negotiable warehouse receipts shall be obtained promptly by the shipping warehouseman from the receiving warehouseman for all transferred grain. Such receipts shall have printed or stamped in large bold or outline letters diagonally across the face and covering the face from corner to corner the words "NOT NEGOTIABLE". Receipts are not valid for collateral purposes. They shall be retained by the shipping warehouseman to be presented to and used by Department examiners in lieu of an on-site inventory. The grain covered by such receipts is not the property of either the receiving or shipping warehouseman but held in trust by both solely for the benefit of the depositors whose bailed grain was transferred individually or collectively and the depositor or the depositor's transferee retains title thereto.

(4) The shipping warehouseman's bond shall be increased to consider the addition of the transferred grain to the licensed capacity of the warehouse with the net asset requirements based on the total of the licensed capacity

and the forwarded grain. The bond amount need not be more than \$500,000 unless necessary to cover a deficiency in net assets to meet requirements. The receiving warehouseman shall not incur storage obligations that exceed the licensed capacity of his warehouse.

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

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

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

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

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

(c) A warehouseman may transfer stored grain for which receipts have not and are not to be issued to another

§ 736.43

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

[52 FR 8057, Mar. 16, 1987]

§ 736.43 Removal of specially stored grain.

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

§ 736.44 Grades and weights; bulk grain.

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

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

§ 736.45 Storage of identity-preserved grain.

Upon acceptance for storage of bulk grain the identity of which is to be preserved, the warehouseman shall store such grain in a bin or bins, a compartment or compartments, or other con-

7 CFR Ch. VII (1-1-02 Edition)

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

§ 736.46 Sacked grain.

Each warehouseman shall keep sacked grain stored in an orderly manner so as to permit easy access to all lots and to facilitate inspecting, sampling, counting, and identification of each lot.

§ 736.47 Warehouses to be kept clean.

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

§ 736.48 Delivery of fungible grain.

Except as may be provided by law or the regulations in this part, each warehouseman: (a) Upon proper presentation of a receipt for any grain other than identity-stored grain, and which grain has not at the request of the depositor or lawful holder of the receipt covering such grain or otherwise as permitted by law or the regulations in this part, been dried or otherwise conditioned by such warehouseman, and upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt grain of the grade and quantity named in such receipt; and (b) upon proper presentation of a receipt for any grain the identity of which was to have been preserved during the storage period, and upon payment or tender of all advances and legal charges, shall deliver to the person lawfully entitled thereto, the identical grain so stored in his warehouse.