

§ 736.111

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

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

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

§ 736.111 Terminal markets.

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

7 CFR Ch. VII (1-1-98 Edition)

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

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

PART 737—TOBACCO WAREHOUSES

DEFINITIONS

- Sec.
737.1 Meaning of words.
737.2 Terms defined.

WAREHOUSE LICENSES

- 737.3 Application form.
737.4 Grounds for not issuing license.
737.5 Net assets.
737.6 Posting license.
737.7 Suspension or revocation of license.
737.8 Return of suspended or revoked license.
737.9 Lost or destroyed warehouse license.
737.10 Unlicensed warehousemen must not represent themselves as licensed.

WAREHOUSE BONDS

- 737.11 Bond required; time of filing.
737.12 Basis of amount of bond; additional amounts.
737.13 Amendment to license.
737.14 New bond required each year.
737.15 Approval of bond.

WAREHOUSE RECEIPTS

- 737.16 Form.
737.17 Copies of receipts.
737.18 Lost or destroyed receipts; bond.
737.19 Printing of receipts.
737.20 Partial delivery of tobacco.
737.21 Return of receipts before delivery of tobacco.
737.22 Nonnegotiable receipts.
737.23 Persons authorized to sign receipts.
737.24 Receipts; basis for issuance.
737.25 Omission of grade; no compulsion by warehouseman.

DUTIES OF LICENSED WAREHOUSEMAN

- 737.26 Insurance; requirements.
737.27 Duties re insurance and bonding companies.
737.28 Records; safe keeping.
737.29 Warehouse charges.
737.30 Business hours.
737.31 Packaging tobacco.
737.32 Clean warehouse.
737.33 Package identification.
737.34 Package arrangement.
737.35 Care of stock and equipment.
737.36 Care of other commodities.
737.37 Removal of tobacco in storage.
737.38 Handling and storing; care.

Farm Service Agency, USDA

§ 737.2

- 737.39 Tobacco out of condition.
- 737.40 System of accounts.
- 737.41 Reports; copies.
- 737.42 Canceled receipts; auditing.
- 737.43 Examination of warehouses.
- 737.44 Weighing apparatus.
- 737.45 Licensee preferred for service.
- 737.46 Reporting fire losses.
- 737.47 [Reserved]

FEES

- 737.48 License fees.
- 737.49 Warehouse annual and inspection fees.
- 737.50 Advance deposit.
- 737.51 Return of excess deposit.

LICENSED SAMPLES, INSPECTORS, GRADERS, AND WEIGHER

- 737.52 Applications; samplers', inspectors', graders', and weighers'.
- 737.53 Examination.
- 737.54 Posting of license.
- 737.55 Proper discharge of duties.
- 737.56 Official samples; sample tags and seals.
- 737.57 Inspection certificate; form.
- 737.58 Grade certificate; form.
- 737.59 Weight certificate; form.
- 737.60 Combined certificate.
- 737.61 Issuance of certificates.
- 737.62 Type, grade, form, or condition; statement.
- 737.63 Licensees to permit and assist in examinations.
- 737.64 Suspension or revocation of licenses.
- 737.65 Return of suspended, revoked, terminated licenses.
- 737.66 Lost or destroyed licenses.
- 737.67 Reports.
- 737.68 Unlicensed persons; misrepresentation.

TOBACCO CLASSIFICATION

- 737.69 Type, grade, form, or condition; statement.
- 737.70 Standards to be used.
- 737.71 Type, grade, form, or condition.
- 737.72 Type, grade, and form; statement.
- 737.73 Statement of condition.

APPEAL ON SAMPLING OR CLASSIFICATION OF TOBACCO

- 737.74 New receipts; expenses.

MISCELLANEOUS

- 737.75 Bonds required; re State warehouses.
- 737.76 Publications.
- 737.77 Violations to be reported.
- 737.78 Procedure in hearings.
- 737.79 One document and one license to cover several products.
- 737.80 Assets and bond; combination warehouses.
- 737.81 Amendments.

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

SOURCE: SRA, BAE 129, Revised, 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

EDITORIAL NOTE: Nomenclature changes to part 737 appear at 62 FR 33540, June 20, 1997.

CROSS REFERENCE: For regulations under the Tobacco Inspection Act, see 7 CFR part 29 of this chapter.

DEFINITIONS

§ 737.1 Meaning of words.

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

§ 737.2 Terms defined.

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

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

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

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

(d) *Designated representative*. The Administrator.

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

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

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

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

(i) *Warehouse*. Unless otherwise clearly indicated by the context, any suitable building, structure, or other protected inclosure in which tobacco is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction

§ 737.3

of the United States, in which tobacco is or may be stored and for which a license has been issued under the act.

(j) *Warehouseman*. Unless otherwise clearly indicated by the context, any person lawfully engaged in the business of storing tobacco and holding a warehouse license.

(k) *License*. A license issued under the act by the Secretary.

(l) *Type*. Any one of the main classes of tobacco having certain peculiar characteristics which will permit of its being divided into a single system of grades.

(m) *Grade*. Any one of the divisions of a type, which may be a combination of any or all of the four factors, group, quality, color, and length.

(n) *Form*. The designation of the stage of preparation of tobacco, such as unstemmed, stemmed, stems, etc.

(o) *Condition*. Any state of tobacco which is not covered by form or grade and which has a material bearing on its value, including its keeping quality.

(p) *Sampler*. A person licensed under the act by the Secretary to sample and to certificate or tag and seal samples of tobacco drawn by him under the act.

(q) *Inspector*. A person licensed under the act by the Secretary to inspect and to certificate the keeping quality of the tobacco in addition to the performance of the duties of a sampler.

(r) *Grader*. A person licensed under the act by the Secretary to grade and to certificate the type, grade, form, and condition of tobacco.

(s) *Weigher*. A person licensed under the act by the Secretary to weigh and certificate the weight of tobacco.

(t) *Package*. A hogshead, tierce, case, or other unit.

(u) *Official sample*. A sample of a package of tobacco drawn, tagged, and prepared by a sampler in accordance with §§ 737.55 through 737.56.

(v) *Receipt*. A warehouse receipt.

(w) *State*. A State, Territory, or District of the United States.

[SRA, BAE 129, rev., 7 FR 6806, Aug. 29, 1942, as amended at 13 FR 8729, Dec. 30, 1948. Redesignated and amended at 50 FR 1814, Jan. 14, 1985]

7 CFR Ch. VII (1–1–98 Edition)

WAREHOUSE LICENSES

§ 737.3 Application form.

Applications for licenses and for amendments to licenses under the act shall be made to the Secretary upon forms prescribed for the purpose and furnished by the Service, 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 Department may find necessary to a proper consideration of his application.

§ 737.4 Grounds for not issuing license.

A license for the conduct to a warehouse shall not be issued if it be found by the Secretary, or his designated representative that the warehouse is not suitable for the proper storage of tobacco, that the warehouseman is insolvent 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 purposes of the act for not issuing such license.

§ 737.5 Net assets.

Each warehouseman conducting a warehouse licensed, or for which application for license has been made, shall have and maintain, above all exemptions and liabilities, net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least \$5 per 1,000 pounds of the maximum number of pounds of tobacco that the warehouse will accommodate when stored in the manner customary to the warehouse, as determined by the Administrator, except that the amount of such assets shall not be less than \$5,000 and need not be more than \$100,000. In case such warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, such warehouses shall be deemed to be one warehouse for the purposes of the assets required under this section. For the purposes of this section only, paid-in capital stock, as such, shall not be considered a liability. A deficiency in

such assets may be supplied by an increase in the amount of the licensed warehouseman's bond in accordance with § 737.12(b).

§ 737.6 Posting license.

Immediately upon receipt of his license or of any amendment thereto 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 such warehouseman are delivered to depositors.

§ 737.7 Suspension or revocation of license.

Pending investigation, the Secretary, or his designated representative, whenever he deems necessary, may suspend a warehouseman's license temporarily without hearing. Upon written request and a satisfactory statement of reasons therefor, submitted by a warehouseman, the Secretary or his designated representative, may, without hearing, suspend or revoke the license issued to such warehouseman. The Secretary, or his designated representative, may, after opportunity for hearing has been afforded in the manner prescribed in this section, revoke a license issued to a warehouseman when such warehouseman (a) is bankrupt or insolvent, (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, or (e) has in any other manner become nonexistent or incompetent or incapacitated to conduct the business of the warehouse. Whenever any of the conditions mentioned in paragraphs (a) through (e) of this section shall come into existence it shall be the duty of the warehouseman to notify immediately the Administrator of the existing condition. Before a license is revoked for any violation of or failure to comply with any provision of the act or of the regulations in this part or upon the ground that unreasonable or exorbitant charges have been made for services rendered, the warehouseman involved shall be furnished by the Secretary, or by his designated representative, a

written statement specifying the charges and shall be allowed a reasonable time within which he may answer the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 737.78.

§ 737.8 Return of suspended or revoked license.

If a license issued to a warehouseman terminates or is suspended or revoked by the Secretary or by his designated representative it shall be returned to the Secretary when requested. At the expiration of any period of suspension of such license, unless it be in the meantime revoked, the dates of the beginning and termination of the suspension shall be endorsed thereon, it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as prescribed in § 737.6.

§ 737.9 Lost or destroyed warehouse license.

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

§ 737.10 Unlicensed warehousemen must not represent themselves as licensed.

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

WAREHOUSE BONDS

§ 737.11 Bond required; time of filing.

Each warehouseman applying for a warehouse license under the act shall, before such license is granted, file with the Secretary or his designated representative a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall:

Faithfully perform during the period of 1 year commencing _____, or until the termination of said license(s) in the event of termination prior to the end of the 1-year period, all obligations of a licensed warehouseman under the terms of the Act and regulations thereunder relating to the above-named products; and

Faithfully perform during said 1-year period and thereafter, whether or not said warehouse(s) remain(s) licensed under the Act, such delivery obligations and further obligations as a warehouseman as exist at the beginning of said 1-year period or are assumed during said period and prior to termination of said license(s) under contracts with the respective depositors of such products in the warehouse(s);

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

[28 FR 5637, June 8, 1963. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.12 Basis of amount of bond; additional amounts.

(a) Exclusive of any amount which may be added in accordance with paragraphs (b) and (c) of this section, the amount of such bond shall be at the rate of \$5 per 1,000 pounds of the maximum number of pounds of tobacco that the warehouse will accommodate when stored in the manner customary to the warehouse, as determined by the Administrator, but not less than \$5,000 nor more than \$50,000. In case a warehouseman has applied for licenses to conduct two or more warehouses in the same State, the assets applicable to all of which shall be subject to the liabilities of each, and shall desire to give a single bond meeting the requirements of the act and the regulations in this part for the said warehouses, such warehouses shall be deemed to be one warehouse for the purposes of the bond required under §§ 737.11 through 737.15.

(b) In case of a deficiency in net assets under § 737.5 there shall be added to the amount ascertained in accord-

ance with paragraph (a) of this section an amount equal to such deficiency.

(c) If the Secretary, or his designated representative finds the existence of conditions warranting such action, there shall be added to the amount ascertained in accordance with paragraphs (a) and (b) of this section a further amount, fixed by him to meet such conditions.

§ 737.13 Amendment to license.

If an application is made under § 737.3 for an amendment to a license and no bond previously filed by the warehouseman under §§ 737.11 through 737.15 covers obligations arising during the period of such amendment, the warehouseman shall, when notice has been given by the Secretary, or his designated representative that his application for such modification or extension will be granted upon compliance by such warehouseman with the act, file with the Secretary, within a time, if any, fixed in such notice, a bond complying with the act, unless bond in sufficient amount has been filed since the filing of such application. In the discretion of the Secretary, or his designated representative, a properly executed instrument in form approved by him, amending, extending, or continuing in force and effect the obligations of a valid bond previously filed by the warehouseman and otherwise complying with the act and the regulations in this part, may be filed in lieu of a new bond.

§ 737.14 New bond required each year.

Whenever, a license has been issued for a longer period than 1 year, such license shall not be effective beyond 1 year from its effective date unless the warehouseman shall have filed a new bond in the required amount with, and such bond shall have been approved by the Secretary or his designated representative prior to the date on which that license would have expired had it been issued for but 1 year, subject to the provisions of § 737.13.

§ 737.15 Approval of bond.

No bond, amendment, or continuation thereof shall be deemed accepted for the purposes of the act and the regulations in this part until it has been

approved by the Secretary or his designated representative.

WAREHOUSE RECEIPTS

§ 737.16 Form.

(a) Every receipt, whether negotiable or nonnegotiable, issued for tobacco stored in a licensed warehouse shall, in addition to complying with the requirements of section 18 of the act, embody within its written or printed terms the following: (1) The name of the warehouseman and the designation, if any, of the warehouse, (2) the license number of the warehouseman, (3) the number of the bonded compartment, if any, in which the tobacco is stored, (4) a statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws, (5) in the event the relationship existing between the warehouseman and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship, (6) the identification number given to each package in accordance with § 737.33, (7) a statement, conspicuously placed, indicating whether the tobacco is insured by the warehouseman, and, if insured, to what extent against loss or damage by fire, lightning, or tornado, and (8) the words "Negotiable" or "Not negotiable", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.

(b) Every receipt, whether negotiable or nonnegotiable, issued for tobacco stored in a warehouse shall specify a period, not exceeding 3 years, for which the tobacco is accepted for storage under the act and the regulations in this part, but upon demand and the surrender of the receipt by the lawful holder thereof at or before the expiration of the specified period, the warehouseman, so far as the available capacity of his warehouse then permits and upon such lawful terms and conditions as may be granted by him at such time to other depositors of tobacco in the warehouse, if he then continues to act as a licensed warehouseman, may either extend the original receipt by making an appropriate notation thereon or issue a new receipt for a further specified period not exceeding 3 years,

provided it is actually determined by a licensed inspector that the tobacco has not deteriorated and that it is in proper condition for further storage.

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

(d) Whenever the type, grade, form, or condition is required to be or is stated in a receipt for tobacco stored in a licensed warehouse, it shall be stated in accordance with § 737.69. Whenever the grade is stated in such receipt, the type, form, and condition also must be stated.

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

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

[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.17 Copies of receipts.

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

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

[29 FR 13369, Sept. 26, 1964, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.18 Lost or destroyed receipts; bond.

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

(b) Before issuing such duplicate receipt the warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman: (1) An affidavit showing that he is lawfully entitled to the possession of the original receipt, that he has not negotiated or assigned it, how the original receipt was lost or destroyed, and, if lost, that diligent effort has been made to find the receipt without success, and (2) a bond in an amount double the value, at the time the bond is given, of the tobacco represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, or his designated representative, shall be conditioned to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and shall have as surety thereon preferably a surety company which is authorized to do business and is subject to service of process in a suit on the bond in the State in which the warehouse is located, or at least two individuals who are residents of such State and each of whom owns real property therein having a value in excess of all exemptions and encumbrances, equal to the amount of the bond.

§ 737.19 Printing of receipts.

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

- (a) In a form prescribed by the Administrator,
- (b) Upon distinctive paper or card stock specified by the Administrator,
- (c) Printed by a printer with whom the United States has a subsisting

agreement and bond for such printing, and

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

[62 FR 33540, June 20, 1997]

§ 737.20 Partial delivery of tobacco.

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

§ 737.21 Return of receipts before delivery of tobacco.

Except as permitted by law or by the regulations in this part, a warehouseman shall not deliver tobacco for which he has issued a negotiable receipt until the receipt has been returned to him and canceled; and shall not deliver tobacco for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written acknowledgment thereof. Before delivery is made of the last portion of a lot of tobacco covered by a nonnegotiable receipt, the receipt itself shall be surrendered.

§ 737.22 Nonnegotiable receipts.

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

§ 737.23 Persons authorized to sign receipts.

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

§ 737.24 Receipts; basis for issuance.

Before issuing any receipt under the act each warehouseman shall, unless he has personally weighed, inspected and graded, if graded, a lot of tobacco, first obtain either a copy of or the original weight certificate, and inspection and/or grade certificate, if any, covering said lot of tobacco and said weight, inspection and grade certificate shall be filed as a permanent record in the warehouseman's office when the receipt is issued. The number of the warehouse receipt issued for the tobacco covered by such certificate or certificates shall be written on the certificate or certificates before filing. Such certificates shall be retained, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which the certificates are issued.

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

[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.25 Omission of grade; no compulsion by warehouseman.

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

DUTIES OF LICENSED WAREHOUSEMAN

§ 737.26 Insurance; requirements.

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

(b) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 737.6 and at such other place as the Administrator or his representative may from time to time designate, a notice stating briefly the conditions under which tobacco will be insured against loss or damage by fire, lightning, or tornado.

(c) Each warehouseman shall promptly take such steps as may be necessary and proper to collect any moneys which may become due under contracts of insurance entered into by him upon tobacco stored in his warehouse, and shall, as soon as collected, promptly pay to the persons concerned any portion of such moneys which they may be entitled to receive from him.

§ 737.27 Duties re insurance and bonding companies.

Each warehouseman, in accordance with his contracts with insurance and bonding companies for the purpose of

meeting the insurance and bonding requirements of the regulations in this part, shall pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

§ 737.28 Records; safe keeping.

Each warehouseman shall provide a metal fireproof safe, a fireproof vault, or a fireproof compartment in which he shall keep, when not in actual use, all records, books, and papers pertaining to the licensed warehouse, including his current receipt books, unissued receipt blanks, copies of receipts issued, and canceled receipts, except that with the written approval of the Administrator, or his representative, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep such records, books, and papers in some other place of safety. Each canceled receipt shall be retained by the warehouseman for a period of six years after December 31 of the year in which the receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouseman knows to be pending, or as may be required by the Administrator in particular cases to carry out the purposes of the act. Canceled receipts shall be arranged by the warehouseman in numerical order and otherwise in such manner as shall be directed, for purposes of audit, by authorized officers or agents of the Department of Agriculture.

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

[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 22 FR 1629, Mar. 14, 1957; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.29 Warehouse charges.

A warehouseman shall not make any unreasonable or exorbitant charge for services rendered. Before a license to conduct a warehouse is granted the warehouseman shall file with the Service a copy of his rules and a schedule of charges to be made by him if licensed. Before making any change in such

rules or schedule of charges he shall file with the Service a statement in writing showing the proposed change and the reasons therefor. Each warehouseman shall keep exposed conspicuously in the place prescribed by § 737.6, and at such other place, accessible to the public, as the Administrator or his representative may from time to time designate, a copy of his current rules and schedules of charges.

§ 737.30 Business hours.

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

(b) In case the warehouse is not to be kept open as required by paragraph (a) of this section, the notice posted as prescribed in that paragraph shall state the period during which the warehouse is to be closed and the name of an accessible person, with the address where he may be found, who shall be authorized to deliver tobacco stored in such warehouse, upon lawful demand and proper compliance with the regulations in this part.

§ 737.31 Packaging tobacco.

(a) A warehouseman shall not receive for storage in his warehouse any tobacco that is not properly packaged.

(b) A warehouseman shall return to the package from which it is taken all the tobacco drawn for the selection of a sample, except the portion used for such sample.

§ 737.32 Clean warehouse.

(a) Each warehouseman shall keep his warehouse clean and free from trash, rubbish, and scattered tobacco. He shall also exercise every precaution to keep his warehouse free of rats or other pests.

(b) When in the opinion of the Administrator or his representatives it may appear necessary, it shall be the duty of each licensed warehouseman to fumigate thoroughly his licensed warehouse with such chemicals as may be approved by the Administrator for that purpose.

§ 737.33 Package identification.

A warehouseman shall mark, stencil, or tag each package of tobacco received for storage in his warehouse with a number by which the identity of such package will be preserved. Such numbers shall be in numerical sequence or any series of numerical sequences approved by the Administrator or his representative, shall be made with some durable substance, and shall be clear and legible. If tags are used they shall be made of substantial material and securely attached to the packages.

§ 737.34 Package arrangement.

(a) A warehouseman shall arrange the tobacco stored in his warehouse so that each package of each depositor can be readily removed for inspecting, weighing, or delivering, and he shall arrange each package of tobacco in his warehouse so that the identification number thereon required by § 737.33 is visible and readily accessible, but when the Administrator shall find that it is not practicable to arrange each package so that the identification numbers are visible and accessible, he may authorize the warehouseman to arrange the packages of tobacco in rows and keep in the warehouse a card or chart upon which shall be clearly shown the identification number of each package stored in each row. Such authorization may be withdrawn at any time that the warehouseman fails to observe this requirement or to keep his record current.

(b) If, at any time, a warehouseman shall be offered tobacco in such quantity for storage so as to exceed the capacity of his warehouse, as shown in his license, he shall not accept such tobacco until he has first secured authority through an amended license, and after such authority has been granted the warehouseman shall continue to arrange the tobacco in accordance with

paragraph (a) of this section, and so as not to obstruct free access to the tobacco and the proper use of sprinkler or other fire protection equipment provided for the warehouse.

§ 737.35 Care of stock and equipment.

Each warehouseman shall at all times, including any period of suspension of his license, exercise such care in regard to tobacco in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. He shall see that the sprinkler or other fire protection equipment, if any, provided for his warehouse is maintained in proper working order.

§ 737.36 Care of other commodities.

If, at any time, a warehouseman shall handle tobacco other than for storage, or shall handle or store any other commodity, he shall so protect the same, and otherwise exercise such care with respect to it, as not to endanger the tobacco in his custody as a warehouseman or impair his ability to meet his obligations and perform his duties under the act and the regulations in this part. If the warehouseman shall store commodities other than those for which he is licensed, a non-licensed receipt shall be issued, which shall contain in its terms a provision that such commodities are accepted for storage only until such time as the space which they may occupy may be needed for products for the storage of which the warehouseman is licensed. Under no circumstances shall any commodities for the storage of which the warehouseman is not licensed be stored if the storage of such commodities might adversely affect the commercial value of, or impair the insurance on, tobacco covered by licensed receipts.

§ 737.37 Removal of tobacco in storage.

Except as permitted by law or the regulations in this part, a warehouseman shall not remove any tobacco in storage from the part of the warehouse shown in the receipt to another part covered by the license, or to any other licensed warehouse, without first securing the receipt and indorsing on it the fact and date of such removal and making an identical indorsement on

the copy of the original receipt. If the insurance on any tobacco would be affected by such removal, prior to removal the warehouseman shall obtain the consent in writing of the holder of the receipt. In the event it should be necessary for purposes of proper sampling and inspecting to move temporarily tobacco from the licensed warehouse, or licensed compartment shown on the outstanding receipt to another licensed warehouse or licensed compartment, removal for such purpose may be made without recalling the outstanding receipt upon compliance with the following conditions:

(a) That such tobacco will be moved only upon specific instructions of the depositor of the tobacco when title to the tobacco remains in him, or of the holder of the receipt, such instructions to be reduced to writing and filed by the warehouseman with his other warehouse records. Said instructions shall show by marks or numbers the specific tobacco to be moved, the warehouse or compartment from and to which the tobacco is to be moved, the date of removal and upon return to the warehouse or compartment from which removed the warehouseman shall indicate the date of return.

(b) That said tobacco so removed shall be fully covered by insurance against loss by fire, lightning, tornado, or theft both while in transit to and from the licensed warehouse or licensed compartment shown in the outstanding receipt and while in the warehouse in which it is being sampled and inspected.

(c) That no such removal from one licensed warehouse or licensed compartment to another licensed warehouse or licensed compartment shall take place while Department examiners are engaged in making inspections except as the chief of the inspection party may approve.

Under no other circumstances, unless it becomes absolutely necessary to protect the tobacco, shall tobacco covered by receipts issued under the act be removed from a warehouse, except as provided in § 737.21. In case it becomes necessary to remove tobacco from a warehouse prior to the surrender of the receipts, the warehouseman immediately upon such removal, shall notify

the Service of such removal and the necessity therefor.

§ 737.38 Handling and storing; care.

A warehouseman shall not handle or store tobacco in such a manner as will injure or damage the tobacco or the packages containing the tobacco.

§ 737.39 Tobacco out of condition.

(a) If the warehouseman, with the approval of a licensed inspector or grader shall determine that any tobacco is deteriorating and that such deterioration can not be stopped, the warehouseman shall give immediate notice of the fact in accordance with paragraphs (b) and (c) of this section.

(b) Such notice shall state: (1) The warehouse in which the tobacco is stored; (2) the actual condition of the tobacco as nearly as can be ascertained, and the reason, if known, for such condition; (3) the outstanding receipts covering the tobacco out of condition, giving the number and date of each such receipt and the type, grade, form, condition, and weight of the tobacco as stated in each such receipt; and (4) that such tobacco will be delivered upon the return and surrender of the receipts therefor.

(c) A copy of such notice shall be delivered in person or shall be sent by mail (1) to the persons holding the receipts, if known to the warehouseman; (2) to the person who originally deposited the tobacco; (3) to any other persons known by the warehouseman to be interested in the tobacco; and (4) to the Administrator. Public notice shall also be given by posting a copy of such notice at the place where the warehouseman is required to post his license. A copy of such notice shall be kept as a record of the warehouse. If the holders of the receipts and the owners of the tobacco are known to the warehouseman and cannot, in the regular course of the mails, be reached within 36 hours, the warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone at their expense.

(d) Any person financially interested in any tobacco or the receipt covering such tobacco stored in a licensed warehouse may, in writing, notify the warehouseman of the fact of his interest,

and such warehouseman shall keep a record of that fact. If such person request in writing that he be notified regarding the condition of any such tobacco and agree to pay the cost of any telegraph or telephone toll charge the warehouseman shall notify such person in accordance with his request.

(e) If the tobacco advertised in accordance with the requirements of this section has not been removed from storage by the owner thereof within seven days from the date of notice of its being out of condition, the warehouseman in whose warehouse such tobacco is stored may sell the same at public auction at the expense and for the account of the owner, after giving seven days' notice of such proposed sale in the manner specified in paragraphs (b) and (c) of this section.

(f) Nothing contained in this section shall be construed as relieving the warehouseman from properly caring for any tobacco after notification of its condition has been given in accordance with this section.

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

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

[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.40 System of accounts.

A warehouseman shall use for his licensed warehouse a system of accounts, approved for the purpose by the Administrator or his representative, which shall show for each package of tobacco the name of the depositor, the identification number mentioned in § 737.33, its weight, type, grade, form, and condition when same is required to be or is ascertained, its location, the dates received and delivered out of

storage, the receipts issued and canceled, and a separate record for each depositor of his tobacco, and such accounts shall include a detailed record of all moneys received and disbursed and of all insurance policies taken out and canceled. 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)

[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.41 Reports; copies.

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

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

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

[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 29 FR 13369, Sept. 26, 1964; 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.42 Canceled receipts; auditing.

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

[62 FR 33540, June 20, 1997]

§ 737.43 Examination of warehouses.

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, at any time, any warehouse for the conduct of which such warehouseman has been licensed, 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.

§ 737.44 Weighing apparatus.

The weighing apparatus used for ascertaining the weight stated in a receipt or certificate, issued for tobacco stored in a licensed warehouse, shall be subject to examination by any officer or agent of the Department employed for the purpose. If the Service shall disapprove such weighing apparatus, it shall not thereafter, unless such disapproval is withdrawn, be used in ascertaining the weight of tobacco for the purposes of the act and the regulations in this part.

§ 737.45 Licensee preferred for service.

(a) Except as authorized by the Administrator, a warehouseman shall not have any tobacco stored or to be stored in his warehouse, sampled, inspected, graded, or weighed for the purpose of his record or receipts by any person not licensed under the act to perform such services, if there be a person so licensed for such warehouse.

(b) When a grade or weight certificate has been issued by a grader or weigher and delivered to the warehouseman with the first copy of such certificate, the warehouseman shall fill in the identification numbers required in § 737.33, on each certificate, and shall mail or deliver the original certificate to the depositor and file the copy of such certificate as a part of the records of the warehouse.

§ 737.46 Reporting fire losses.

If at any time a fire occurs at or within any licensed warehouse, it shall be the duty of the warehouseman to re-

port immediately the occurrence of such fire and the extent of damage to the Administrator.

[62 FR 33540, June 20, 1997]

§ 737.47 [Reserved]

FEEES

§ 737.48 License fees.

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

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

[59 FR 51358, Oct. 11, 1994]

§ 737.49 Warehouse annual and inspection fees.

Warehousemen must pay:

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

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

(c) An inspection fee at the rate of 100 percent of the annual fee charged warehouses without a CCC storage contract or agreement, in all cases where the license has been suspended and the

warehouseman has requested reinstatement. No fee will be charged if the Secretary determines that the suspension was not justified.

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

[59 FR 51358, Oct. 11, 1994]

§ 737.50 Advance deposit.

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

[46 FR 63200, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985, as amended at 62 FR 33541, June 20, 1997]

§ 737.51 Return of excess deposit.

The Treasurer of the United States shall hold in his custody each advance deposit made under § 737.50 until the fee, if any, is assessed and he is furnished by the Service with a statement showing the amount thereof and against whom assessed. Any part of such advance deposit which is not required for the payment of any fee assessed shall be returned to the party depositing the same.

[SRA, BAE 129, rev., as amended at 3 FR 1400, June 14, 1938. Redesignated at 50 FR 1814, Jan. 14, 1985]

LICENSED SAMPLERS, INSPECTORS,
GRADERS, AND WEIGHERS

§ 737.52 Applications; samplers', inspectors', graders', and weighers'.

(a) Applications for licenses to sample, to inspect, and to grade or to weigh tobacco under the act shall be made to the Administrator on forms furnished for the purpose by him.

(b) Each such application shall be signed by the applicant, shall be veri-

fied by him under oath or affirmation administered by a duly authorized officer, and shall contain or be accompanied by: (1) The name and location of a warehouse or warehouses licensed, or for which application for license has been made under the act in which tobacco sought to be sampled, inspected, graded, or weighed under such license is or may be stored, (2) a statement from the warehouseman conducting such warehouse showing whether the applicant is competent and is acceptable to such warehouseman for the purpose, (3) satisfactory evidence that he has had at least one year's experience in the kind of service for which a license is sought or the equivalent of such experience, and that he is competent to perform such services, except in the case of applicants for weighers' licenses one month's experience will be sufficient, (4) a statement by the applicant that he agrees to comply with and abide by the terms of the act and the regulations in this part so far as the same may relate to him, and (5) such other information as the Service may deem necessary: *Provided*, That when an application for a license to sample, to inspect, to grade, or to weigh tobacco is filed by a person who does not intend to sample, to inspect, to grade, or to weigh for any particular licensed warehouseman but who does intend to sample, to inspect, to grade, or to weigh tobacco stored or to be stored in a licensed warehouse and to issue certificates therefor, as provided for by the Act and the regulations in this part, independent of the warehouse receipt, issued to cover such tobacco, it shall not be necessary to furnish such statement as is required by paragraph (b)(2) of this section.

(c) The applicant shall at any time furnish such additional information as the Secretary or his designated representative shall find to be necessary to the consideration of his application.

(d) A single application may be made by any person for a license to sample, to inspect, to grade, and to weigh upon complying with all the requirements of this section.

[SRA, BAE 129, rev.; 7 FR 6806, Aug. 29, 1942; 13 FR 8731, Dec. 30, 1948; 19 FR 57, Jan. 6, 1954, as amended at 41 FR 34005, Aug. 12, 1976. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 737.53

CROSS REFERENCE: For inspectors, samplers, and weighers regulations under the Tobacco Inspection Act, see 7 CFR 29.106 through 29.113 of this chapter.

§ 737.53 Examination.

Each applicant for license as a sampler, inspector, grader, or weigher, and each sampler, inspector, grader, or weigher, whenever requested by an authorized agent of the Department, shall submit to an examination or test to show his ability properly to perform the duties for which he is applying for license or for which he has been licensed, and each such applicant, or licensee shall furnish the Service any information requested, at any time, in regard to his sampling, inspecting, grading, or weighing of tobacco.

§ 737.54 Posting of license.

Each sampler, inspector, grader, or weigher shall keep his license conspicuously posted at the place or office where he functions as a sampler, inspector, grader, or weigher, or in such other place as may be designated for the purpose by the Service.

§ 737.55 Proper discharge of duties.

Each sampler, inspector, grader, or weigher, according to the nature of his license, when requested shall, without discrimination, as soon as practicable, and upon reasonable terms, sample, inspect, grade, or weigh tobacco stored or to be stored in a licensed warehouse for which he holds a license, if such tobacco be offered to him under such conditions as will permit proper sampling, inspecting, grading, or weighing. Each such licensee shall give preference to persons who request his services as such other persons who request his services in any other capacity. No official sample shall be drawn and no inspection, grade, or weight certificate shall be issued under the act for tobacco not stored or to be stored in a licensed warehouse.

§ 737.56 Official samples; sample tags and seals.

(a) Each licensed sampler shall provide himself, unless provided by the warehouseman, with a sufficient quantity of tags of a kind and quality approved by the Administrator or his rep-

7 CFR Ch. VII (1-1-98 Edition)

resentative for identifying the samples of tobacco drawn by him. There shall be clearly written or printed on the face of each tag (1) the number of the tag, (2) the caption "Official Tobacco Sample Drawn under the United States Warehouse Act", (3) the name and location of the licensed warehouse in which the tobacco is or is to be stored, (4) the identification number, in accordance with § 737.33, of the package from which the sample was drawn, except when sampled before being stored, in which case the private number and marks of the package shall be shown and a blank space left for said identification number, (5) the date on which the sample was drawn, and (6) a statement to the effect that the sample was drawn by a sampler licensed in accordance with the United States Warehouse Act and the regulations thereunder. One such tag shall be attached to each official sample of tobacco so as to preserve the identity of the sample.

(b) Each sampler shall seal each official sample of tobacco drawn by him so as to prevent the removal of the tag mentioned in paragraph (a) of this section, or the separation of the sample into parts without breaking the seal. Such seal shall show (1) the name of the sampler, (2) the license number of such sampler, and (3) the insignia "U.S.W.A."

(c) Each official sample taken from a package of tobacco stored or to be stored in a licensed warehouse shall be of such size and drawn and prepared in such manner as may be required by the Administrator or his representative.

§ 737.57 Inspection certificate; form.

Each inspection certificate issued under the act by an inspector shall be in a form approved for the purpose by the Service and shall embody within its written or printed terms (a) the caption "Tobacco Inspection Certificate Issued under the United States Warehouse Act", (b) whether it is an original, first, second, or other copy, (c) the number of the certificate, (d) the name and location of the warehouse in which the tobacco is or is to be stored, (e) the date of the certificate, (f) the location of the tobacco at the time of inspecting, (g) a blank space for the purpose of showing the

identification number of each package of tobacco, in accordance with § 737.33, (h) the keeping quality or condition of each package of tobacco at the time of inspecting, (i) a blank space designated for the purpose in which may be stated any condition that, in the opinion of the inspector, may affect the keeping quality of the tobacco, (j) that the certificate is issued by a licensed inspector under the United States Warehouse Act and the regulations thereunder, and (k) the signature of the inspector. In addition, the inspection certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 737.58 Grade certificate; form.

Each grade certificate issued under the act by a grader shall be in a form approved for the purpose by the Service and shall embody within its written or printed terms (a) the caption "Tobacco Grade Certificate Issued under the United States Warehouse Act", (b) whether it is an original, first, second, or other copy, (c) the number of the certificate, (d) the name and location of the warehouse in which the tobacco is or is to be stored, (e) the date of the certificate, (f) the location of the tobacco at the time of grading, (g) a blank space for the purpose of showing the identification number of each package, in accordance with § 737.33, (h) the grade, type, form, and condition of each package of tobacco at the time of grading, (i) the number of each official sample, if graded upon sample, (j) that the certificate is issued by a licensed grader, under the United States Warehouse Act and regulations thereunder, (k) a blank space designated for the purpose in which may be stated any general remarks on the condition of the tobacco, and (l) the signature of such licensed grader. In addition, the grade certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 737.59 Weight certificate; form.

Each weight certificate issued under the act by a weigher shall be in a form approved for the purpose by the Serv-

ice, and shall embody within its written or printed terms (a) the caption "Tobacco Weight Certificate Issued under the United States Warehouse Act", (b) whether it is an original, first, second, or other copy, (c) the number of the certificate, (d) the name and location of the warehouse in which the tobacco is or is to be stored, (e) the date of the certificate, (f) the location of the tobacco at the time of weighing, (g) a blank space for the purpose of showing the identification number of each package, in accordance with § 737.33, (h) the gross, tare, and net weight of each package of tobacco, (i) a blank space designated for the purpose in which may be stated any condition that in the opinion of the weigher may affect the weight of the tobacco, (j) that the certificate is issued by a licensed weigher, under the United States Warehouse Act and the regulations thereunder, and (k) the signature of the weigher. In addition, the weight certificate may include any other matter not inconsistent with the act or the regulations in this part, provided the approval of the Service is first secured.

§ 737.60 Combined certificate.

A combined certificate of inspection, grade, and weight may be issued if such certificate meets all the requirements of §§ 737.57 through 737.61.

§ 737.61 Issuance of certificates.

Each licensed inspector, grader, or weigher shall, as soon as possible after inspecting, grading, or weighing any tobacco stored or to be stored in a licensed warehouse, issue an original and a first copy inspection, grade, or weight certificate, as the case may be, for such tobacco, and deliver both the original and first copy of the certificate to the warehouseman, in whose warehouse the tobacco is or is to be stored, except, when the functions of warehouseman, inspector, grader, and weigher are all performed by the same person, with the approval of the Administrator, inspection, grade, and weight certificates need not be issued.

§ 737.62 Type, grade, form, or condition; statement.

Whenever the type, grade, form, or condition of tobacco is required to be

§ 737.63

or is stated for the purposes of the act and the regulations in this part, it shall be stated in accordance with §§ 737.69 through 737.73.

§ 737.63 Licensees to permit and assist in examinations.

Each sampler, inspector, grader, or weigher shall permit any authorized officer or agent of the Department to inspect or examine at any time his books, papers, records, and accounts relating to the performance of his duties under the act and the regulations in this part, and shall, when requested, assist any such officer or agent in the inspection or examination mentioned in § 737.43, as far as any such inspection or examination relates to the performance of his duties as a licensee.

§ 737.64 Suspension or revocation of licenses.

Pending investigation the Secretary or his designated representative may, whenever he deems necessary, suspend the license of a sampler, inspector, grader, or weigher temporarily without hearing. Upon a written request and a satisfactory statement of reasons therefor submitted by the licensee, or when the licensee has ceased to perform the services for which licensed, the Secretary or his designated representative may, without hearing, suspend or revoke the license issued to such licensee. The Secretary, or his designated representative may, after opportunity for hearing, when possible, has been afforded in the manner prescribed in this section, suspend or revoke a license issued to a sampler, inspector, grader, or weigher when such licensee has, in any manner, become incompetent or incapacitated to perform his duties as such licensee. As soon as it shall come to the attention of a licensed warehouseman that any of the conditions in this section exist, it shall be his duty to notify in writing the Service. Before the license of any sampler, inspector, grader, or weigher is permanently suspended or revoked, pursuant to section 12 of the act, such licensee shall be furnished by the Secretary or his designated representative, a written statement specifying the charges and shall be allowed a reasonable time within which he may answer

7 CFR Ch. VII (1-1-98 Edition)

the same in writing and apply for a hearing, an opportunity for which shall be afforded in accordance with § 737.78.

[SRA, BAE, 129, rev.; 7 FR 6806, Aug. 29, 1942, as amended at 13 FR 8730, Dec. 30, 1948. Re-designated at 50 FR 1814, Jan. 14, 1985]

§ 737.65 Return of suspended, revoked, terminated licenses.

In case a license issued to a sampler, inspector, grader, or weigher is suspended or revoked by the Secretary or by his designated representative, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it is revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the person to whom it was originally issued, and it shall be posted as prescribed in § 737.54. Any license issued to a sampler, inspector, grader, or weigher shall automatically terminate as to any warehouse whenever the license of such warehouse is suspended, expires, or is revoked, and the license of such sampler, inspector, grader, or weigher shall be returned to the Secretary. In case such license shall apply to more than one warehouse, the Secretary or his designated representative shall issue a new license, omitting the names of the warehouses for which licenses have been suspended, terminated, or revoked. Such new license shall be posted as prescribed in § 737.54.

§ 737.66 Lost or destroyed licenses.

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

§ 737.67 Reports.

Each sampler, inspector, grader, or weigher shall, from time to time, when requested by the Department, make reports on forms furnished for the purpose by the Service bearing upon his activities as such licensee.

§ 737.68 Unlicensed persons; misrepresentation.

No person shall in any way represent himself to be a sampler, inspector,

grader, or weigher licensed under the act unless he holds an unsuspended or unrevoked license issued under the act.

TOBACCO CLASSIFICATION

§ 737.69 Type, grade, form, or condition; statement.

Whenever the type, grade, form, or condition of tobacco is required to be or is stated for the purposes of the act and the regulations in this part, it shall be stated in accordance with §§ 737.69 through 737.73.

§ 737.70 Standards to be used.

Until such time as official tobacco standards of the United States are in effect, the type, grade, form, and condition of tobacco shall be stated: (a) In accordance with such standards, if any, as may be approved for the purpose by the Administrator, or his representative, or (b) in the absence of any such standards, in accordance with the standards adopted by any tobacco organization or by the tobacco trade generally in the locality in which the warehouse is located, subject to disapproval by the Administrator.

§ 737.71 Type, grade, form, or condition.

Whenever the type, grade, form, or condition of tobacco is stated for the purposes of the act and the regulations in this part, the terms used shall be correctly applied and shall be so selected as not to convey a false impression of the tobacco. In determining the type, grade, form, or condition of a package of tobacco, the package as a whole shall be considered rather than parts of it which do not materially affect the value of the entire package and minor irregularities in the tobacco shall be overlooked.

§ 737.72 Type, grade, and form; statement.

Whenever the type, grade, or form of tobacco is stated for the purposes of the act and the regulations in this part, it shall be based upon a careful and thorough examination of the package of tobacco or an official sample thereof. In case the tobacco in one part of a package or sample is inferior to that in other parts of the package or

sample, the grade assigned to the tobacco shall be an average, considering the proportion that each part bears to the whole, and in case of a question as to which grade of two or more grades should be assigned to the tobacco, the lowest grade in question shall be assigned.

§ 737.73 Statement of condition.

Whenever the condition of tobacco is stated for the purpose of the act and the regulations in this part, it shall be based upon a careful and thorough examination of the package of tobacco. In case any portion of a package of tobacco is found to be in a tangled, doubtful keeping, or nested condition, the condition stated for the whole package shall be based upon such tangled, doubtful keeping, or nested portion.

APPEAL ON SAMPLING OR CLASSIFICATION OF TOBACCO

§ 737.74 New receipts; expenses.

If a question arises as to the accuracy of an official sample, or whether the type, grade, form, or condition of the tobacco was correctly stated in a receipt or certificate issued under the act or the regulations in this part, the warehouseman concerned or any person financially interested in the tobacco involved may, after reasonable notice to the other party, submit the question to such committee as the Administrator may appoint. The decision of the committee shall be final, unless the Administrator shall direct a review of the question. Immediately upon making their decision, the committee shall issue a certificate embodying their findings to the appellants and the licensee or licensees involved. If the decision of the committee be that the sample was not representative of the package of tobacco, or that the type, grade, form, or condition was not correctly stated, the receipt or certificate involved shall be returned to and canceled by the licensee who issued it and the licensee shall issue in lieu thereof a new receipt or certificate embodying therein the statement of type, grade, form, or condition in accordance with the findings of the committee. All necessary and reasonable expense of such

appeal shall be borne by the losing party, unless the Administrator shall decide that the expense should be prorated between the parties.

MISCELLANEOUS

§ 737.75 Bonds required; re State warehouses.

Every person applying for a license or licensed under section 9 of the act shall, as such, be subject to all portions of the regulations in this part, except § 737.5, so far as they may relate to warehousemen. If there is a law of any State providing for a system of warehouses owned, operated, or leased by such State, a person applying for a license under section 9 of the act, to accept the custody of tobacco and to store the same in any of said warehouses, may, in lieu of a bond or bonds, complying with § 737.12, file with the Secretary a single bond meeting the requirements of the act and the regulations in this part, in such form, and in such amount not less than \$5,000 as he shall prescribe, to insure the performance by such person, with respect to the acceptance of the custody of tobacco and its storage in the warehouses in such system for which licenses are or may be issued, of his obligations arising during the periods of such licenses, and in addition, if desired by the applicant, during the periods of any modifications or extensions thereof. In fixing the amount of such bond, consideration shall be given, among other appropriate factors, to the character of the warehouses involved, their actual or contemplated capacity, the bonding requirements of the State, and its liability with respect to such warehouses. If the Secretary shall find the existence of conditions warranting such action, there shall be added to the amount of the bond so fixed a further amount, fixed by him, to meet such conditions.

§ 737.76 Publications.

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

[62 FR 33541, June 20, 1997]

§ 737.77 Violations to be reported.

Every person licensed under the act shall immediately furnish the Service any information which comes to the knowledge of such person tending to show that any provision of the act or the regulations in this part has been violated.

§ 737.78 Procedure in hearings.

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

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

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

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

§ 737.80 Assets and bond; combination warehouses.

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

§ 737.81 Amendments.

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