

§ 739.83

7 CFR Ch. VII (1-1-00 Edition)

and of fees if the full capacity of the warehouse were used for its storage.

§ 739.83 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.

PART 740—NUT WAREHOUSES

DEFINITIONS

Sec.

- 740.1 Meaning of words.
- 740.2 Terms defined.

WAREHOUSE LICENSES

- 740.3 Application form.
- 740.4 All facilities to be licensed or exempted.
- 740.5 Scales; bin and compartment numbers.
- 740.6 Net assets.
- 740.7 Grounds for not issuing license.
- 740.8 License shall be posted.
- 740.9 Suspension, cancellation or revocation of warehouse licenses.
- 740.10 Return of suspended or revoked warehouse license.
- 740.11 Lost or destroyed warehouse license.
- 740.12 Unlicensed warehousemen must not represent themselves as licensed.

WAREHOUSE BONDS

- 740.13 Bond required; time of filing.
- 740.14 Amount of bonds; additional amounts.
- 740.15 Amendment to license; bond.
- 740.16 New bond required each year.
- 740.17 Approval of bond.

WAREHOUSE RECEIPTS

- 740.18 Form.
- 740.19 Copies of receipts.
- 740.20 Lost or destroyed receipts; bond.
- 740.21 Printing of receipts.
- 740.22 Return of receipts before delivery of nuts.
- 740.23 Partial delivery of nuts.
- 740.24 Authority for delivery of nuts on non-negotiable receipts.
- 740.25 Omission of grade; no compulsion by warehouseman.
- 740.26 Persons authorized to sign receipts.

DUTIES OF LICENSED WAREHOUSEMAN

- 740.27 Cancelled receipts, auditing.
- 740.28 Nuts must be inspected and weighed.
- 740.29 Receipts; basis for issuance.
- 740.30 Insurance requirements.
- 740.31 Care of nuts in warehouses.

- 740.32 Care of nonlicensed nuts, or other commodities.
- 740.33 Records to be kept in safe place.
- 740.34 Warehouse charges.
- 740.35 Numbered tags to be attached to packaged nuts.
- 740.36 Identification tag on stored nuts.
- 740.37 Bulk nuts; grade or other class and weights.
- 740.38 Identity-preserved nuts; bulk storage.
- 740.39 Delivery of nuts.
- 740.40 Removal of nuts from storage; conditions.
- 740.41 Loading out without weighing.
- 740.42 Business hours.
- 740.43 System of accounts.
- 740.44 Reports.
- 740.45 Copies of reports to be kept.
- 740.46 Inspections; examinations of warehouses.
- 740.47 Weighing; testing, measuring apparatus; inspection.
- 740.48 Warehouse to be kept clean.
- 740.49 [Reserved]
- 740.50 Excess storage.
- 740.51 Deteriorating nuts; handling.
- 740.52 Sale at public auction.
- 740.53 Compliance with contracts.
- 740.54 Reporting fire losses.
- 740.55 Grade-weight certificate; filing.

FEEES

- 740.56 License fees.
- 740.57 Warehouse annual and inspection fees.
- 740.58 Advance deposit.
- 740.59 Return of excess deposit.

INSPECTORS AND WEIGHERS

- 740.60 Inspector's and weigher's applications.
- 740.61 Examination of applicant.
- 740.62 Posting of license.
- 740.63 Duties of inspectors and weighers.
- 740.64 Inspection certification; form.
- 740.65 Copies of inspection certificates to be accessible.
- 740.66 Weight certificate; form.
- 740.67 Combination grade and weight certificate.
- 740.68 Copies of certificates to be kept.
- 740.69 Licensees to permit examination of records.
- 740.70 Reports by licensees.
- 740.71 Licenses; suspension, cancellation or revocation.
- 740.72 Suspended or revoked license; termination of license.
- 740.73 Lost or destroyed licenses.
- 740.74 Unlicensed inspectors and weighers.

NUT GRADING

- 740.75 Classification; statement.
- 740.76 Grades based on inspection and sample.
- 740.77 Standards to be used.

Farm Service Agency, USDA

§ 740.2

740.78 Conditions and procedure for appeal of grades or other class.

MISCELLANEOUS

- 740.79 Publications.
- 740.80 Information of violations.
- 740.81 Procedure in hearings.
- 740.82 One document and one license to cover several products.
- 740.83 Bond, assets, and fees for combination warehouse.
- 740.84 Amendments.

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

SOURCE: 41 FR 31163, July 27, 1976, unless otherwise noted. Redesignated at 50 FR 1814, Jan. 14, 1985.

EDITORIAL NOTE: Nomenclature changes to part 740 appear at 62 FR 33540, June 20, 1997.

DEFINITIONS

§ 740.1 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.

§ 740.2 Terms defined.

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

(a) *Nuts*. Unshelled nuts of the following kinds: American-grown peanuts, pecans, filberts, and English or Persian walnuts; and shelled American-grown peanuts.

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

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

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

(e) *Secretary*. 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.

(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 that Service to whom authority has heretofore lawfully been

delegated, or to whom authority 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 the context otherwise clearly indicates, any building, structure, or other protected enclosure licensed or to be licensed under the Act, in which nuts are or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which nuts are or may be stored.

(j) *Warehouseman*. Any person lawfully engaged in the business of storing nuts, who holds an effective warehouseman's license under the Act, or who has applied for such a license.

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

(l) *Warehouseman's bond*. The bond required by the Act to be given by a warehouseman.

(m) *Licensed inspector*. (1) A person licensed under provisions of section 11 of the United States Warehouse Act (7 U.S.C. 241 *et seq.*), or (2) a Federal employee authorized under provisions of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*), or (3) a person licensed under the provisions of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to inspect, grade, and certificate the grade or other class and/or condition of nuts stored or to be stored in a warehouse licensed under the U.S. Warehouse Act (the terms "persons duly licensed to inspect" or "licensed inspector" shall be defined accordingly).

(n) *Licensed weigher*. A person licensed under the provisions of section 11 of the United States Warehouse Act (7 U.S.C. 241 *et seq.*), to weigh and certificate the weight of nuts stored or to be stored in a warehouse licensed under the U.S. Warehouse Act (the terms "persons duly licensed to weigh" or "licensed weigher" shall be defined accordingly).

(o) *Receipt*. A licensed warehouse receipt issued under the Act.

(p) *Package*. A bag, sack, box, or other container.

§ 740.3

(q) *Ton.* (Short ton) 2,000 pounds.

[41 FR 31163, July 27, 1976, as amended at 42 FR 26646, May 25, 1977. Redesignated and amended at 50 FR 1814, Jan. 14, 1985]

WAREHOUSE LICENSES

§ 740.3 Application form.

Applications for licenses and for amendments of licenses under the Act shall be made to the Administrator upon prescribed forms 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 Administrator shall find to be necessary to the consideration of his application.

§ 740.4 All facilities to be licensed or exempted.

All facilities within the same city or town used for the storage of nuts 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 nut warehouseman in such city or town, unless the facilities which are not to be covered by a license are exempted by the Administrator upon a finding that, due to the exercise of adequate controls by some independent agency over the operation of the nonfederally licensed facilities, there would be no likelihood of the interchange, substitution, or commingling of nuts stored in such facilities with nuts 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 nut warehouseman in the city or town in which the facilities in question are located. Each applicant for a nut warehouse license must apply for a license covering all facilities operated by him for the storage of nuts within the same city or town or for exemption as provided in this section. If a licensed nut warehouseman acquires any additional nut 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 nut storage facility ac-

7 CFR Ch. VII (1-1-00 Edition)

quired by a licensed nut 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 nuts until it qualifies for license and is licensed or is exempted as provided in this section. If any one of the licensed nut 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 nuts, until the condition making it ineligible is removed or an exemption is granted as provided in this section. The use for the storage of nuts 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 nuts.

§ 740.5 Scales; bin and compartment numbers.

(a) Each warehouse must be equipped with suitable scales in good order, and so arranged that all nuts, whether for storage or for nonstorage purposes, can be weighed in and out of the warehouse. The scales in any warehouse shall be subject to examination by representatives of the Department and to disapproval by the Administrator. If he disapproves any weighing apparatus, it shall not thereafter be used in ascertaining the weight of nuts for the purposes of this Act, until such disapproval be withdrawn.

(b) Both bulk bins and compartments for sacked nuts of all warehouses licensed under the Act shall be identified by means of clearly discernible numbers securely affixed thereto. The series of numbers to be used shall be approved by the Service. Bulk bins shall be numbered so as to be easily identified at the openings on top and also on or near the outlets. Compartments shall be numbered in such a manner as to clearly show the space covered by each number.

§ 740.6 Net assets.

(a) Each warehouseman conducting a warehouse licensed, or for which application for a license has been made

under the regulations in this part, shall have and maintain above all exemptions and liabilities, total net assets liable for the payment of any indebtedness arising from the conduct of the warehouse, to the extent of at least \$25 per ton for the maximum number of tons of peanuts, 2 cents per pound for the maximum number of pounds of walnuts or filberts, and/or 3 cents per pound for the maximum number of pounds of pecans, that the warehouse could accommodate when stored in the manner customary to the warehouse as determined by the Administrator: *Provided*, That no person may be licensed as a warehouseman under the regulations in this part unless he has allowable net assets of at least \$10,000: *And provided further*, That any deficiency in net assets required above the \$10,000 minimum may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 740.14(c). In determining total net assets, credit may be given for insurable property such as buildings, machinery, equipment, and merchandise inventory, only to the extent that such property is protected by insurance against loss or damage by fire. Such insurance shall be in the form of 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 in which the warehouse is located.

(b) In case a warehouseman is licensed or is applying for licenses to operate two or more warehouses under the regulations in this part, the maximum quantity of nuts which all such warehouses will accommodate when stored in the manner customary to the warehouse, as determined by the Administrator, shall be considered in determining whether the warehouseman meets the net assets requirements specified in paragraph (a) of this section.

(c) For the purposes of paragraphs (a) and (b) of this section only, capital stock as such shall not be considered a liability.

§ 740.7 Grounds for not issuing 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 that the warehouse is not suitable for the proper storage of nuts; that the warehouseman does not possess a good reputation, or does not have a net worth of at least \$10,000, 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 nuts 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 nut 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 § 740.4.

§ 740.8 License shall be posted.

Immediately upon receipt of his license 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 such warehouseman are delivered to depositors.

§ 740.9 Suspension, cancellation or revocation of warehouse licenses.

(a) Pending investigation, the Secretary, 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 may, without hearing, suspend or cancel the license issued to such warehouseman. The Secretary 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 he determines that such warehouseman:

- (1) Does not have a net worth of at least \$10,000;
- (2) Has parted, in whole or in part, with his control over the licensed warehouse;
- (3) Is in process of dissolution or has been dissolved;

§ 740.10

(4) Has ceased to operate such licensed warehouse;

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

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

(7) Is operating in the same city or town in which his licensed warehouse facilities are located, any facility for storage of nuts which is not covered by a license or an exemption as provided in § 740.4, or

(8) Has in any other manner violated or failed to comply with any provision of the Act or the regulations in this part.

(b) Whenever any of the conditions mentioned in paragraphs (a)(1) through (8) of this section shall come into existence, it shall be the duty of the warehouseman to notify the Administrator immediately of the existing condition. Before a license is revoked or suspended (other than temporarily pending investigation) 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 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 § 740.81.

§ 740.10 Return of suspended or revoked warehouse license.

In case a license issued to a warehouseman terminates or is suspended, revoked, or canceled by the Secretary, it shall be returned immediately to the Secretary. At the expiration of any period of suspension of such license, unless it be in the meantime revoked or canceled, the dates of the beginning and termination of the suspension shall be indorsed thereon, and it shall be returned to the licensed warehouseman to whom it was originally issued, and it shall be posted as required in § 740.8: *Provided*, That in the discretion of the Administrator a new license may be

7 CFR Ch. VII (1-1-00 Edition)

issued without reference to such suspension.

§ 740.11 Lost or destroyed warehouse license.

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

§ 740.12 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, unrevoked, and uncanceled license for the conduct of such warehouse.

WAREHOUSE BONDS

§ 740.13 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 a bond containing the following conditions and such other terms as the Secretary 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

Farm Service Agency, USDA

§ 740.18

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.

§ 740.14 Amount of bonds; additional amounts.

(a) The amount of bond to be furnished for each warehouse under the regulations in this part for peanuts shall be fixed at a rate of \$25 per ton for the first 10,000 tons of licensed capacity and \$20 per ton for all tons of licensed capacity over 10,000 tons; for walnuts and filberts the bond shall be fixed at a rate of 2 cents per pound for the licensed capacity; and for pecans the bond shall be fixed at a rate of 3 cents per pound for the licensed capacity: *Provided*, That in any case the amount of bond shall not be less than \$20,000 nor more than \$500,000, except as prescribed in paragraph (c) of this section. The licensed capacity shall be the maximum quantity of nuts that the warehouse will accommodate when stored in the manner customary to the warehouse as determined by the Administrator.

(b) In case a warehouseman is licensed or is applying for licenses to operate two or more warehouses in the same State he may give a single bond meeting the requirements of the Act and the regulations in this part to cover all his warehouses within the State. In such case the warehouses to be covered by the bond shall be deemed to be one warehouse only for purposes of determining the amount of bond required under paragraph (a) of this section.

(c) In case of a deficiency in net assets above the \$10,000 minimum required under §740.6, there shall be added to the amount of bond determined in accordance with paragraph (a) of this section an amount equal to such deficiency. In any other case in which the Administrator finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond as determined under the other provisions of this section, a further amount to meet such conditions.

§ 740.15 Amendment to license; bond.

In case an application is made for an amendment to a license and no bond previously filed by the warehouseman under §§740.13 through 740.17 covers obligations arising during the period covered by such amendment, the warehouseman shall, when notice has been given by the Secretary, that his application for such amendment 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. In the discretion of the Secretary, 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.

§ 740.16 New bond required each year.

A continuous form of license shall not remain in force for more than one year from its effective date, or any subsequent extension thereof, unless each year prior to the date on which the license would expire, the warehouseman files a bond in the required amount with the Secretary and such bond has been approved by him.

§ 740.17 Approval of bond.

No bond, amendment, or continuation thereof shall be accepted for the purposes of the Act and the regulations in this part until it has been approved by the Secretary.

WAREHOUSE RECEIPTS

§ 740.18 Form.

(a) Every receipt, whether negotiable or nonnegotiable, issued for nuts 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 warehouse.

§ 740.18

7 CFR Ch. VII (1-1-00 Edition)

(3) A statement whether the warehouseman is incorporated or unincorporated, and if incorporated, under what laws.

(4) 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.

(5) A statement conspicuously placed, whether or not the nuts are insured, and, if insured, to what extent, by the warehouseman against loss by fire, lightning, tornado, or otherwise.

(6) The kind and type of nut.

(7) The net weight of the nuts.

(8) In the case of nuts the identity of which are to be preserved, the identification or location in accordance with §§ 740.35, 740.36, and 740.38; and

(9) The words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.

(b) Every receipt, whether negotiable or nonnegotiable, issued for unshelled peanuts stored in a licensed warehouse shall specify that the unshelled peanuts are accepted for storage under the Act and the regulations in this part, for a period not to extend beyond July 1 following the year in which harvested. Upon demand and the surrender of the old receipt by the lawful holder thereof on or before July 1, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of unshelled peanuts in the warehouse, if he then continues to act as a licensed warehouseman, may issue a new receipt for a further specified period not to extend beyond March 31 of the year following the date of surrender of the old receipt: *Provided*, That the farmers' stock peanuts are first reinspected by a licensed inspector and found to be in proper condition for further storage and the grade or other class, as determined by the licensed inspector is shown on the new receipt.

(c) Every receipt, whether negotiable or nonnegotiable, issued for shelled peanuts stored in dry storage space in a licensed warehouse shall specify a period, for which the peanuts are to be stored under the Act and the regulations in this part, not to extend beyond

May 31 following the year in which harvested. Every receipt, whether negotiable or nonnegotiable, issued for peanuts stored in cold storage space in a licensed warehouse shall specify a period, not exceeding one year, for which the peanuts are accepted for storage under the Act and regulations in this part. Upon demand for issuance of a new receipt, surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified therein and an offer to satisfy the warehouseman's lien, the warehouseman, upon such lawful terms and conditions as may be granted by him to other depositors of peanuts in his warehouse, shall, in the absence of some lawful excuse, issue a new receipt for a further specified period, not exceeding one year.

(d) Every receipt, whether negotiable or nonnegotiable, issued for walnuts, filberts, or pecans stored in a licensed warehouse under ordinary dry storage conditions shall specify a period for which the walnuts, filberts, or pecans are accepted for storage under the Act and the regulations in this part not to extend beyond March 31 following the year in which harvested. Upon demand by the lawful holder and surrender of this receipt on or before March 31, the warehouseman, upon such lawful terms and conditions as may be granted by him at such time to other depositors of walnuts, filberts, or pecans in his warehouse, if he then continues to act as a licensed warehouseman may issue a new receipt for a further specified period not to extend beyond December 31 of the year following the date of surrender of the old receipt: *Provided*, That the walnuts, filberts, or pecans are first reinspected by a licensed inspector and found to be in proper condition for further storage and the grade and condition as determined by the licensed inspector and the year in which the walnuts, filberts, or pecans were harvested are shown on the new receipt: *And provided further*, That such nuts are placed in licensed cold storage space before or immediately following inspection thereof and before the issuance of receipts.

(e) The grade or other class stated in a receipt issued for nuts, shall be stated in such receipt in accordance

with § 740.77 as determined by the licensed inspector who last inspected the nuts before the issuance of such receipt, and such receipt shall embody within its written or printed terms the following: (1) That the nuts covered by the receipt were weighed by a licensed weigher, and inspected by a licensed inspector; (2) 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 nuts covered by the receipt.

(f) If a warehouseman issues a receipt omitting the statement of grade or other class on request of the depositor as permitted by section 18 of the Act, such receipt shall have clearly and conspicuously stamped or written on the face thereof the words "not graded on request of depositor."

(g) 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 by the warehouseman.

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

[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.19 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)

[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.20 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 receipt 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 new or duplicate receipt the licensed warehouseman shall require the depositor or other person applying therefor to make and file with the warehouseman: (1) An affidavit showing that the applicant 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 nuts represented by the lost or destroyed receipt. Such bond shall be in a form approved for the purpose by the Secretary, 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 (i) 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 (ii) at least two individuals other than the applicant 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 extent of the amount of the bond.

§ 740.21 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

§ 740.22

the agreement under paragraph (c) of this section.

[62 FR 33541, June 20, 1997]

§ 740.22 Return of receipts before delivery of nuts.

Except as permitted by law or by this part, a warehouseman shall not deliver nuts for which he has issued a negotiable receipt until the receipt has been returned to him and canceled; and shall not deliver nuts 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 order therefor.

§ 740.23 Partial delivery of nuts.

Before delivery is made of the last portion of a lot of nuts covered by a nonnegotiable receipt, the receipt itself shall be surrendered. If a warehouseman delivers a part only of a lot of nuts for which he has issued a negotiable receipt under the Act, he shall take up and cancel such receipt and issue a new receipt bearing the same lot number for the undelivered portion of the nuts. In addition to showing the information required by § 740.18, the new receipt shall also indicate the date and number of the receipt which it supersedes.

§ 740.24 Authority for delivery of nuts on 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 nuts 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 nuts 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: *Provided*, That if the holder of such nonnegotiable receipts agrees in writing to hold blameless both the warehouseman and bondsman for any loss that might result from improper delivery through receipt of an unauthorized telegram, deliveries

7 CFR Ch. VII (1-1-00 Edition)

may be made on receipt of telegraphic orders to be followed immediately with usual confirmation order.

§ 740.25 Omission of grade; no compulsion by warehouseman.

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

§ 740.26 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.

DUTIES OF LICENSED WAREHOUSEMEN

§ 740.27 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 33541, June 20, 1997]

§ 740.28 Nuts must be inspected and weighed.

(a) Except in case of identity preserved nuts when grade or other class is omitted at request of depositor, all nuts received into the warehouse shall be inspected and weighed by a licensed inspector and/or weigher and no receipt may be issued under the Act and the regulations in this part until the nuts covered by such receipt have been so inspected and weighed.

(b) When requested by the depositor of nuts the identity of which is to be preserved, a receipt omitting statement of grade or other class but not weight may be issued.

(c) Except as provided in § 740.41, all nuts delivered out of a warehouse must be weighed by a licensed weigher.

(d) Warehousemen must keep stocks of nuts in storage by grades or other class in balance with the grades or other class of nuts represented by outstanding storage obligations for which receipts have been or are to be issued, except when the nuts have unavoidably improved or deteriorated through natural causes. In the case the grades or other class of stored nuts should get out of balance with grades or other class represented by outstanding storage obligations for which receipts have been or are to be issued, the warehouseman shall effect proper adjustments.

§ 740.29 Receipts; basis for issuance.

Before issuing any receipt under the Act each warehouseman shall, unless he personally weighed, inspected, and graded, if graded, a lot of nuts, first obtain either a copy of, or the original weight certificate, and inspection certificate, if any, covering said lot of nuts. The warehouse records shall clearly identify the certificate(s) used as a basis of issuance of each warehouse receipt, and said inspection and weight certificate shall be kept on file as a record in the warehouseman's office. Such certificates shall be retained for a period of three years after December 31 of the year in which issued.

§ 740.30 Insurance requirements.

(a) Each licensed warehouseman, when so requested in writing as to any nuts by the depositor thereof or lawful holder of the receipt covering such nuts, shall, to the extent to which in the exercise of due diligence he is able to procure such insurance, keep such nuts while in his custody as a licensed warehouseman insured in his own name or arrange for insurance otherwise to the extent so requested against loss or damage by fire, lightning and tornado. When insurance is not carried in the warehouseman's name the receipts shall show that the nuts are not insured by the warehouseman. 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 insur-

ance to the extent requested, he shall, by telegraph or orally in person or by telephone and with subsequent confirmation in writing, and at his own expense, immediately notify the person making the request of the fact. Nothing in this section shall be construed to prevent the warehouseman from adopting a rule that he will insure all nuts stored in his warehouse.

(b) Each warehouseman shall comply fully with the terms of insurance policies or contracts covering his licensed warehouse and all products stored therein, and shall not commit any acts, nor permit his employees to do anything, which might impair or invalidate such insurance.

(c) Each warehouseman shall keep exposed conspicuously in the place prescribed by § 740.8, 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 the nuts will be insured against loss or damage by fire, lightning, and tornado.

(d) Each warehouseman shall, 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, pay such premiums, permit such reasonable inspections and examinations, and make such reasonable reports as may be provided for in such contracts.

(e) 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 for the purpose of meeting the requirements of the regulations in this part, 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.

§ 740.31 Care of nuts in warehouses.

Each warehouseman shall at all times exercise such care in regard to nuts in his custody as a reasonably careful owner would exercise under the same circumstances and conditions. Walnuts, filberts, and/or pecans stored under licensed receipts between March 31 and December 31, of the year following the year in which such walnuts,

§ 740.32

filberts, and/or pecans were harvested must be stored in a licensed cold-storage warehouse or room. Unless otherwise authorized by the Administrator, the warehouseman shall maintain even temperature and humidity in licensed cold-storage space, with temperature not higher than 37° F., nor less than 32° F., and relative humidity not higher than 70 percent nor less than 55 percent at any time while nuts of any kind subject to this Act are in storage. Such licensed cold-storage warehouse or room shall be equipped with automatic recording instruments for temperature and relative humidity approved by the Administrator. Continuous records or charts of temperature and relative humidity shall be kept by the warehouseman.

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

[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.32 Care of nonlicensed nuts, or other commodities.

If, at any time, a warehouseman shall handle or store nuts 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 nuts 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. If the warehouseman stores commodities other than those for which he is licensed, licensed receipts shall not be issued therefor.

§ 740.33 Records to be kept in safe place.

Each warehouseman shall provide a fireproof safe, vault, or 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 book, copies of issued and canceled receipts, except that with the written consent of the Administrator, upon a showing by such warehouseman that it is not practicable to provide such fireproof safe, vault, or compartment, he may keep

7 CFR Ch. VII (1-1-00 Edition)

such records, books, and papers in some other place of safety approved by the Administrator. Each canceled receipt shall be retained by the warehouseman for a period of 6 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)

[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.34 Warehouse charges.

A warehouseman shall not make any unreasonable or exorbitant charge for service rendered. Before a license to conduct a warehouse is granted under the Act, 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 § 740.8, and at such other places, accessible to the public, as the Administrator or his representative may from time to time designate, a copy of his current rules and schedule of charges.

§ 740.35 Numbered tags to be attached to packaged nuts.

Each warehouseman shall, upon acceptance of any lot of nuts in packages or sacks for storage, immediately stencil or mark an identification number or mark on each such package in the lot and attach to such lot a tag of good quality which shall identify the lot. Such tag shall show the lot number, the identification mark on each package, the number of the receipt issued to

cover such nuts, the number of packages or sacks in the lot, the kind of nuts, the grade or other class if determined, and the gross weight of the nuts at the time they entered storage.

§ 740.36 Identification tag on stored nuts.

Each warehouseman shall so store each lot of nuts for which a receipt under the Act has been issued that the tag thereon, required by § 740.35 is visible and readily accessible, and shall arrange all packages in his licensed warehouse so as to permit an accurate count thereof and to facilitate sampling of the nuts and inspection for condition.

§ 740.37 Bulk nuts; grade or other class and weights.

Each licensed warehouseman shall accept all nuts for storage and shall deliver out of storage all bulk nuts, other than specially binned or sacked nuts, in accordance with the grade or other class of such nuts as determined by a person duly licensed to inspect such nuts and to certificate the grade or other class thereof, and in accordance with the weights of such nuts as determined by a person duly licensed to weigh such nuts and to certificate the weight thereof, under the Act and the regulations in this part.

§ 740.38 Identity-preserved nuts; bulk storage.

Upon the acceptance for storage in his licensed warehouse of any lot of bulk nuts the identity of which is to be preserved, the warehouseman shall store such nuts in an individual bin or compartment designated by lot or cargo numbers, or by letters, numbers or other clearly distinguishable words or signs, permanently and securely affixed thereto, or shall so mark the container or containers of such nuts, or so place the nuts in the warehouse, that their identity will not be lost during the storage period.

§ 740.39 Delivery of nuts.

Except as may be provided by law or the regulations in this part, each licensed warehouseman: (a) Upon proper presentation of a receipt for any nuts, other than identity-preserved nuts, and

upon payment or tender of all advances and legal charges, shall deliver to such depositor or lawful holder of such receipt nuts of the grade or other class and quantity specified in such receipt, and (b) upon proper presentation of a receipt for any nuts, 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 nuts stored in his licensed warehouse.

§ 740.40 Removal of nuts from storage; conditions.

Except as may be permitted by law or the regulations in this part, a licensed warehouseman shall not remove any nuts for storage from the licensed warehouse until such receipt is first surrendered and canceled. If it becomes absolutely necessary to remove the nuts prior to the surrender of the receipts in order to protect the interests of holders of the receipts, the warehouseman shall promptly notify the Administrator of such removal and the necessity therefor.

§ 740.41 Loading out without weighing.

When the lawful owner of an entire lot of identity preserved nuts requests the warehouseman to deliver said lot without reweighing said nuts, the warehouseman may make such delivery if there is an accurate record of the weight of such nuts when received. Such deliveries shall be made only when the lawful owner agrees to assume all shortages and other risks incidental thereto, and after the warehouse receipts covering all of the nuts in the lot have been surrendered to the warehouseman and canceled.

§ 740.42 Business hours.

(a) Each licensed warehouse shall be kept open for the purpose of receiving nuts for storage and delivering nuts out of storage every business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m., except as provided in 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

§ 740.43

hours during which the warehouse will be kept open, except when such warehouse is kept open continuously for eight hours between 8 a.m. and 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 telephone number and address where he is to be found, who shall be authorized to deliver nuts stored in such warehouse, upon lawful demand by the depositor thereof or the holder of the receipt therefor, as the case may be.

§ 740.43 System of accounts.

Each licensed warehouseman shall have and maintain a system of accounts, approved for the purpose by the Service, which shall include but is not limited to a stock record showing for each lot of nuts, the name of the depositor, the weight of the nuts, the number of packages in each lot, the grade or other class when grade or other class is required to be, or is, ascertained, the location, the dates received for and delivered out of storage and the receipts issued and canceled, a separate record for each depositor and such accounts shall include a detailed record of all moneys received and disbursed and of all effective insurance policies. In the case of nuts stored in packages, the tag number mentioned in § 740.35 shall be shown. 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)

[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.44 Reports.

Each licensed warehouseman shall, from time to time, when requested by the Administrator, make such reports, on forms prescribed and furnished for

7 CFR Ch. VII (1-1-00 Edition)

the purpose by the Service, concerning the condition, contents, operation, and business of the warehouse as the Administrator may require.

§ 740.45 Copies of reports to be kept.

Each warehouseman shall keep on file, as a part of the records of the warehouse, for a period of 3 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)

[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.46 Inspections; examinations of warehouses.

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

§ 740.47 Weighing, testing, measuring apparatus; inspection.

The apparatus used for determining the weight, quantity, or quality stated in a receipt or certificate shall be subject to examination by the Service. If the Service shall disapprove such apparatus, it shall not thereafter, unless such disapproval be withdrawn, be used in ascertaining the weight, quantity, or quality of nuts for the purposes of the Act and the regulations in this part.

§ 740.48 Warehouse to be kept clean.

Each licensed warehouseman shall keep his warehouse clean and free from trash, dust, rubbish, or accumulations of materials that will increase the fire hazard or interfere with the handling of nuts.

Farm Service Agency, USDA

§ 740.52

§ 740.49 [Reserved]

§ 740.50 Excess storage.

If at any time a warehouseman shall store nuts in his warehouse in excess of the capacity for which it is licensed, such warehouseman shall immediately notify the Service of such excess storage, the reason therefor, and the location thereof.

§ 740.51 Deteriorating nuts; handling.

(a) If the licensed warehouseman, with the approval of the licensed inspector, shall determine that any nuts are deteriorating and that such deterioration cannot be stopped, the licensed 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 nuts are stored; (2) the quantity, kind, and grade or other class of the nuts at the time the notice is given; (3) the actual condition of the nuts as nearly as can be ascertained, and the reason, if known, for such condition; (4) the outstanding receipts covering the amount of nuts out of condition, giving the number and date of each such receipt and the quantity, the kind, and grade or other class of the nuts as stated in each such receipt; and (5) that such nuts will be delivered upon the return and cancellation of the receipts therefor.

(c) A copy of such notice shall be delivered in person or shall be sent by mail: (1) To the person holding the receipts, if known to the licensed warehouseman; (2) to the person who originally deposited the nuts; (3) to any other persons known by the licensed warehouseman to be interested in the nuts; and (4) to the Administrator. If the holders of the receipts and owners of the nuts are known to the licensed warehouseman and cannot, in the regular course of the mails, be reached within 12 hours, the licensed warehouseman shall, whether or not requested so to do, also immediately notify such persons by telegraph or telephone at their expense. 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 and keeping such notice posted so long as the condition exists. A copy of such notice shall be kept as a record of the warehouse.

(d) Any person, interested in any nuts or the receipt covering such nuts stored in a licensed warehouse, may, in writing, notify the licensed warehouseman conducting such licensed warehouse, of the fact of his interest, and such licensed warehouseman shall keep a record of the fact. If such person requests in writing that he be notified regarding the condition of any such nuts and agree to pay the cost of any telegraph or telephone toll charge, such licensed warehouseman shall notify such person in accordance with such request.

(e) Nothing contained in this section shall be construed as relieving the licensed warehouseman from properly caring for any nuts after notification of their condition in accordance with this section.

(f) 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)

[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.52 Sale at public auction.

If the nuts, advertised in accordance with the requirements of § 740.51 have not been removed from storage by the owner thereof within 5 days from the date of notice of their being out of condition, the licensed warehouseman in whose licensed warehouse such nuts are stored may sell the same at public auction at the expense and for the account of the owner after giving 10 days' notice in the manner specified in § 740.51(c).

§ 740.53

§ 740.53 Compliance with contracts.

Each warehouseman shall faithfully perform such obligations as a warehouseman as may be assumed by him under contracts with depositors of nuts in his warehouse.

§ 740.54 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 report immediately the occurrence of such fire and the extent of damage to the Administrator.

[62 FR 33541, June 20, 1997]

§ 740.55 Grade-weight certificate; filing.

When an inspection or weight certificate has been issued by a licensed inspector or weigher, a copy of such certificate shall be filed with the warehouseman in whose warehouse the nuts covered by such certificate are stored, and such certificate shall become a part of the records of the licensed warehouseman. 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)

[41 FR 31163, July 27, 1976, as amended at 47 FR 745, Jan. 7, 1982. Redesignated at 50 FR 1814, Jan. 14, 1985]

FEES

§ 740.56 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]

7 CFR Ch. VII (1-1-00 Edition)

§ 740.57 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]

§ 740.58 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

Farm Service Agency, USDA

§ 740.64

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 63201, Dec. 30, 1981. Redesignated at 50 FR 1814, Jan. 14, 1985, as amended at 62 FR 33541, June 20, 1997]

§ 740.59 Return of excess deposit.

The Treasurer of the United States shall hold in his custody each advance deposit made under § 740.58 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.

INSPECTORS AND WEIGHERS

§ 740.60 Inspectors' and weighers' applications.

(a) Application for licenses to inspect and grade or to weigh nuts under section 11 of the Act shall be made to the Administrator on forms furnished for the purpose by him. Each application shall be in English, shall be signed by the applicant, and shall contain or be accompanied by a statement from the warehouseman for whom the applicant will inspect, grade, or weigh nuts under the Act, showing whether the applicant is competent and is acceptable to such warehouseman for the purpose.

(b) Each inspector's application shall contain:

(1) Evidence that he can correctly grade nuts in accordance with the official standards of the United States, or in the absence of such standards in accordance with any standards approved by the Administrator, and

(2) Satisfactory evidence that he will be provided with such means or facilities for inspecting and grading nuts as may be deemed necessary, for use in the locality in which the applicant expects to perform services as a licensed inspector.

(c) Applications for licenses to weigh nuts shall be on forms furnished for the purpose by the Administrator and shall give such information as will show the applicant's experience in weighing nuts.

(d) A single application may be made by any person for a license as both inspector and weigher upon complying with the requirements of this section.

(e) An applicant shall at any time furnish such additional information as the Department shall find to be necessary to the consideration of his application.

[41 FR 31163, July 27, 1976, as amended at 42 FR 26646, May 25, 1977. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.61 Examination of applicant.

Each applicant for license as an inspector or weigher and each inspector or weigher shall, whenever requested by an authorized agent of the Department, submit to an examination or test to show his ability properly to inspect and grade or to weigh nuts.

§ 740.62 Posting of license.

Each inspector or weigher shall keep his license conspicuously posted in a place designated for the purpose by the Service unless authorized by the Service not to do so.

§ 740.63 Duties of inspectors and weighers.

Each inspector and each weigher whose license remains in effect shall, without discrimination, as soon as practicable, and upon reasonable terms, inspect, grade or weigh and certificate the grade or other class or weight of nuts, stored or to be stored, in a warehouse, for which he holds a license, if such nuts be offered to him under conditions as permit proper inspection and weighing and the determination of the grade or other class or weight thereof. No inspector shall issue a certificate of grade or other class for any nuts unless the inspection thereof be based upon a correct and representative sample of the nuts.

§ 740.64 Inspection certification; form.

(a) Except as provided in paragraph (b) of this section, each inspection certificate issued under the Act by an inspector shall be in a form approved for the purpose by the Department, and shall embody the following information within its written or printed terms:

§ 740.65

(1) The caption "United States Warehouse Act, Nut Inspection Certificate."

(2) Whether it is an original, a duplicate, or other copy, and that it is not negotiable.

(3) The name and location of the warehouse in which the nuts are or are to be stored.

(4) A statement showing whether the inspection covers nuts moving into or out of the warehouse.

(5) The date of the certificate.

(6) The consecutive number of the certificate.

(7) The approximate amount of nuts covered by the certificate.

(8) The kind of nuts covered by the certificate.

(9) The grade or other class of the nuts, as determined by such licensed inspector, in accordance with § 740.77, and, in the case of nuts for which no official nut standards of the United States are in effect, the standard or description in accordance with which such nuts are graded.

(10) A statement that the certificate is issued by an inspector licensed under the United States Warehouse Act and the regulations thereunder.

(11) The signature of the inspector who inspected and graded the nuts.

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.

(b) In lieu of the inspection certificate provided for in the preceding paragraph, each inspector, who holds an unsuspended and unrevoked license under the Agricultural Marketing Act of 1946 and regulations thereunder to inspect and grade any nuts and to certificate the grade or other class thereof for shipment or delivery for shipment in interstate or foreign commerce, shall, unless otherwise requested as to any such nuts by the owner or depositor thereof, issue a certificate of grade or other class covering such nuts in accordance with the Agricultural Marketing Act of 1946 and regulations thereunder. Such nuts shall be deemed to be inspected and graded and such certificate of grade or other class shall be deemed to be an inspection certificate for the purposes of the Act and the regulations in this part.

7 CFR Ch. VII (1-1-00 Edition)

§ 740.65 Copies of inspection certificates to be accessible.

Each inspector shall, as soon as possible after inspecting any nuts and not later than the close of business on the next following business day, make accessible to the parties interested in a transaction in which the nuts are involved at the place designated in § 740.62 a true copy of the inspection certificate issued by him for such nuts or a record of each lot or parcel of nuts inspected or graded by such licensed inspector showing the information contained on such inspection certificate.

§ 740.66 Weight certificate; form.

Each weight certificate issued under the Act by a weigher shall be in a form approved for the purpose by the Service, and shall embody the following information within its written or printed terms:

(a) The caption "United States Warehouse Act, Nut Weight Certificate."

(b) Whether it is an original, a duplicate, or other copy, and that it is not negotiable.

(c) The name and location of the warehouse in which the nuts are or are to be stored.

(d) Whether the nuts are weighed into or out of the warehouse.

(e) The date of the certificate.

(f) The consecutive number of the certificate.

(g) The gross weight of the nuts.

(h) A statement that the certificate is issued by a weigher licensed under the United States Warehouse Act and the regulations thereunder, and

(i) 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.

§ 740.67 Combination grade and weight certificate.

The grade or other class and weight of any nuts ascertained by an inspector and a weigher may be stated on a certificate meeting the combined requirements of §§ 740.64 through 740.66, if the form of such certificate shall have been approved for the purpose by the Service.

Farm Service Agency, USDA

§ 740.72

§ 740.68 Copies of certificates to be kept.

Each inspector and each weigher shall keep for a period of one year in a place accessible to interested parties a copy of each certificate issued by him under the regulations in this part, and shall file a copy of each such certificate with the warehouse in which the nuts covered by the certificates are stored.

§ 740.69 Licensees to permit examination of records.

Each inspector and each weigher shall permit any authorized officer or agent of the Department to inspect or examine on any business day during the usual hours of business, his books, papers, records, and accounts relating to the performance of his duties under the Act and this part, and shall, with the consent of the warehouseman concerned, assist any such officer or agent in the inspection or examination mentioned in § 740.46 as far as any such inspection or examination relates to the performance of the duties of such inspector or weigher under the Act and the regulations in this part.

§ 740.70 Reports by licensees.

Each inspector and each weigher shall, from time to time, if requested by the Service, make reports, on forms approved for the purpose by the Service, bearing upon his activities as such inspector or weigher.

§ 740.71 Licenses; suspension, cancellation or revocation.

Pending investigation, the Secretary may, whenever he deems necessary, suspend the license of an inspector or weigher temporarily without hearing. Upon a written request or a satisfactory statement of reasons therefor, submitted by the inspector or weigher, the Secretary or his designated representative may, without hearing, suspend or cancel the license issued to such inspector or weigher. The Secretary may, after opportunity for hearing has been afforded in the manner prescribed in this section, suspend or revoke a license issued to an inspector or a weigher when such licensee: (a) Has ceased to perform services as such

inspector or weigher, or (b) Has in any other manner become incompetent or incapacitated to perform the duties of such inspector or weigher. As soon as it shall come to the attention of a warehouseman that either of the conditions mentioned under (a) or (b) of this section exists, it shall be the duty of such warehouseman to notify the Service in writing. Before the license of any inspector or weigher is permanently suspended or revoked pursuant to section 12 of the Act, such inspector or weigher shall be furnished by the Secretary 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 § 740.81.

§ 740.72 Suspended or revoked license; termination of license.

(a) In case a license issued to an inspector or weigher is suspended or revoked by the Secretary, such license shall be returned to the Secretary. At the expiration of any period of suspension of such license, unless in the meantime it be revoked, the dates of the beginning and termination of the suspension shall be indorsed thereon, it shall be returned to the inspector or weigher to whom it was originally issued and it shall be posted as prescribed in § 740.62.

(b) Any license issued under the Act and the regulations in this part to an inspector or weigher shall automatically be suspended as to any warehouse whenever the license of such warehouse shall be suspended and shall automatically terminate as to any warehouse whenever the license of such warehouse shall be revoked. Upon either suspension or termination of any inspector's or weigher's license under this paragraph, such license shall be returned to the Department. In case such license shall apply to other warehouses, the Secretary shall issue to the licensee a new license, omitting the names of the warehouses for which licenses have been revoked or suspended. Such new license shall be posted as prescribed in § 740.62.

§ 740.73

§ 740.73 Lost or destroyed licenses.

Upon satisfactory proof of the loss or destruction of a license issued to an inspector or weigher, a duplicate thereof may be issued under the same number, in the discretion of the Secretary.

§ 740.74 Unlicensed inspectors and weighers.

No person shall in any way represent himself to be an inspector or weigher licensed under the Act unless he is a licensed inspector or licensed weigher as defined in accordance with the provisions of paragraphs (m) and (n) of § 740.2

[42 FR 26646, May 25, 1977. Redesignated at 50 FR 1814, Jan. 14, 1985]

NUT GRADING

§ 740.75 Classification; statement.

Whenever the type or grade or other class of nuts 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 § 740.77.

§ 740.76 Grades based on inspection and sample.

Whenever the grade or other class of nuts is required to be or is stated for the purposes of the Act or the regulations in this part, it shall be based upon a correct and representative sample of the nuts and the inspection and grading thereof shall be made under conditions which permit the determination of its true grade or other class.

§ 740.77 Standards to be used.

Official Nut Grading Standards of the United States are hereby adopted as the official nut grading standards of the Act and the regulations in this part; *Provided*, That, the grade of nuts for which no official nut standards of the United States are in effect, shall be stated: (a) In accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the nut trade generally in the locality in which the warehouse is located, subject to the approval of the Service, or (b) in the absence of the standards mentioned in (a) of this section, in accordance with any standards

7 CFR Ch. VII (1-1-00 Edition)

approved for the purpose by the Service.

§ 740.78 Conditions and procedure for appeal of grades or other class.

(a) If a question arises as to whether the kind, grade or other class, or condition of nuts was correctly stated in a receipt or inspection certificate issued under the Act or the regulations in this part, the warehouseman concerned or any person financially interested in the nuts involved may, after reasonable notice to the other party, submit the question to the Administrator, who may appoint a committee to make a determination. The decision of the committee shall be final unless the Administrator shall direct a review of the question. Immediately upon making its decision, the committee shall issue a certificate embodying its findings to the appellants and to the licensee or licensees involved.

(b) If the decision of the committee be that the kind, grade or other class or condition of any identifiable lot was not correctly stated, a new receipt or certificate embodying therein the statement of kind, grade or other class or condition in accordance with the findings of the committee.

(c) All necessary and reasonable expenses of such determination shall be borne by the losing party, unless the Administrator or his representative shall decide that the expense shall be prorated between the parties.

MISCELLANEOUS

§ 740.79 Publications.

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

§ 740.80 Information of violations.

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

§ 740.81 Procedure in hearings.

Hearings under the Act or the regulations in this part, except those relating

Farm Service Agency, USDA

Pt. 741

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 6776, Jan. 30, 1980. Redesignated at 50 FR 1814, Jan. 14, 1985]

§ 740.82 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.

§ 740.83 Bond, assets, and fees for combination warehouse.

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.

§ 740.84 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.

PART 741—SIRUP WAREHOUSES

DEFINITIONS

Sec.

- 741.1 Words in singular form.
- 741.2 Terms defined.

WAREHOUSE LICENSES

- 741.3 Application forms.
- 741.4 Grounds for not issuing license.
- 741.5 Net assets required.
- 741.6 License shall be posted.
- 741.7 Suspension or revocation of warehouse licenses.
- 741.8 Return of terminated, suspended, or revoked warehouse license.
- 741.9 Lost or destroyed warehouse license.

- 741.10 Unlicensed warehousemen must not represent themselves as licensed.

WAREHOUSE BONDS

- 741.11 Bond required; time of filing.
- 741.12 Basis of amount of bond; additional amounts.
- 741.13 Amendment of license.
- 741.14 New bond required each year.
- 741.15 Approval of bond.

WAREHOUSE RECEIPTS

- 741.16 Form.
- 741.17 Copies of receipts.
- 741.18 Lost or destroyed receipts; bond.
- 741.19 Printing of receipts.
- 741.20 Partial delivery of sirup.
- 741.21 Return of receipt before delivery of sirup.
- 741.22 Signatures of persons authorized to direct delivery to be filed with warehouseman.
- 741.23 Omission of grade; no compulsion by warehouseman.

DUTIES OF LICENSED WAREHOUSEMAN

- 741.24 Sirup must be inspected.
- 741.25 Insurance requirements.
- 741.26 Premiums; inspections; reports.
- 741.27 Care of sirup in storage.
- 741.28 Care of nonlicensed sirup or other commodities.
- 741.29 Records to be kept in safe places.
- 741.30 Warehouse charges.
- 741.31 Business hours.
- 741.32 Numbered tags to be attached to each lot of sirup.
- 741.33 System of accounts.
- 741.34 Reports.
- 741.35 Copies of reports to be kept.
- 741.36 Canceled receipts; auditing.
- 741.37 Inspections and examinations of warehouses.
- 741.38 Inspection of weighing, testing, and measuring apparatus.
- 741.39 Care in storage.
- 741.40 Water or ash in sirup.
- 741.41 Procedure to follow prior to reconditioning deteriorating sirup.
- 741.42 Deteriorating sirup; handling.
- 741.43 Excess storage.
- 741.44 Removal of sirup from storage.
- 741.45 Signatures of persons to sign receipts to be filed with Department.
- 741.46 Reporting fire losses.
- 741.47 Copies of inspection or weight certificates to be filed.

FEES

- 741.48 License fees.
- 741.49 Warehouse annual and inspection fees.
- 741.50 Advance deposit.
- 741.51 Return of excess deposit.