

UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Marketing Service

WA-502

**LICENSING AGREEMENT
FOR
EXPORT FOOD AID COMMODITY
WAREHOUSE OPERATORS**

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Licensing Agreement for Export Food Aid Commodity Warehouse Operators

This Agreement applies exclusively to United States Government Export Food Aid Commodities (EFAC) stored or handled at a licensed port warehouse or transloading facility in the United States.

As a condition of initial licensing and continued licensing under the United States Warehouse Act (USWA), administered by the Administrator for the United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), the licensee agrees to the terms and conditions set forth in this Agreement and the regulations found at 7 CFR Part 869 and the statute found at 7 U.S.C. § 241 *et seq.*

No person may represent themselves as licensed under the USWA unless holding a valid (neither suspended nor revoked) license under the USWA.

Any person engaged in the business of handling EFAC, but not licensed under the USWA, is barred from participating in or benefiting from any USWA activity and any claimants against said person may not benefit from any of the USWA protections or coverage.

The USWA, regulations located at 7 CFR Part 869, and this Agreement prevail to the extent that the USWA, regulations located at 7 CFR Part 869, or this Agreement and any addenda to it conflict with the laws, regulations or practices of the various states, localities or municipalities. Additionally, as authorized by 7 CFR Part 869.2(b), and except as provided in this Agreement, the following USWA regulations are waived and do not apply to the Licensee under this Agreement:

7 CFR § 869.14
7 CFR § 869.110
7 CFR Part 869 Subpart E

As indicated by Department of Agriculture Civil Monetary Penalties Adjustment, 75 Fed. Reg. 17555 (April 7, 2010), the maximum civil penalty per violation located at 7 CFR § 869.5(a) is \$27,500.

The following is included by reference:

The United States Warehouse Act (7 U.S.C. § 241 *et seq.*)

Section A - Definitions

Administrator. The AMS designee under whose general direction and supervision all provisions and activities regulated under the USWA are administered.

Agricultural Marketing Service. An agency of the USDA whose jurisdiction includes administration of the USWA.

Authorized Individual. An individual, including a warehouse examiner, designated by AMS to engage in activities authorized under the USWA.

Business Day. A calendar day excluding Saturday, Sunday, or legal holidays (unless business activity occurred).

Control of the Facility. The licensee's ultimate responsibility for the operation and integrity of a facility by ownership, lease, or operating agreement.

Conveyance. The individual transportation unit (truck, railroad car, container, barge, or vessel) used in receiving or shipping EFAC.

Deliver. To move EFAC from the licensed facility and load the EFAC into a conveyance.

Export Food Aid Commodities. For the purpose of this agreement, packaged or processed agricultural commodities received by a licensee under authorized U.S. government food aid programs for export.

Force Majeure. Those severe weather conditions, fire, explosion, flood, earthquake, nuclear incident, nuclear reaction, nuclear radiation, radioactive contamination, insurrection, riot, strike, labor dispute, acts of terrorism, act of civil or military authority, non-availability of transportation, or any other cause beyond the control of the licensee that renders performance virtually impossible, as determined by AMS.

Licensed Facility. Any facility designated by AMS for handling and/or storing EFAC under the USWA.

Licensee. A person licensed under the USWA that operates and has control of the licensed facility.

Persons. Individuals, corporations, companies, associations, firms, partnerships, societies, joint stock companies, a State or political subdivision of a State.

Port Warehouse. A structure or facility, as determined by AMS, for EFAC program use, in which any EFAC is stored or handled under the USWA.

Schedule of Fees. The fees charged and assessed by USDA for licensing and/or services furnished under the USWA to help defray the costs of administering the USWA.

Signature. Any name, mark, or writing used with the intention of authenticating or giving legal affect to a document. It may be a hand-inscribed original, facsimile, digital, electronic, or any other form of authentication, as approved by AMS.

Transloading Facility. An area for transferring EFAC from one mode of transportation conveyance to another which may employ a temporary storage facility.

Section B - Qualifications

In general, EFAC licensees, as determined by AMS, under the USWA must:

1. **be** responsible persons, who:
 - A. have knowledge of and experience in storing and/or handling packaged or processed agricultural commodities;
 - B. are competent and willing to operate the licensed facility in accordance with the USWA, Federal regulations, and this agreement; and
 - C. have not committed a fraudulent or criminal offense indicating a lack of business integrity or business honesty that seriously or directly undermines the person's responsibility as licensee.
2. **maintain** facilities that:
 - A. are physically and operationally suitable for the protection of stored and/or handled EFAC;
 - B. allow for the accurate accounting and efficient handling of the stored and/or handled EFAC; and
 - C. are under the licensee's control.
3. **have** personnel available who:
 - A. have knowledge and experience in the storage and/or handling of packaged or processed agricultural commodities; and
 - B. are able to assist authorized individuals with inspections and examinations.

Section C - Duties of the Licensee

In general, the licensee agrees, unless prevented from doing so by force majeure, to (each of the following):

1. **exercise**, at all times, such care in regard to EFAC as a reasonably prudent owner would exercise under the same circumstances and conditions and not handle and/or store such products in a manner that would cause or contribute to product loss, damage or contamination.
2. **assure AMS that**:
 - A. all EFAC accepted for storage and handling are stored in licensed storage space;
 - B. all EFAC products are stored and handled with proper dunnage and pallets that are suitable for proper storage of EFAC; and
 - C. they are not currently delinquent or have not within three (3) years prior to executing this Agreement been delinquent for any Federal or State tax liability in an amount that exceeds \$3,000.00.
3. **provide**:
 - A. all necessary assistance to authorized individuals in the execution of inspections and examinations;
 - B. to commodity suppliers and the consignee, or the consignee's representative, detailed information of commodities received from the conveyance at the EFAC licensed facility. EFAC documentation acceptable to AMS must be signed by an authorized representative of the EFAC licensed facility, and

shall include, but is not limited to, the name of the commodity, the units/quantity received, unloading date, and the commodity purchase order number;

- C. lighting;
 - D. sanitary facilities for the use of employees; and
 - E. security for EFAC to avoid tampering or adulteration.
4. **maintain:**
- A. records for a period of six (6) years for stored and/or handled EFAC and provide such reports with respect to receiving, storing, handling, and delivering EFAC as requested;
 - B. at all times, legal and operational control of all licensed storage space and handling facilities;
 - C. lot identity when receiving, handling, and delivering EFAC;
 - D. the facilities in sound physical condition such that breaches in walls and floors are promptly repaired, doors are in good working order, and roof leaks are identified, controlled, and promptly repaired;
 - E. the grounds such that:
 - 1) contamination of EFAC from adjacent properties is prevented;
 - 2) litter and waste are removed;
 - 3) tall grass and weeds are kept away from the licensed facility;
 - 4) equipment is stored such that it does not provide shelter for pests;
 - 5) outside premises including yards, parking areas, and roads are well drained and maintained; and
 - 6) adequate space is maintained between equipment and structures to allow cleaning and maintenance of the facility.
 - F. EFAC to ensure that:
 - 1) EFAC packaging is kept clean and free of infestation, bird droppings, dust, rodent filth, and stains;
 - 2) all chemicals or fertilizers, if any are stored in the warehouse, are stored in a separate area away from EFAC to prevent damage to commodities;
 - 3) objectionable odors that could contaminate the EFAC are eliminated;
 - 4) there are 18 inches of clearance between EFAC and ceilings/sprinkler heads; at least one main aisle or walkway a minimum of 24 inches wide, and 18 inches between walls and EFAC;
 - 5) product stacking requirements are not exceeded;
 - 6) storage areas are inspected for pest activity, moisture issues, and product quality on a regular basis (with results documented and records retained); and
 - 7) AMS is promptly notified of any EFAC deterioration or condition which could adversely affect EFAC.

- G. a reasonably clean facility at all times, free of materials that could create a hazard or interfere with the handling of EFAC, and provide a safe environment in and around the storage and/or handling facility;
 - H. records of salvaged EFAC and EFAC disposal;
 - I. a comprehensive pest control program that keeps the facility free of insects, rodents, birds and any other pests that may adversely affect the condition of EFAC, and ensure that:
 - 1) such program is in writing, is available for review upon request, and is implemented by trained in-house personnel, or by registered, trained, or licensed contractors;
 - 2) results of inspections and corrective actions in the pest control program are documented and records retained for three (3) years;
 - 3) only pest management materials that meet all regulatory or contractual requirements and restrictions are used;
 - 4) copies of credentials (certifications or registrations) of those who perform pest management services are retained on file for three (3) years;
 - 5) copies of contracts with outside providers are retained on file for three (3) years; and
 - 6) areas of the facility undergoing treatment are properly marked with signage and barriers to prevent exposure to hazardous materials.
 - J. a written security plan that includes measures to protect EFAC stored and/or handled under this Agreement.
5. **report immediately to AMS:**
- A. the occurrence of significant loss, damage, or contamination to EFAC, and the extent and cause, if known; and
 - B. EFAC that has been in storage in excess of 30 days by shipper. The report shall include commodity, date of delivery, contract number, lot number, and/or purchase order number.
6. **not accept** EFAC that are damaged, including torn packaging exposing the commodity, or EFAC otherwise not suitable for storage and/or handling.
7. **deliver** stored and/or handled EFAC without unnecessary delay unless prevented by force majeure.
8. **conduct** a facility risk assessment and establish procedures that address:
- A. general security of the physical structures and grounds of the facility;
 - B. shipping and receiving procedures to ensure that EFAC are not subject to tampering;
 - C. action to be taken in the event of a national emergency; and
 - D. contact information for local security authorities.
9. **post** any certificates of licensing issued by AMS.
10. **implement** U.S. Coast Guard approved security plan as required.

Section D - Inspection and Examination of Facilities

The licensee agrees (each of the following):

1. that USDA has unrestricted access to the licensed facility.
2. that authorized individuals are permitted to enter and inspect or examine, on any business day during the usual hours of business, any USWA licensed facility.
3. that the books, records, papers, accounts, and the contents thereof relating to the license are subject to inspection or examination.
4. to furnish to authorized individuals the assistance necessary to conduct an inspection or examination.
5. to promptly respond to violations noted on the examination. The response will include the corrective action on items completed and a corrective action plan on items to be completed, including a timetable for completion.
6. to immediately notify AMS of any additions or deletions of facilities, or any change in ownership or operational control of facilities.

Section E - Temporary Suspension

AMS may temporarily suspend the USWA EFAC license, prior to an opportunity for a hearing.

1. The grounds for temporary suspension by USDA include, but are not limited to:
 - A. failure to perform the duties specified, failure to meet the requirements of the USWA and/or violations of the regulations or this Agreement;
 - B. failure to maintain legal and operational control of the licensed facilities;
 - C. indication or commission of a fraudulent act;
 - D. incapacity or incompetence of the licensee;
 - E. any action or inaction by the licensee that may place EFAC at risk;
 - F. failure to provide a safe work environment;
 - G. failure to ensure adequate security or protection of stored and/or handled EFAC from tampering or adulteration; and
 - H. failure to pay fees required under this Agreement.
2. Upon temporary suspension, the licensee will:
 - A. not receive additional EFAC products without approval of AMS;
 - B. not remove or deliver from inventory any EFAC without prior approval of AMS;
 - C. take corrective action within the time frame specified in the temporary suspension; and
 - D. not represent themselves as licensed in good standing or perform the functions of a USWA licensee.
3. AMS will notify the licensee:

- A. by mail, email, phone, or fax of the suspension;
- B. of the reason for the suspension;
- C. of an on-going review of the situation;
- D. of the time period for expected compliance;
- E. whether public notice will be made of a temporary suspension and of subsequent revocation of the USWA license;
- F. that revocation of the USWA license may be anticipated for noncompliance; and
- G. that progression from temporary suspension to revocation may be appealed as presented in Section H *Failures, Defaults – Remedies*.

Section F - Dispute Resolution and Arbitration

1. A person may initiate legal action in any district court of the United States concerning a claim for noncompliance or an unresolved dispute with respect to activities authorized under the USWA.
2. Any claim for noncompliance or an unresolved dispute between the licensee and another party with respect to activities authorized under the USWA may be resolved by the parties through mutually agreed upon arbitration procedures.
3. In no case will USDA provide assistance or representation to parties involved in a court or arbitration proceeding arising with respect to activities authorized under the USWA and the regulations.

Section G - Fines and Penalties

The licensee and their employees are subject to the provisions of criminal and civil fraud statutes that apply to making a false certification or statement, fraudulent adjustments or corrections, and concealment of operational or financial condition and as such may be punishable by imprisonment, fines, and other penalties, including but are not limited to, the following: 18 U.S.C. §§ 286, 287, 371, 641, 651, 1001, and 1014; and 31 U.S.C. § 3729.

Section H - Failures, Defaults – Remedies

1. AMS may initiate a suspension or revocation of a license and take necessary measures to protect EFAC, as determined by AMS, if licensee fails to:
 - A. perform services required by this Agreement;
 - B. maintain control of the facility;
 - C. provide a safe work environment; or
 - D. ensure adequate security or protection of stored or handled EFAC from tampering or adulteration.
2. AMS may initiate a suspension or revocation of a license and take necessary measures to protect EFAC, as determined by AMS, if the licensee commits a fraudulent act related to the purposes of the storage or handling of EFAC under this agreement.
3. Upon suspension of the license, the licensee will:
 - A. not receive additional EFAC products without approval of AMS;

- B. not remove or deliver from inventory any EFAC without prior approval of AMS;
 - C. take corrective action within the time frame specified in the suspension; and
 - D. not represent themselves to anyone as licensed in good standing or perform the functions of a licensed USWA licensee.
4. AMS will notify the licensee:
- A. by mail, email, phone, or fax of the suspension;
 - B. of the reason for the suspension;
 - C. of an on-going review of the situation;
 - D. of the time period for expected compliance;
 - E. whether public notice will be made of a suspension and of subsequent revocation of the USWA license; and
 - F. that revocation of the USWA license may be anticipated for noncompliance.
5. Suspension, revocation, and liquidation are taken in accordance with the adverse determination rules in 7 CFR Part 735.8 which provide for a hearing before AMS.
6. The USWA licensee may request revocation of their license. In that case, the USWA license will be revoked pending administrative action, as appropriate.
7. Upon a finding of failure, at the licensee's request, or the commission of a fraud, AMS may (take **any** of these actions):
- A. take operational control of:
 - 1) any EFAC within the licensed facilities; and
 - 2) all books, papers, and property used in the operation of the facility.
 - B. take necessary measures to protect EFAC, as determined by AMS;
 - C. recover necessary expenses from the licensee for closeout procedures; or
 - D. enter into remediation activities. Remediation may include, but is not limited to, blacklightings, segregation of EFAC, cleaning and/or re-inspection of EFAC prior to shipment.

Section I - Fees

AMS is authorized to collect fees to cover the administration of USWA licensing activities. The schedule of fees is established by AMS and is available on USWA/AMS Web Page under Fee Schedule. Fee changes will be published in the ***Federal Register***.

1. Licensee will pay fees as follows:
- A. **Annual User Fees.** Fees are invoiced and paid prior to license issuance and annually thereafter.
 - B. **Inspection Fees.** A onetime inspection fee will be invoiced and paid prior to the issuance of the original license.

- C. **Licensing Action Fees.** Such fees for original and amendment licensing actions are invoiced and payable in advance of service.
- D. Fees for additional or special examination services include:
 - 1) reinstatement examination fees for suspended licenses which are invoiced at the inspection fee rate.
 - 2) examinations requested by licensee. These fees are invoiced at an hourly rate as determined by AMS.
 - 3) examinations due to adverse conditions. These fees are invoiced at an hourly rate as determined by AMS.
- 2. All fees collected under this Agreement will be credited to the account that incurs the costs of administering the warehousing activities and are available without further appropriation and without regard to fiscal year limitations. A schedule showing the fees described in this section are detailed in a ***Federal Register*** notice.
- 3. Fees remaining unpaid will subject the licensee to **suspension or revocation** of their license upon notification by AMS.

By signing this form, I (the Licensee) agree to all the terms and conditions set forth in the WA-502, Licensing Agreement for Export Food Aid Commodity Warehouse Operators. I understand that failure to comply with the provisions set forth in this Agreement and the regulations found at 7 CFR Part 869 and the statute, United States Warehouse Act, found at 7 U.S.C. § 241 *et seq* may result in suspension, revocation, or liquidation.

| | | |
|---|---|-----------------------------|
| For: | _____ Licensee (Legal Entity) | |
| At: | _____ Principal Place of Business | |
| By: | _____ Signature of Authorized Representative | |
| Title: | _____ | Date: _____ (MM-DD-YYYY) |
| Accepted for Agricultural Marketing Service by: _____ | | |
| Title: | _____ | |
| Date: | _____ | |

Please sign this page and return it to:
Warehouse and Commodity Management Division
Mail Stop 9148
Post Office Box 419205
Kansas City, Missouri 64141-6205
Phone (816) 926-6474
Warehousing@usda.gov

NOTE:

The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. 552a - as amended). The authority for requesting the information identified on this form is 7 CFR Part 869, 7 CFR Part 1423, the United States Warehouse Act (Pub. L. 106-472), and the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.). The information will be used to document licensee agreement to all of the terms and conditions set forth for initial licensing and continued licensing under the United States Warehouse Act. The information collected on this form may be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation. Providing the requested information is voluntary. However, failure to furnish the requested information will result in a determination of ineligibility to obtain new licensing or retain existing licensing under the United States Warehouse Act.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0305. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

*The provisions of appropriate criminal and civil fraud, privacy, and other statutes may be applicable to the information provided. **RETURN THIS COMPLETED FORM TO THE WAREHOUSE AND COMMODITY MANAGEMENT DIVISION, POST OFFICE BOX 419205, MAIL STOP 9148, KANSAS CITY, MO 64141-6205 or warehousing@usda.gov.***

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at http://www.ascr.usda.gov/complaint_filing_cust.html and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov. USDA is an equal opportunity provider, employer, and lender.

Instructions for WA-502

LICENSING AGREEMENT FOR EXPORT FOOD AID COMMODITIES WAREHOUSE OPERATORS

The Warehouse and Commodity Management Division (WCMD) supplies Export Food Aid Commodities Warehouse Operators with a Licensing Agreement that incorporates the terms and conditions for licensing under the United States Warehouse Act. The Warehouse Operator reviews the provisions of the Licensing Agreement and signs the document indicating their agreement to abide by all provisions.

The Warehouse Operator shall submit the document to THE WAREHOUSE AND COMMODITY MANAGEMENT DIVISION, STOP 9148, P.O. BOX 419205, KANSAS CITY, MO 64141-6205 or warehousing@usda.gov

When completing the Licensing Agreement, follow the instructions below. Please contact WCMD at (816) 926-6474 if assistance is needed.

| Field Name | Instruction |
|--|---|
| Licensee | Enter the complete name of the Licensee (Legal Entity) in the field titled "Licensee". |
| Principal Place of Business | Enter the Licensee (Legal Entity) Principal Place of Business |
| Signature of Authorized Representative | <p>Signature of the authorized representative who has authority to bind the licensee in a legal contract. A signature resolution must be sent in if the signee does not meet the notations below. See below for acceptable signatories:</p> <ul style="list-style-type: none">• For corporations, a signature resolution must be on file or a signature resolution must be sent with the bond for execution.• For General Partnerships, all partners must sign.• For Limited Partnerships, the general partner signs.• For LLCs provide signature according to the organizing documents. |
| Date | Enter the date of signature in (MM-DD-YYYY) format. |

“Accepted for Agricultural Marketing Service” will be completed by WCMD.