

REPUBLIC OF KENYA



MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVES
OFFICE OF THE CABINET SECRETARY

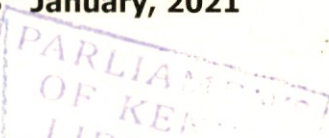
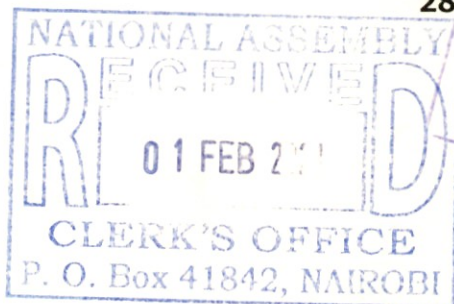
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Ref. No. MOALF/POLY/10/13 Vol.II

28th January, 2021

Mr. Michael Sialai, EBS
Clerk to the National Assembly
Parliament Buildings
P. O. Box 41842 - 00100
NAIROBI



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Dear *Check*

SUBMISSION OF THE LEGAL NOTICE NO. 3 OF 2021 ON THE WAREHOUSE RECEIPT SYSTEM REGULATIONS FOR PARLIAMENTARY SCRUTINY OF STATUTORY INSTRUMENTS

3/2/21

Following publication in the Gazette of the Warehouse Receipt System Regulations vide Legal Notice No. 3 of 22nd January of 2021 and pursuant to the provisions of Section 11 of Part V of the Statutory Instruments Act, No. 23 of 2013, the Cabinet Secretary hereby submits the said Regulations for Parliamentary scrutiny and approval. Please find enclosed copies of the following documents that provide evidence of compliance with the provisions of the Statutory Instruments Act during the development of the Regulations;

1. The warehouse Receipt System Regulations – L.N. No. 3 of 2021;
2. The Regulatory Impact Assessment (RIA) Report on the Regulations;
3. The Regulatory Impact Statement, (RIS);
4. The Explanatory Memorandum;
5. Compliance Certificate
6. Notice; and
7. Evidence of public participation (Matrix of issues raised and lists of attendance during public participation)

The purpose of this letter is to submit the published Regulations and the above-mentioned accompanying documents for parliamentary scrutiny.

Yours

Sincerely

Hon. Peter Munya, EGH
CABINET SECRETARY

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PIS register, canva
Tabung & Manual to
committee &
alternates
receipt
3/2/21

SPECIAL ISSUE

Kenya Gazette Supplement No. 4

5

22nd January, 2021

(Legislative Supplement No. 3)

LEGAL NOTICE NO. 3

THE WAREHOUSE RECEIPT SYSTEM ACT

(No. 8 of 2019)

THE WAREHOUSE RECEIPT SYSTEM REGULATIONS, 2021

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		TUESDAY
DATE: 09 FEB 2021		BY: <i>The leader of the Majority party</i>
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THE WAREHOUSE RECEIPT SYSTEM ACT

(No. 8 of 2019)

IN EXERCISE of the powers conferred by section 28 and 49 of the Warehouse Receipt System Act, 2019, the Cabinet Secretary for Agriculture, Livestock, Fisheries and Co-operatives makes the following Regulations—

THE WAREHOUSE RECEIPT SYSTEM REGULATIONS, 2021

PART I—PRELIMINARY

1. These Regulations may be cited as the Warehouse Receipt System Regulations, 2021. Citation.

2. These regulations shall apply to— Application.

(a) all activities relating to the issuance, negotiation and transfer of warehouse receipts for agricultural commodities stored in licensed warehouses; and

(b) all persons involved in the activities under the warehouse receipt system provided in the Act and these Regulations.

3. In these Regulations, unless the context otherwise requires— Interpretation.

“Act” means the Warehouse Receipt System Act, 2019 No. 8 of 2019.

“county executive committee member” means the member of the county executive committee responsible for matters relating to agriculture in the respective county;

“delivery” means the release of the actual possession of warehoused commodity to the owner on demand and upon production of the warehouse receipt to a warehouse operator;

“independent warehouse manager” means a collateral manager certified by the Council and appointed by the county executive committee member to manage warehousing operations pursuant to suspension or revocation of a license of a warehouse operator by the county executive committee member;

“inspector” means a person appointed as an inspector under the Act; and

“licensed warehouse” means a warehouse licensed in accordance with the Crops Act, 2013. No. 16 of 2013.

PART II—LICENSING OF WAREHOUSE OPERATORS AND REGISTRATION OF COLLATERAL MANAGERS

4. (1) A person who intends to operate the business of warehouse storage of agricultural commodities and issuance of warehouse receipts shall, before submitting an application under regulation 5, apply to the Council for a Certificate of Conformity to operate within the warehouse receipt system in Form 1A in the First Schedule. Certificate of conformity to be issued by the Council.

(2) The Council shall consider an application for a Certificate of Conformity to operate within the warehouse receipt system and issue the certificate if the applicant—

- (a) is a limited liability company or such other legal entity registered in Kenya;
- (b) has submitted a viable business plan for the intended warehouse business based on the criteria specified in Form 1B set out in the First Schedule;
- (c) has or demonstrates ability to raise adequate capital to finance initial investment in infrastructure and three years operational expenses;
- (d) demonstrates ability to provide performance bond;
- (e) has qualified personnel or engages services of qualified personnel in warehousing operations; and
- (f) has paid the fee prescribed for issuance of a Certificate of Conformity prescribed in the Third Schedule.

(3) Where the applicant meets the requirements in paragraph (2), the Council shall, within fourteen days from the date of receipt of the application, issue a Certificate of Conformity to the applicant in Form 2A set out in the Second Schedule, upon payment of the fees prescribed in the Third Schedule.

5. (1) A person who intends to operate the business of warehouse storage of agricultural commodities and issuance of warehouse receipts shall apply for a warehouse operator's license.

Licensing of warehouse operators.

(2) An application for a warehouse operator's license shall be made to the respective county executive committee member of the respective county government in Form 1C set out in the First Schedule and be accompanied with a non-refundable application fee prescribed in the Third Schedule.

(3) An applicant under paragraph (1) shall be eligible for a warehouse operator's license if the applicant—

- (a) submits a Certificate of Conformity issued by the Council under regulation 4;
- (b) is in possession of a warehouse licensed in accordance with the Crops Act, 2013 and Crops (Food Crops) Regulations, 2019; and
- (c) provides a performance bond equivalent to ten per-cent of the value of the commodity that the applicant predominantly stores or intends to store in the warehouse.

LN 217/2019.

6. (1) The county executive committee member shall issue a license in Form 2B set out in the Second Schedule to an applicant who has a Certificate of Conformity from the Council and met the requirements of regulation 5 and notify the Council of the issuance of the license.

Issuance of a warehouse operator's license".

(2) The Council shall enter the details of the licensed warehouse operator in the Central Registry database to enable the operator commence warehouse operations.

(3) A license issued under paragraph (2) shall, unless earlier suspended or revoked, be valid until the 30th of June of every year.

(4) Where an application does not meet the requirements in regulation 5, the county executive committee member shall reject the application and inform the applicant of the rejection, in writing, within seven days stating the reasons.

(5) An applicant may, upon addressing the issues raised as grounds for rejection of an application, resubmit an application for reconsideration.

7. (1) A warehouse operator shall, at least one month before the expiry of a license, apply to the county executive committee member for renewal of a license.

Renewal of license.

(2) The requirements and timelines for processing and issuing of a license under regulations 4 and 5 shall apply to the renewal of a license.

8. (1) A county executive committee member may suspend a license where the warehouse operator—

Suspension and revocation of License.

- (a) fails to preserve the quality of the commodity;
- (b) fails to account for the commodity under their custody for which a warehouse receipt has been issued;
- (c) falsifies records in the warehouse; or
- (d) fails to maintain the stipulated standards relating to the infrastructure of a warehouse.

(2) A county executive committee member shall notify the Council of the intention to suspend a license under paragraph (1) before the suspension.

(3) A county executive committee member shall before suspending a license notify the warehouse operator and give the warehouse operator an opportunity to be heard.

(4) The county executive committee member may upon hearing a warehouse operator—

- (a) warn and direct the warehouse operator to take remedial action;
- (b) impose a fine on the warehouse operator for the non-compliance;
- (c) take any other enforcement action as may be necessary for the protection of users of the warehouse and the public interest; or
- (d) suspend the license.

(5) Upon the suspension of a license, the county executive committee member shall notify the warehouse operator, in writing, of the suspension specifying the period and reasons for suspension and the remedial measures required for lifting of the suspension.

(6) The county executive committee member shall notify the Council before revoking the license of a warehouse operator who after suspension and reinstatement of their license engages in the conduct stated in paragraph (1).

(7) The county executive committee member shall, before revoking a license, give a warehouse operator a fourteen days' notice to show cause why the license should not be revoked and an opportunity to be heard.

(8) A notice under paragraph (7) may specify conditions which the warehouse operator may be required to fulfil within the fourteen-day period to safeguard the interest of depositors and other parties with interest on the commodities in the warehouse.

(9) After hearing the warehouse operator, the county executive committee member may revoke the license and notify the warehouse operator, in writing, of the revocation of the license, indicating the reasons for revocation.

(10) Where the license has been revoked the county executive committee member shall appoint an independent warehouse manager in accordance with section 21(6) of the Act to operate the warehouse until the matter is resolved.

(11) The costs of the management the warehouse by the independent warehouse manager may be met using—

- (a) the warehousing charges payable by the depositor of commodity or owner of the warehouse receipt;
- (b) the proceeds of the performance bond; or
- (c) any other sources as may be specified by the Council.

9. In addition to the requirement to publish the names of licensed warehouses in the Gazette and one daily newspaper of nationwide circulation, under section 17(7) of the Act, the Council shall continually update and publish in its website and any other media the names of warehouse operators—

- (a) licensed to operate under the warehouse receipt system; and
- (b) whose licenses have been suspended or revoked.

10. (1) A person who intends to operate as a collateral manager under the Act shall apply to the Council for the issuance of a Certificate of Compliance in Form 1D set out in the First Schedule.

(2) An applicant shall be eligible for the issuance of a certificate of compliance by the Council if the applicant—

- (a) is a company or such other legal entity registered in Kenya;

Publication of names of warehouse operators.

Certificate of Compliance for collateral managers.

(b) has qualified personnel or has engaged the services of qualified personnel in warehousing operations and collateral management; and

(c) has a minimum of three years' relevant experience in commodity handling and warehouse operations.

(3) The Council shall acknowledge receipt of the application under paragraph (1) within seven days of receipt.

(4) Where the applicant meets the requirements in paragraph (2), the Council shall, within fourteen days from the date of receipt of the application, issue a Certificate of Compliance to the applicant in Form 2C set out in the Second Schedule, upon payment of the fees prescribed in the Third Schedule.

(5) A Certificate of Compliance issued under paragraph (4) shall, unless earlier suspended or revoked, remain valid until the 30th June in every year.

(6) A collateral manager shall apply for renewal of the certificate of conformity upon payment of a renewal fee prescribed in the Third Schedule as long as the applicant continues to satisfy the requirements for grant of the certificate.

(7) The Council shall publish a list of collateral managers registered by the Council in its website and any other media on a quarterly basis.

(8) Any person who operates as a collateral manager under the Act without registration by the Council commits an offence.

11. (1) The Council may suspend a certificate of compliance issued under regulation 10 if—

(a) the Council establishes that the information stated in the application for the Certificate of Conformity was false;

(b) the warehouse operator violates any conditions upon which the certificate was granted; or

(c) a warehouse operator continues to undertake warehouse operations under the Act but has failed to renew a Certificate of Compliance.

(2) The Council shall before suspending a Certificate of Compliance, give a collateral manager a fourteen days' notice to show cause why the Certificate of Compliance should not be revoked and an opportunity to be heard.

(3) Upon hearing the collateral manager, the Council may suspend a Certificate of Compliance, and notify the collateral manager, in writing, of the suspension specifying the period and the reasons for suspension and the remedial measures required to facilitate the lifting of the suspension.

(4) The Council shall revoke a Certificate of Compliance where a Collateral manager who, after the suspension or subsequent

Suspension and
Revocation of
Certificate of
Compliance.

reinstatement of their Certificate of Compliance, does not undertake remedial measures specified in paragraph (3).

(5) The Council shall before revoking a Certificate of Compliance, give a collateral manager a fourteen days' notice to show cause why the Certificate of Compliance should not be revoked and an opportunity to be heard.

(6) Upon hearing the collateral manager and the decision to revoke is upheld, the Council may revoke a Certificate of Compliance, and notify the collateral manager, in writing, of the revocation, indicating the reasons for revocation.

(7) The Council may, before suspending or revoking a Certificate of Compliance under this regulation, specify conditions which the collateral manager may be required to fulfil within the fourteen-day period.

PART II—THE CENTRAL REGISTRY

12. (1) The Council shall establish a Central Registry system for administering the warehouse receipts system.

Features of the central registry.

(2) The Central Registry shall—

- (a) have capacity to handle electronic and hard copy warehouse receipts;
- (b) integrate with a clearing and settlement system;
- (c) be connected or capable of being connected to any commodities exchange and warehouses;
- (d) contain adequate infrastructure to ensure timely update of warehouse receipt system operations;
- (e) have adequate risk management mechanism including pre-checks performed by the system before transfer of title;
- (f) have capacity to provide real-time risk management and surveillance tools for monitoring of warehouse receipt system activities of all warehouses;
- (g) be able to provide warehouse operators and holders of receipts with access to warehouse receipts transactions;
- (h) be able to provide interested parties access to confirm the validity of a warehouse receipt through official search from the Central Registry;
- (i) have adequate systems capacity supported by a business continuity plan including a disaster recovery system;
- (j) be established and maintained in a manner to ensure that it is secure and maintains the confidentiality of data; and
- (k) contain any other feature and functionality as the Council may specify.

13. The Central Registry shall be required to—

Duties of the Central Registry.

- (a) maintain a register of all warehouse receipt transactions;
- (b) generate and avail reports on all transactions of warehouse receipts for use by actors;
- (c) provide a link for the warehouse receipt system to the commodity exchanges and other relevant platforms;
- (d) maintain the integrity of the receipts and associated transactions; and
- (e) notify the public of any warehouse receipt that is lost, cancelled or withdrawn.

14. (1) Every county executive committee member shall ensure that the county registry established under section 5(a) of the Act meets all the requirements specified in regulation 12. County registries.

(2) Every county executive committee member shall ensure that the county registry is linked to the Central Registry.

15. (1) A warehouse operator shall within fourteen days of issuing a warehouse receipt, submit either hard or electronic copy of the receipt to the registrar of the Central Registry in Form 1E set out in the First Schedule. Submission of copies of Warehouse Receipts.

(2) The registrar shall register the warehouse receipt submitted under paragraph (1) and generate a certificate of registration for the receipt.

(3) A certificate of registration generated under paragraph (2) shall be conclusive evidence of the issuance or negotiation of a warehouse receipt.

(4) The registrar shall facilitate access to the certificate of registration and registered warehouse receipts through the Central Registry.

16. (1) The charges and fees payable under these Regulations shall be as prescribed in the Third Schedule. Fees and charges.

(2) A warehouse operator shall disclose all charges levied by the warehouse operator to the depositor prior to depositing of the commodity into the warehouse.

PART IV – WAREHOUSE RECEIPTS

17. The Council shall—

- (a) identify the commodities to be under warehouse receipt system at any given time; and
- (b) specify and periodically review the minimum lots required for various agricultural commodities acceptable for issuance of warehouse receipts under these Regulations.

Types of commodities and minimum lots.

18. The Council shall from time to time establish and provide values to be used by warehouse operators in determining the usual and normal shrinkage in weight of commodities during storage due to natural processes. Determination of normal shrinkage.

19. (1) A warehouse receipt to be issued by all warehouse operators shall be in Form 2D set out in the Second Schedule.

Warehouse receipts.

(2) For the purpose of issuing electronic warehouse receipts, the Council shall facilitate the integration or linkage of an electronic system of the Central Registry for generating, sending, receiving and storing electronic warehouse receipts with warehouse operators' electronic platforms.

(3) The Council shall not approve an electronic system of a warehouse operator unless the system has capability to interface with the Central Registry.

20. (1) A depositor shall immediately report a lost, stolen or destroyed warehouse receipt to the warehouse operator who issued it and to any other person who has pecuniary interest in the goods for which the receipt was issued.

Replacement of a warehouse receipt.

(2) The warehouse operator shall, before issuing a replacement receipt, require the depositor to avail details set out in Form 2E set in the Second Schedule.

(3) The depositor shall make a commitment to bear the liability that the warehouse operator may suffer from such loss, theft or destruction of the warehouse receipt.

(4) Upon fulfilment of the requirements of this regulation, the warehouse operator shall issue a new receipt marked "Replacement Receipt" bearing the reference number of the lost receipt as set out in Form 2F set out in the Second Schedule.

(5) The warehouse operator shall notify the Central Registry of the replacement warehouse receipt in Form 2G set out in the Second Schedule.

21. (1) A depositor who wishes to split a lot for which a receipt has been issued, shall surrender the warehouse receipt to the warehouse operator.

Surrender of receipts in split of lots.

(2) Upon surrender of a receipt under paragraph (1), the warehouse operator shall, subject to the minimum lot size required for the commodity, cancel the receipt and issue new receipts reflecting the new lots.

PART V—NEGOTIATION AND TRANSFER OF WAREHOUSE RECEIPTS

22. (1) A warehouse receipt shall be negotiable instrument.

Negotiation and transfer.

(2) A warehouse receipt shall be negotiable upon its registration by the Central Registry.

(3) A person who intends to transfer a warehouse receipt shall initiate the transfer using a standard contract template to be issued by the Council.

(4) A prospective transferee shall verify the ownership and any encumbrances of the warehouse receipt under negotiation by making such confirmations as are necessary to do so from the Central Registry.

(5) The warehouse operator shall, where required, disclose any material information and any encumbrances relating to the warehouse receipt to the prospective transferee.

(6) The transferor shall settle any encumbrances, including any payments to any creditor with a lien over the warehouse receipt and all related charges, before the transfer.

(7) Upon settlement of encumbrances, fees and related charges the transferor shall endorse the warehouse receipt in favour of the transferee.

(8) Upon endorsement, the transferor and transferee shall execute and submit to the warehouse operator a transfer in such form as the Council may determine.

(9) Upon receipt and verification of the endorsed warehouse receipt and duly completed transfer form, the warehouse operator shall issue a new warehouse receipt to the transferee and submit either hard or electronic copy of the receipt to the registrar of the Central Registry within fourteen days.

(10) The Registrar shall immediately update the records to reflect change of title or ownership and generate a certificate of registration of the warehouse receipt.

23. (1) The warehouse operator shall deliver commodities to the owner upon presentation of a warehouse receipt.

Delivery of commodities.

(2) A warehouse operator may fail or refuse to deliver commodities to the holder of a warehouse receipt where—

- (a) warehouse operator's lien has not been fully satisfied;
- (b) there is a court order prohibiting the warehouse operator from delivering the commodities;
- (c) the owner has failed to produce warehouse receipt; or
- (d) the warehouse operator has any other lawful reason for refusing to deliver.

(3) Where the warehouse operator fails or is unable to deliver commodities to the holder of a warehouse receipt on demand, a warehouse operator may, upon agreement with the depositor, deliver commodities of similar grade and quality or its equivalent within seven days.

(4) A warehouse operator who fails to comply with paragraphs (1) and (3) commits an offence.

24. (1) Where a depositor has not collected or issued further instructions to the warehouse operator at the end of the agreed contractual storage period, the goods in the warehouse shall be deemed to be uncollected and shall be handled in accordance with the Disposal of Uncollected Goods Act.

Uncollected commodities in a warehouse.

Cap. 38.

(2) The warehouse operator shall notify the depositor or holder, in accordance with section 5(6) of the Disposal of Uncollected Goods Act, to take delivery of the commodities within fourteen days.

Cap. 38

(3) The warehouse operator shall notify the Council before initiating the process provided under the Disposal of Uncollected Goods Act.

Cap. 38.

25. (1) Where the holder of a lien is satisfied that the owner of the warehouse receipt is unable to meet their obligations under the lien, the holder of lien may initiate the sale of the commodity under lien.

Sale of commodities under lien.

(2) The sale shall not take place unless the holder of the lien has given at least twenty-one days' notice to the owner of the warehouse receipt.

(3) The notice in paragraph (2) shall state that the commodities shall be advertised for sale and be sold by auction at a specified time and place unless the claim is paid within the time specified in the notice.

(4) The sale by auction shall include a condition as to the reserve price that takes into account the prevailing market conditions.

(5) The proceeds of the sale shall be used to settle any outstanding liabilities entered in the warehouse receipt in accordance with priority and order of claims, and the balance of the proceeds, if any, paid to the holder of the warehouse receipt.

26. A warehouse operator's lien on commodities deposited, or on the proceeds thereof, shall include—

Claims included in the warehouse operator's lien.

- (a) all lawful charges for storage and preservation of the commodities;
- (b) all lawful claims for money advanced, interest, insurance, transportation, labour, weighing and other charges and expenses in relation to the commodities; and
- (c) all reasonable charges and expenses for notice and advertisement of sale and for sale of the commodities where default has been made in satisfying the warehouse operator's lien.

PART VI—DUTIES AND OBLIGATIONS OF A WAREHOUSE OPERATOR, DEPOSITOR AND PLEDGEEES

27. (1) In addition to the obligation under section 33 of the Act, a licensed warehouse operator shall—

Duties of a warehouse operator.

- (a) maintain each licensed warehouse and warehousing infrastructure as per the set national standards
- (b) maintain the quality and quantity of the stock of agricultural commodities in the warehouse received from depositors as reflected in the warehouse receipt issued;

- (c) issue a negotiable warehouse receipt only in respect of such commodities that have been specified by the Council from time to time;
- (d) verify the authenticity, any liabilities or encumbrances of warehouse receipts during negotiation and transfer;
- (e) deliver the commodities to owner of a negotiable warehouse receipt on demand;
- (f) keep and update records of all warehouse operations and avail for the same inspection; and
- (g) prepare and submit monthly reports on the warehouse operations to the Council and the county executive committee member.

28. A depositor of a commodity or warehouse receipt owner shall—

Obligations of a depositor or warehouse receipt owner.

- (a) deliver commodities that meet the national commodity standards;
- (b) ensure the receipt issued for the deposited commodity reflects the accurate information including quality and quantity of the commodity;
- (c) ensure that upon negotiation of a receipt relating to a commodity in the warehouse, the depositor or owner endorses the receipt and executes the transfer form.

29. Where an owner of a warehouse receipt pledges the receipt in favour of a pledgee, the pledgee—

Duties of a pledgee.

- (a) shall ensure that the receipt issued for the deposited commodity reflects the accurate information including quality and quantity of the commodity;
- (b) shall register their interest in the receipt with the Central Registry;
- (c) may appoint a collateral manager to oversee and ensure the proper care of commodities in a warehouse for which receipts have been pledged.

30. (1) The Council may suspend operations of a warehouse operator, inspector, grader or a weigher on grounds of—

Suspension of operations of a warehouse operator, etc.

- (a) repeated failure to remit returns on operation;
- (b) professional misconduct or inadequacy;
- (c) falsification of documents; or
- (d) improper use of the license.

(2) In addition to the grounds set out in paragraph (1), the Council may suspend the license of a warehouse operator—

- (a) for failing to retain required competencies; or
 - (b) on the institution of insolvency proceedings against the warehouse operator.
- (3) Upon the suspension of operations under paragraphs (1) and (2), the Council shall notify the warehouse operator in writing, indicating the period and reasons for suspension and the remedial measures to be undertaken in order to lift the suspension.

31. (1) The county executive committee member, in consultation with the Council, shall appoint an independent warehouse manager to take over and manage the operations of the warehouse where a warehouse operator's license has been suspended or revoked.

Collateral management after suspension or revocation of license.

(2) The independent warehouse manager appointed under paragraph (1) shall, in addition to meeting the requirements specified in regulation 10(2), satisfy the requirements for insurance equivalent to the current market value of the commodity in the warehouse or warehouses that the independent warehouse manager is appointed to manage.

(3) The county executive committee member shall inform all depositors, holders and interested party of the appointment of an independent warehouse manager.

(4) Where the license is suspended or revoked the depositor, holder or any interested party may transfer their commodities to any other licensed warehouse operator.

(5) Where the license is suspended or revoked and the decision to revoke is upheld upon appeal, the county executive committee member may in, consultation with the Council—

- (a) appoint an independent warehouse manager to bring the warehouse operations to normalcy within six months and if the warehouse does not resume normalcy, a further six months to wind up the operations;
 - (b) make arrangements to transfer the warehouse operations to a licensed operator; or
 - (c) transfer the commodities to licensed warehouse operator as the case may be at no additional cost to the depositor or holder.
- (6) The warehouse receipt which the previous warehouse operator issued shall remain valid.

(7) The county executive member, in consultation with the Council shall give the independent warehouse manager the period within which the warehouse business should be returned to normalcy or wound up.

PART VII—INSPECTIONS

32. (1) Pursuant to section 25(2) of the Act, the Council may, by notice in the *Gazette*, appoint qualified persons by name or office to

Appointment of inspectors.

carry out the inspection of the warehouse operator's premises and business for the purposes of the Act and these regulations.

(2) The inspectors appointed under paragraph (1) may include inspectors appointed under the Crops Act, 2013.

No. 16 of 2013.

(3) The Council may appoint external inspectors for independent inspections or audits.

(4) An inspector appointed under this regulation shall have jurisdiction in such area as specified in the instrument of appointment.

33. (1) An inspector may, in the performance of their duties under the Act and these regulations, at all reasonable times and without a warrant—

Powers of inspectors.

- (a) enter any premises, facility, vessel or property which the inspector has reason to believe it is necessary for him to enter in order to ascertain whether the requirements of the Act or these regulations are being complied with and may take with him any person duly authorized by the Council;
- (b) take any equipment or material required for any purpose for which the power of entry is being exercised;
- (c) carry out such tests and examinations, and make such recordings as may be necessary in the circumstances;
- (d) direct that any part of premises which he has power to enter, or anything in such premises, shall be left undisturbed for as long as is reasonably necessary for the purpose of any test or examination;
- (e) take appropriate samples of any commodities, articles or substances found in any premises which he has power to enter, for analysis or any other relevant purpose under the Act or these regulations;
- (f) require the production of any records which may be required to be kept under the Act or these Regulations.

(2) When exercising their powers under these Regulations the inspector shall appropriately identify himself and prominently display an official badge from the appointing authority.

34. (1) A warehouse operator or their agent shall give the inspector unlimited access to warehouse premises and any records.

Obstruction of inspectors.

(2) Any person who—

- (a) willfully refuses entry to an inspector acting under this regulation;
- (b) knowingly obstructs an inspector in making an entry or making an inspection; or
- (c) without reasonable excuse, fails to produce any document the production of which is required of under this regulation, commits an offence.

PART VIII—MISCELLANEOUS PROVISIONS

35. (1) Any commingling of agricultural commodities shall be done with regard to— Commingling of commodities.

- (a) the crop harvest season and year, where applicable;
- (b) commodity type, grade or quality.

(2) The warehouse operator shall ensure that all the records of commingled agricultural commodities are kept distinct.

(3) The Council may specify the range of commodities to be stored or warehoused in the same warehouse.

36. (1) For the purpose of section 19 of the Act, a warehouse operator shall insure the warehouse and commodities against all common perils including loss by fraud, theft, fire, employee infidelity, loading and offloading risks, disasters such as drought, flooding, sabotage, internal explosion, wind storm and any other disaster, perils and such other related peril. Insurance cover.

(2) A warehouse operator may take professional indemnity cover for the personnel engaging in the warehouse business.

(3) A warehouse operator shall display in a conspicuous place in the warehouse a certificate of insurance and a notice in bold letters stating briefly the conditions under which commodities are insured.

(4) A warehouse operator shall, in accordance with the terms the warehouse operator's contract with an insurance company licensed under the Insurance Act, pay such premiums as may be required. Cap. 487.

(5) A warehouse operator shall take such steps as may be necessary and proper to ensure that the warehouse operator is promptly compensated for any loss which becomes due under a contract of insurance entered into by the warehouse operator for the purposes of this Act and promptly pay any person entitled to receive the money.

37. (1) The Council shall prepare and submit quarterly and annual reports to the Cabinet Secretary on the operations of the Council. Submission of reports by the Council.

(2) The reports shall contain—

- (a) the details of commodities in regard to type, variety, quantity and grade;
- (b) the number of warehouse receipts issued;
- (c) the number of participants including depositors, financiers and warehouse operators and buyers;
- (d) details on any defaults by depositors;
- (e) disputes filed and resolved by the Council; and
- (f) any other detail as the Cabinet Secretary may require.

38. Any person who commits an offence under these regulations for which no other penalty is specified is liable to a fine not exceeding Penalties.

three hundred thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

39. (1) All disputes arising from implementation of this regulation shall be referred to the Council. Dispute resolution.

(2) A person aggrieved by the decision of the Council may appeal to the Warehouse Receipts Dispute Resolution Committee.

40. Forms prescribed for use in these regulations may be in physical or electronic form and may be used with modifications to enable their effective use. Forms.

SCHEDULES
FIRST SCHEDULE

FORM 1A

r,4(1)

APPLICATION/RENEWAL FOR WAREHOUSE OPERATOR'S CERTIFICATE OF
CONFORMITY

Warehouse Receipt System Act

Serial No.....

Warehouse Receipt System Council
Logo

FORM 1A: APPLICATION/RENEWAL FOR WAREHOUSE OPERATOR'S
CERTIFICATE OF CONFORMITY

A – Particulars of Applicant (New/Renewal - *delete as appropriate*):

Period for which the Licence application is made Month of Year.....

1. Full name of applicant.....
2. Postal address Postal code..... Town
3. Telephone No..... Mobile phone.....
E-mail Website
4. Type of Entity (Company/Cooperative/Partnership/Society/Trust/Sole proprietorship)(*Select as appropriate*)
5. Certificate of Company Incorporation No/Registration No.....
6. KRA PIN
7. List Names and Identity card Nos. for Directors (Attach list)
8. Provide Passport Nos. and Work Permits for Directors for Foreign based Companies (Attach list)

B – Physical Locations/Principal office

1. L.R. No. or No's.....
2. County Sub County..... Ward..... Street
3. Building.....

C – Commodities to be Warehoused

1. Type of commodities to be warehoused.....
2. Storage capacity of the warehouse (in metric tons/cubic meters).....

Declaration

I hereby declare that the particulars which we have given are true and accurate to the best of our knowledge and information.

Name of authorized signatory.....
Title of authorized signatory.....
Signature..... Date

Company Seal.....

FOR OFFICIAL USE ONLY

Register of the Warehouse Receipt System Council.

Name:..... Signature..... Date.....

Comments (Approved/Not Approved)

Official stamp

Requirements

- a) Duly filled application form;
- b) Copy of the business plan for intended warehouse(s)
- c) Copy of current Tax compliance Certificate;
- d) Copy of Certificate of good conduct;
- e) Personal details – Copies of ID, PIN No.,
- f) Copy of Insurance policy;
- g) Copy of Valid license for the warehouse;
- h) In the case of a company, Copy of certificate of incorporation/Registration and the latest CR12;
- i) Copy of Certificate of good conduct;
- j) Copy of previous years license in case of renewals
- k) Copy of latest Warehouse inspection report (should be at least -within the last two years).
- l) Proof of payment of requisite application fee (attach original payment receipt)

FORM 1B:

(r.4(2)(b))

CRITERIA FOR ASSESSING VIABILITY OF WAREHOUSE OPERATOR
BUSINESS PLAN

CRITERION	INDICATOR
1. Business Background	
<ul style="list-style-type: none"> • Proof of existence of business entity and its legal structure and creation (Company registration certificate, Business permit) 	
<ul style="list-style-type: none"> • The company's objectives both short term and long-term (<i>Business strategic plan</i>) 	
<ul style="list-style-type: none"> • Proof of ownership or access to agricultural commodity warehousing facilities. (<i>Lease agreement, Title deed, Asset register</i>) 	
<ul style="list-style-type: none"> • Proof of experience in warehouse related business of agricultural commodities (<i>Recommendation letters, Certifications,</i>) 	
2. Market analysis	
<ul style="list-style-type: none"> • Indication of the company's target market and clientele (Business opportunity, customer base, production of target areas, supply volumes) 	
3. Financial Analysis	
<ul style="list-style-type: none"> • Proof of Financial capacity (Financial projections, audited financial reports) 	
4. Risk Analysis	
<ul style="list-style-type: none"> • Proof of business risk mitigation measures (Insurance policy (Fire, Theft, Natural calamity; Performance bond, Business continuity plan) 	

FORM IC

(r,5(2))

APPLICATION/RENEWAL FOR WAREHOUSE OPERATOR'S LICENCE

Warehouse Receipt System Act

Serial No.....

Warehouse receipt System Council Logo	County Government of Logo
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FORM IC: APPLICATION/RENEWAL FOR WAREHOUSE OPERATOR'S LICENCE

A – Particulars of Applicant (New/Renewal - delete as appropriate):

Period for which the License application is made Month of Year.....

1. Full name of applicant.....
2. Postal address Postal code..... Town
3. Telephone No..... Mobile phone.....
E-mail Website
4. Type of Entity (Company/Cooperative/Partnership/Society/Trust/Sole proprietorship)(Select as appropriate)
5. Certificate of Company Incorporation No/Registration No.....

B – Physical Locations/Principal office

1. L.R. No. or No's.....
2. County Sub County..... Ward..... Street
3. Building.....

C – Commodities to be Warehoused

3. Type of commodities to be warehoused.....
4. Storage capacity of the warehouse (in metric tons/cubic meters).....

Declaration

I hereby declare that the particulars which we have given are true and accurate to the best of our knowledge and information.

Name of authorized signatory.....

Title of authorized signatory.....

Signature..... Date

Company Seal.....

FOR OFFICIAL USE ONLY

County Executive Committee (CEC) Member for Agriculture.

Name:..... Signature..... Date.....

Comments (Approved/Not Approved)

Official stamp

Requirements

- a) Duly filled application form;
- b) Personal details – Copies of ID, PIN No.,
- c) Copy of Insurance policy;
- d) Proof of performance Bond
- e) Copy of previous years license in case of renewals
- f) Proof of payment of requisite application fee (attach original payment receipt)

FORM ID: (r. 10(1))

APPLICATION/RENEWAL FOR A COLLATERAL MANAGER CERTIFICATE OF COMPLIANCE

Serial No.....

Warehouse Receipt System Act

Warehouse Receipt System

Council Logo

FORM 1B: APPLICATION/RENEWAL FOR A COLLATERAL MANAGER CERTIFICATE OF COMPLIANCE

Date of application for registration: Day Month of Year.....

A – Particulars of Applicant:

1. Full name of applicant.....

2. Postal address..... Postal code..... Town.....

3. Telephone No..... Mobile phone.....

E-mail..... Website(Where applicable).....

4. Type of Entity

- Company*
- Cooperative*
- Partnership*
- Society*
- Association*
- Sole proprietorship*
- Other(Specify).....*

5. Certificate of Company Incorporation No/Registration No.....

6. KRA PIN

7. Names and Identity card Nos. for Directors (Attach list)

8. Passport Nos. and Work Permits for Directors for Foreign based Companies
(Attach list)

B – Physical Locations/Principal office

1. Physical Address.....

2. County..... Sub County Town Street

Declaration

I/We hereby declare that the particulars which I/we have given are true and accurate to the best of my/our knowledge and information.

Name of authorized signatory.....

Title of authorized signatory.....

Signature Date

Company Seal/ Official stamp

FOR OFFICIAL USE ONLY

Chief Executive Officer of the Warehouse Receipt System Council

Name: Signature Date.....

Comments (Approved/Not Approved)

Official stamp

Attach the following

- a) Duly filled application form;
- b) Copy of current Tax Compliance Certificate;
- c) Personal details of directors/management – Copies of ID, PIN No.,
- d) In the case of a company, Copy of certificate of incorporation/Registration and the latest CR12;
- e) Proof of warehouse operations;
- f) Payment of requisite application fee

FORM 1E:

(r.15(1))

NOTIFICATION TO THE CENTRAL REGISTRY OF ISSUED WAREHOUSE RECEIPTS

Warehouse Receipt System Act

Warehouse receipt System Council Logo	County Government of Logo
--	---------------------------------------

1. Warehouse Operator Details:

Name.....

Postal Address: Postal Code

Email..... Tel number

Physical address Sub-County

S. No.	Name of Deposit/owner	Receipt No.	Next of kin	Date of issue	Commodity type	Quantity	Grade	Remarks

Prepared by: Name Signature.....

Approved by: Name Signature Date

Stamp.....

SECOND SCHEDULE

FORM 2A

(r. 4(3))

Serial No.....

Warehouse Receipt System Act

Warehouse Receipt System

Council Logo

CERTIFICATE OF CONFORMITY FOR WAREHOUSE OPERATOR

M/s..... of Post office Box
 is hereby issued with a certificate of Conformity for
 a Warehouse Operator within the Warehouse Receipt System Act vide certificate
 No.

This Certificate is Valid from20..... to 20.....

Chief Executive Officer

Warehouse Receipt System Council

Date of issue.....

Official stamp.

Note: This Certificate of Conformity does not authorize the bearer to operate a warehouse under the warehouse receipt system unless the holder has been licensed to do so by the respective County Government.

FORM 2B

(r. 6(1), 8(1))

Warehouse Receipt System Act

Serial No.....

Warehouse receipt System Council Logo	County Government of Logo
---	---

WAREHOUSE OPERATOR'S LICENSE

M/s..... of Post office Box
..... has been granted a Warehouse Operators
License No.

This license is Valid from to 20.....

Fee paid: Kshs.....

.....
CECM (Agriculture)

Date of issue.....

Official stamp.

This license is issued subject to Conformity with the provisions of the Warehouse Receipt System Act, 2019 and the Warehouse Receipt System Regulations, 2010 and such terms and conditions as specified hereunder.

Terms and conditions

1. This license is not transferable
2. An application for renewal of this license shall be made to the CEC (Agriculture) not later one month before the license is due to expire.
3. Any changes in the particulars for purposes of the license shall be notified to the CEC Agriculture in writing
4. This license may be suspended or cancelled where a licensee contravenes the provisions of the Act.

FORM 2C

(r. 10(4))

Warehouse Receipt System Act

Serial No.....

CERTIFICATE OF COMPLIANCE FOR COLLATERAL MANAGER

M/s..... of Post office Box
..... is hereby issued with a certificate of compliance to
operate as a Collateral Manager within the Warehouse Receipt System Act vide
certificate No.

This Certificate is Valid from20..... to 20.....

Chief Executive Officer

Warehouse Receipt System Council

Date of issue.....

Official stamp.

FORM 2D:

(r. 19(1))

Warehouse Receipt System Act

Serial No.....

Warehouse Receipt System Council Logo	Warehouse Operator Logo
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WAREHOUSE RECEIPT

WAREHOUSE RECEIPT No:.....

Part A: Depositors/Owners Information

1. Name of Person or Group who have deposited Commodity
2. ID/Passport No.
3. Central Registry Identifier (Where Applicable)
4. Postal Address
5. Telephone No
6. E-mail address.....
7. Ward.....
8. Sub-County
9. County

Part B: Description of the Commodity

- Type
- Quantity (Kg)
- Crop Year/Season
- Grade
- Lot No. (Where Commodities are not commingled)

Part B: Particulars of Warehouse where Commodity is stored

- Name of warehouse
- License No. of the Warehouse Operator
- Name and location of Building
- Street.....
- Ward
- Sub-County
- County
- Operator's Insurance underwriter
- Policy No.

Name of the Warehouse operator

Date

Signature of Warehouse Operator

Applicable Conditions

1. The goods received shall be delivered to the holder or to his order.
2. The warehouse operator holds the lien on the commodities deposited for storage and handling charges.
3. The warehouse operator undertakes to exercise reasonable care and due diligence during storage of commodities.
4. The owner undertakes to immediately report the loss of this receipt to the warehouse operator.

FORM 2E:

(r.20(2))

NOTIFICATION TO THE WAREHOUSE OPERATOR OF A
LOST/DESTROYED/STOLEN WAREHOUSE RECEIPT

Warehouse Receipt System Act

Serial No.....

Warehouse receipt System Council Logo	County Government of Logo
--	------------------------------------

NOTIFICATION TO THE WAREHOUSE OPERATOR OF A
LOST/DESTROYED/STOLEN WAREHOUSE RECEIPT

1. Depositor Details:

Name..... ID/Passport

Postal Address: Postal Code

Email..... Tel number.....

Physical address

County Sub-County

2. Warehouse Receipt particulars:

Receipt No.

Commodity type

Grade

Quantity

Date deposited

3. Nature of loss: (specify)

Stolen [] Lost [] Destroyed []

Other (Specify)

4. Application is made for a lost/stolen/destroyed Warehouse Receipt in accordance with the particulars given above, which are hereby certified to be correct by the applicant(s): -

Name.....Signed Date

Name.....Signed Date

Name.....Signed.....Date.....

Stamp.....

Attach the following:

- (a) Police report of the loss;
- (b) Copy of the lost/destroyed/stolen warehouse receipt (if available)

FORM 2F:

(r. 20(4))

Replacement Warehouse Receipt
Warehouse Receipt System Act

Serial No.....

Warehouse receipt System Council Logo	County Government of Logo
---	---

REPLACEMENT WAREHOUSE RECEIPT

WAREHOUSE RECEIPT No:.....

Part A: Depositors/Owners Information

1. Name of Person or Group who have deposited Commodity
2. ID/Passport No.
3. Central Registry Identifier (Where Applicable)
4. Postal Address
5. Telephone No
6. E-mail address
7. Ward
8. Sub-County.....
9. County

Part B: Description of the Commodity

- Type
- Quantity (Kg)
- Crop Year/Season
- Grade
- Lot No. (Where Commodities are not commingled)

Part B: Particulars of Warehouse where Commodity is stored

- Name of warehouse..... License No. of the Warehouse Operator
- Name and location of Building
- Street.....
- Ward.....
- Sub-County.....
- County

Operator's Insurance underwriter..... Policy No.

Name of the Warehouse operator

Date

Signature of Warehouse Operator

Applicable Conditions

1. The goods received shall be delivered to the holder or to his order.
2. The warehouse operator holds the lien on the commodities deposited for his storage and handling charges.
3. The warehouse operator undertakes to exercise reasonable care and due diligence during storage of commodities.
4. The owner undertakes to immediately report the loss of this receipt to the warehouse operator.

FORM 2G:

(r. 20(5))

NOTIFICATION TO THE CENTRAL REGISTRY OF A LOST/DESTROYED
/STOLEN AND REPLACED WAREHOUSE RECEIPT

Warehouse Receipt System Act

Warehouse receipt System Council Logo	County Government of Logo
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(c)

NOTIFICATION TO THE CENTRAL REGISTRY OF A
LOST/DESTROYED/STOLEN AND REPLACED WAREHOUSE RECEIPT

1. Warehouse Operator Details:

Name.....
Postal Address: Postal Code
Email..... Tel number.....
Physical address Sub-County.....

2. Receipt particulars:

Receipt No.
Serial No.....
Depositor Details: Name..... ID/Passport No.....
Commodity type.....
Grade/Quality
Quantity
Date deposited Date Replacement

3. Nature of loss: (specify)

Stolen [] Misplaced [] Destroyed []

4. Application is made for a lost Warehouse Receipt in accordance with the particulars given above, which are hereby certified to be correct by the applicant(s): -

Name..... Signed..... Date.....
Name..... Signed..... Date.....
Name..... Signed..... Date.....
Applicant Signature.....
Date

Stamp.....

THIRD SCHEDULE

FEES AND CHARGES

(r. 4(2)(f);5(1))10(4)(6); 16(1))

	<i>Type of fee/charge</i>	<i>Paid to</i>	<i>Amount (KSh.)</i>
1.	Application fee for warehouse operator's license	County Government	500/=
2	Certificate of compliance/renewal of certificate of Conformity fee for warehouse Operators	Warehouse Receipt System Council	1,000/=
3.	Licensing/renewal of license fee for warehouse operators.	County Government	1,000/=
4.	Certificate of compliance/renewal of certificate of compliance fee for collateral managers	Warehouse Receipt System Council	10,000/=
5.	Fee for registration of warehouse receipt and generation of a certificate of registration or issue of a warehouse receipt by the Council	Warehouse Receipt System Council	100/=

Made on the 6th January, 2021.

PETER MUNYA,
Cabinet Secretary for Agriculture, Livestock, Fisheries and Co-operatives.