

Subpart E—Electronic Providers**§ 735.400 Administration.**

This subpart sets forth the regulations under which DACO may authorize one or more electronic systems under which:

- (a) Electronic documents relating to the shipment, payment, and financing of the sale of agricultural products may be issued or transferred; or
- (b) Electronic receipts may be issued and transferred.

§ 735.401 Electronic warehouse receipt and USWA electronic document providers.

(a) To establish a USWA-authorized system to issue and transfer EWR's and USWA electronic documents, each applicant must submit to DACO information and documents determined by DACO to be sufficient to determine that the applicant can comply with the provisions of the Act. Each provider operating pursuant to this section must meet the following requirements:

- (1) Have and maintain a net worth as specified in the applicable provider agreement;
- (2) Maintain two insurance policies; one for "errors and omissions" and another for "fraud and dishonesty." Each policy's minimum coverage and maximum deductible amounts and applicability of other forms of financial assurances as set forth in § 735.14 will be prescribed in the applicable provider agreement. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation or as prescribed by FSA;
- (3) Submit a current review or an audit level financial statement prepared according to generally accepted accounting standards as defined by the American Institute of Certified Public Accountants;
- (4) For any entity that is not an individual, a document that establishes proof of the existence, such as:
 - (i) For a partnership, an executed partnership agreement; and
 - (ii) For a corporation:
 - (A) Articles of incorporation certified by the Secretary of State of the applicable State of incorporation;
 - (B) Bylaws; and
 - (C) Permits to do business; and

(iii) For a limited partnership, an executed limited partnership agreement; and

(iv) For a limited liability company:

- (A) Articles of organization or similar documents; and

(B) Operating agreement or similar agreement.

(5) Meet any additional financial requirements as set forth in the applicable provider agreement;

(6) Pay user fees annually to FSA, as set and announced annually by FSA prior to April 1 of each calendar year; and

(7) Operate a CFS as a neutral third party in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

(b) The provider agreement will contain, but not be limited to, these basic elements:

- (1) Scope of authority;
- (2) Minimum document and warehouse receipt requirements;
- (3) Liability;
- (4) Transfer of records protocol;
- (5) Records;
- (6) Conflict of interest requirements;
- (7) USDA common electronic information requirements;
- (8) Financial requirements
- (9) Terms of insurance policies or assurances;
- (10) Provider's integrity statement;
- (11) Security audits; and
- (12) Submission, authorization, approval, use and retention of documents.

(c) DACO may suspend or terminate a provider's agreement for cause at any time.

(1) Hearings and appeals will be conducted in accordance with procedures as set forth in §§ 735.6 and 735.8.

(2) Suspended or terminated providers may not execute any function pertaining to USDA, USWA documents, or USWA or State EWR's during the pendency of any appeal or subsequent to this appeal if the appeal is denied, except as authorized by DACO.

(3) The provider or DACO may terminate the provider agreement without cause solely by giving the other party written notice 60 calendar days prior to termination.

(d) Each provider agreement will be automatically renewed annually on

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April 30th as long as the provider complies with the terms contained in the provider agreement, the regulations in this subpart, and the Act.

§ 735.402 Providers of other electronic documents.

(a) To establish a USWA-authorized system to issue and transfer OED, each applicant must submit to DACO information and documents determined by DACO to be sufficient to determine that the applicant can comply with the provisions of the Act. Each provider operating pursuant to this section must meet the following requirements:

(1) Have and maintain a net worth as specified in the applicable provider agreement;

(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Each policy's minimum coverage and maximum deductible amounts and applicability of other forms of financial assurances as set forth in § 735.14 will be prescribed in the applicable provider agreement. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation or as prescribed by FSA;

(3) Submit a current review or an audit level financial statement prepared according to generally accepted accounting standards as defined by the American Institute of Certified Public Accountants;

(4) For any entity that is not an individual, a document that establishes proof of the existence, such as:

(i) For a partnership, an executed partnership agreement; and

(ii) For a corporation:

(A) Articles of incorporation certified by the Secretary of State of the applicable State of incorporation;

(B) Bylaws; and

(C) Permits to do business; and

(iii) For a limited partnership, an executed limited partnership agreement; and

(iv) For a limited liability company:

(A) Articles of organization or similar documents; and

(B) Operating agreement or similar agreement.

(5) Meet any additional financial requirements as set forth in the applicable provider agreement;

(6) Pay user fees annually to FSA, as set and announced annually by FSA prior to April 1 of each calendar year; and

(7) Operate a CFS as a neutral third party in a confidential and secure fashion independent of any outside influence or bias in action or appearance.

(b) The provider agreement will contain, but not be limited to, these basic elements:

(1) Scope of authority;

(2) Minimum document and warehouse receipt requirements;

(3) Liability;

(4) Transfer of records protocol;

(5) Records;

(6) Conflict of interest requirements;

(7) USDA common electronic information requirements;

(8) Financial requirements;

(9) Terms of insurance policies or assurances;

(10) Provider's integrity statement;

(11) Security audits; and

(12) Submission, authorization, approval, use and retention of documents.

(c) DACO may suspend or terminate a provider's agreement for cause at any time.

(1) Hearings and appeals will be conducted in accordance with procedures as set forth in §§ 735.6 and 735.8.

(2) Suspended or terminated providers may not execute any function pertaining to USDA, USWA documents, USWA or State EWR's or OED's during the pendency of any appeal or subsequent to this appeal if the appeal is denied, except as authorized by DACO.

(d) Each provider agreement will be automatically renewed annually on April 30th as long as the provider complies with the terms contained in the provider agreement, the regulations in this subpart, and the Act.

(e) In addition to audits prescribed in this section the provider must submit a copy of any audit, examination or investigative report prepared by any Federal regulatory agency with respect to the provider including agencies such as, but not limited to, the Comptroller of the Currency, Department of the Treasury, the Federal Trade Commission, and the Commodity Futures Trading Commission.