



## *Implementation of the United States Warehouse Act 2000*

January 16, 2001, Announcement in the Federal Register of Public Meeting on the United States Warehouse Act of 2000

January 23, 2001, Public Meeting Official Transcript

### Comments Received on the Proposed Rule

Comment 1	Comment 2
Comment 3	Comment 4
Comment 5	Comment 6
Comment 7	Comment 8
Comment 9	Comment 10
Comment 11	Comment 12
Comment 13	Comment 14
Comment 15	Comment 16
Comment 17	Comment 18
Comment 19	Comment 20

Proposed Rule as announced in the Federal Register on September 4, 2001

Faust; Agricultural Research Service; U.S. Department of Agriculture; Room 338, Building 005, BARC-West; Beltsville, MD 20705; Telephone: (301) 504-6918; e-mail: rmf@ars.usda.gov.

#### C. Additional Information

The Biotechnology Risk Assessment Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.219. For reasons set forth in the final rule-related Notice to 7 CFR Part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1995, as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524-0022.

Done at Washington, D.C., on this 4th day of January, 2001.

#### Colien Hefferan,

*Administrator, Cooperative State Research, Education, and Extension Service.*

#### Edward B. Knipling,

*Acting Administrator, Agricultural Research Service.*

[FR Doc. 01-1018 Filed 1-12-01; 8:45 am]

BILLING CODE 3410-22-P

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### Interim National Drought Council

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice of Interim National Drought Council meeting.

**SUMMARY:** The Interim National Drought Council (Interim Council) was established through a Memorandum of Understanding (MOU). Its purpose is to coordinate activities between and among Federal Agencies, States, local governments, tribes and others. The first meeting of the Interim Council was held November 9, 2000. All meetings are open to the public; however, seating is limited and available on a first-come basis.

**DATES:** The Interim Council will meet on January 25, 2001, in Room 233 of the Hall of the States building located at 444 North Capitol Street, NW, in Washington, DC from 10:00 a.m. to 11:30 a.m. and then from 12:30 p.m. to 3:00 p.m.. All times noted are Eastern Standard Time. This meeting will be devoted to revising the work plan and other Interim Council business.

#### FOR FURTHER INFORMATION CONTACT:

Leona Dittus, Executive Director, Interim National Drought Council, United States Department of Agriculture (USDA), 1400 Independence Avenue, SW, Room 6701-S, STOP 0501, Washington, D.C., 20250-0501 or telephone (202) 720-3168; FAX (202) 720-9688; internet [leona.dittus@usda.gov](mailto:leona.dittus@usda.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of the MOU is to establish a more comprehensive, integrated, coordinated approach toward reducing the impacts of drought through better preparedness, monitoring and prediction, risk management, and response to drought emergencies in the United States. The Interim Council will encourage cooperation and coordination between and among Federal, State, local, and tribal governments and others, relative to preparation for and response to serious drought emergencies. Activities of the Interim Council include providing coordination to: (a) Resolve drought related issues, (b) exchange information about lessons learned, and (c) improve public awareness of the need for drought planning and mitigation measures. The Interim Council is co-chaired by the Secretary of Agriculture or his designee, and a non-federal co-chair, selected from among the members who are not Federal officers or employees. Ms. Ane D. Deister, Executive Assistant to the General Manager, Metropolitan Water District of Southern California, representing urban water interests, was selected as the non-federal co-chair at the Interim Council's organizational meeting. Administrative staff support essential to the execution of the Interim Council's responsibilities shall be provided by USDA. The Interim Council will continue in effect for 5 years or until Congress establishes a permanent National Drought Council.

If special accommodations are required, please contact Leona Dittus, at the address specified above, by COB January 22, 2001.

Signed at Washington, D.C., on January 10, 2001.

#### George Arredondo,

*Administrator, Farm Service Agency.*

[FR Doc. 01-1226 Filed 1-12-01; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### Meeting on the Implementation of the United States Warehouse Act

**AGENCY:** Farm Service Agency, Agriculture.

**ACTION:** Notice of meeting.

**SUMMARY:** To solicit comments and options for consideration in implementing the United States Warehouse Act of 2000 that was enacted on November 9, 2000 (USWA 2000), the Department of Agriculture (USDA) will conduct a public meeting.

The meeting is open to the public with attendance limited to space that will be available on a first come basis. All attendees are asked to be prepared to share information concerning their current and future e-commerce activities. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the contact person listed below in advance of the meeting. No registration is required and there is no fee to attend the public meeting.

**DATES:** The public meeting to present implementation options and to solicit oral comments will be held on January 23, 2001, from 9 a.m. to 4 p.m. E.S.T., in the Jefferson Auditorium of the U.S. Department of Agriculture South Building, 1400 Independence Avenue, SW., Washington, DC, near the Smithsonian Metro Station.

**FOR FURTHER INFORMATION CONTACT:** Roger Hinkle, Chief, Licensing Authority Branch, Warehouse and Inventory Division, Farm Service Agency, 1400 Independence Avenue SW., STOP 0553, Washington DC 20250, telephone (202) 720-7433; e-mail: [Roger\\_Hinkle@wdc.fsa.usda.gov](mailto:Roger_Hinkle@wdc.fsa.usda.gov).

**SUPPLEMENTARY INFORMATION:** The USWA 2000 was enacted on November 9, 2000, to replace the original United States Warehouse Act (USWA) that was enacted in 1916. USWA 2000 can be found online at: [www.fsa.usda.gov/daco/uswamain/public-law-106-472.pdf](http://www.fsa.usda.gov/daco/uswamain/public-law-106-472.pdf). This statute was enacted to make Federal warehouse licensing and operations more relevant to today's agricultural marketing and financial systems. USWA 2000 authorizes the Secretary of Agriculture to promulgate regulations governing (1) The issuance and transfer of electronic warehouse receipts across State and international boundaries; (2) the manner in which electronic documents relating to the shipment, payment, and financing of the sale of agricultural products may be

issued or transferred, including transfers across State and international boundaries; and (3) the standardization of such electronic documents. This new paperless flow of agricultural commodities from the farm to the end-user will provide significant savings and efficiencies for producers, bankers, warehouse operators, and other affected parties across the nation and throughout the world, and will make U.S. agricultural more competitive in world markets.

Included in USWA 2000 were statutory deadlines for the issuance of proposed and final regulations, and the new statute provides that the current USWA that was enacted in 1916 expires no later than August 1, 2001.

Items that will be discussed in the subject meeting include, but are not limited to the following:

(1) What documents and transactions should USDA make available for e-commerce?

(2) Should USDA standardize criteria and formats for e-commerce concerning commodity warehousing? Financial and business records? Electronic data interchanges? Recordkeeping? Commodity merchandising?

(3) The regulations at 7 CFR 735.100 through 735.105 currently provide specifically for cotton Electronic Warehouse Receipts (EWR) and EWR provider requirements and standards. Should similar regulations and processes be adopted or expanded when including additional commodities? If not, what criteria and requirements should USDA establish for electronic warehouse commerce providers?

(4) What industry and business-based processes should USWA offer?

The agenda includes: (1) Presentation on options currently under consideration for implementing USWA 2000; (2) discussions on the implementation of electronic commerce authorized under USWA 2000, with opportunity for comment; and (3) discussions on warehouse issues, with opportunity for comment.

From 9 a.m. to 12 p.m., the discussion will concentrate on electronic commerce initiatives that are authorized by USWA 2000, and from 1 p.m. to 4 p.m. the discussion will concentrate on the statutory changes that will affect warehousing issues. Each session will (1) outline options that are under consideration for implementing USWA 2000, and (2) provide attendees with an opportunity to present oral comments and submit written and oral questions. An official transcript will be prepared and will be available online at [www.fsa.usda.gov/daco/uswamain/uswa2000-transcript.pdf](http://www.fsa.usda.gov/daco/uswamain/uswa2000-transcript.pdf). This official

transcript will also be available for public inspection in Room 5968, South Agriculture Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons with disabilities who require alternative means for communication of regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

*Comments:* Written comments can be submitted in hard copy by mail to Roger Hinkle at the address shown above, or by fax at (202) 690-3123, or by e-mail to [Roger\\_Hinkle@wdc.fsa.usda.gov](mailto:Roger_Hinkle@wdc.fsa.usda.gov). In order to ensure comments will be received before the meeting, submit written comments no later than January 15, 2001.

Signed at Washington, DC on January 8, 2001.

**Carolyn B. Cooksie,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. 01-1020 Filed 1-12-01; 8:45 am]

BILLING CODE 3410-05-P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. 00-053N]

#### **Codex Alimentarius Commission: Meeting of the Codex Committees on Fats and Oils and Methods of Analysis and Sampling**

**AGENCY:** Office of the Under Secretary for Food Safety, USDA.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS) are sponsoring a public meeting on Wednesday, January 17, 2001. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States' positions that will be discussed at two upcoming Codex Committee meetings. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the Sessions of the Codex Committee on Fats and Oils (CCFO) and the Codex Committee on Methods of Analysis and Sampling (CCMAS) and to address items on the agenda.

**DATES:** The public meeting is scheduled for Wednesday, January 17, 2001, from 9:00 a.m. to 12:00 noon.

**ADDRESSES:** The public meeting will be held in Room 1813, Federal Office Building 8, Food and Drug Administration, 200 C Street, SW., Washington, DC 20204. To receive copies of the documents referenced in this notice, contact the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250-3700. The documents will also be accessible via the world wide web at the following address: <http://www.fao.org/waicent/faoinfo/economic/esn/codex>.

Submit one original and two copies of written comments to the FSIS Docket Room at the address above and reference docket number 00-053N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

#### **FOR FURTHER INFORMATION CONTACT:**

Patrick J. Clerkin, Assistant U.S. Manager for Codex, U.S. Codex Office, FSIS, Room 4861, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 205-7760; Fax (202) 720-3157. Persons requiring a sign language interpreter or other special accommodations should notify Mr. Clerkin at the above number.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The public meeting announced in this notice will provide information and an opportunity for public comment on two upcoming Codex Committee meetings:

- Seventeenth Session of the Codex Committee on Fats and Oils (CCFO) that will be held in London, United Kingdom, February 19-23, 2001.

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PUBLIC MEETING

UNITED STATES WAREHOUSE 2000

10 January 23, 2001

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United States Department of Agriculture  
1400 Independence Avenue, S.W.  
Jefferson Auditorium, South Building  
Washington, D.C. 20024

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P R O C E E D I N G S

(9:15 a.m.)

MR. GILL: Good morning, everybody. You'll hear from me in a couple of minutes, but I'll turn this over first to Alex King, our Deputy Administrator.

MR. KING: Thank you, Steve. Good morning, and welcome to the Department of Agriculture, the people's department. I see so many familiar faces I think I'm just going to take the liberty and just say hello to a few, and I don't want the others to think that they're being slighted, but I saw my former boss, there she is, Vicky. Vicky Hicks. We owe a lot of thanks to Vicky for what we've got here today.

I thought I saw another former Deputy Administrator Commodity Operations here, Gary Martin. Gary, would you stand, please? Again, welcome, and wait, Bill Stubblefield. Where's Bill? We spent a lot of time on the telephone probably what, 10, 12 years ago, but this is the first time we've got to meet each other, but it's good seeing you, Bill, after all those telephone conversations.

I saw Kendall in here, and the list goes on and on, Louis Baioni, and again thank you, and I want to take time, or to thank you for taking time from your busy schedules to be here with us today as we begin

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implementing the newly enacted United States Warehouse Act.

As many of you know, it has taken us over 3 years to see the passage of this new legislation, and we

5 appreciate the fact that many of you were with us all the  
6 way. We also appreciate your support for the changes and  
7 opportunities that the new act offers. There are a number  
8 of things in life that one can do alone. However, getting  
9 this new Warehouse Act through Congress and enacted was  
10 not one of those things.

11 Again, I want to express my sincere gratitude to  
12 all of you for your help along the way. We face many new  
13 and exciting opportunities and challenges as we go through  
14 the process of implementing the new Warehouse Act.  
15 Included in those challenges are establishing electronic  
16 warehouse receipts for all commodities, developing other  
17 electronic documents that will allow for paperless flow of  
18 commodities from the field to the end user.

19 Also included will be implementing electronic  
20 data interchange procedures that will increase our  
21 efficiencies and speed up the warehouse examination  
22 process so that you can service your customers with  
23 minimal disruption from the Federal warehouse examiners.

24 Also included will be expanding the customer  
25 base that is affected and serviced by our operation.

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1 Also, providing services that your various  
2 sectors of the business world want and need to increase  
3 your efficiencies.

4 I will be leaving Washington this morning and  
5 going to Kansas City, but you're going to be in good hands  
6 with my very capable and -- I can't find the words to  
7 fully describe it, but under the very capable hands of  
8 Steve Gill and his staff.

9 I want to thank Steve Gill and his staff for  
10 putting this meeting together to provide everyone here  
11 that will be affected by the United States Warehouse Act  
12 an opportunity to voice their thoughts and to hear  
13 comments of each of the business sectors that are  
14 represented today. I hope that all of you will openly  
15 participate in the discussion today and will continue to  
16 submit ideas and opinions as we work our way through the  
17 regulatory process. Again, thank you for joining us  
18 today, and we look forward to working with you in the  
19 future.

20 MR. GILL: Thank you, Alex. Can everybody hear  
21 me? I, too, have to reiterate what Alex said here in  
22 thanking you for taking time out of your busy schedules to  
23 come in this morning and hopefully spend a fruitful  
24 Government meeting with us this morning and this  
25 afternoon, for those of you who can stay this afternoon.

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1 We appreciate everything you've done for us up to this  
2 point, as Alex has pointed out.

3 He mentioned it took 3 years to get to where we  
4 are today. It actually has taken us longer than that.  
5 The 3-year process was starting the document through the  
6 formal clearance process at the Department of Agriculture,  
7 but before we could have a document we needed some  
8 dialogue.

9 I do want to recognize just a few folks who

10 helped us get that dialogue started, starting with Steve  
11 Nikkelson, if Steve could stand up. Steve was very  
12 instrumental in getting us talking about what we needed to  
13 do, especially after the statute was amended in 1992. We  
14 were not able to do this by ourselves.

15 I also want to introduce the Washington staff  
16 and the Kansas City staff. Those are the folks that are  
17 going to actually help implement the new statute that we  
18 got. Starting with the Washington staff, Roger Hinkle  
19 here in Washington heads up our Licensing Authority  
20 branch. We have in that branch Judy Fry, Dale Vaughan,  
21 Rick Wittle.

22 We also have from Kansas City Dick De Fries,  
23 Deputy Director of Kansas City Office, and we have Ned  
24 Burkman, Kansas City Commodity Office, Dave Kirkland, who  
25 I'm going to ask to say a few words here shortly, and last

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1 but not least, probably the most important component of  
2 our operation, Robert Holdmeier, one of our field  
3 examiners who actually goes out and does the work.

4 Thank you for coming this morning.

5 We're really excited about the fact that we now  
6 have a new statute that we have been struggling for along  
7 time to get. We weren't able to do it by ourselves. It  
8 was quite a coalition to get us to where we are this  
9 morning. We had a lot of assistance from the cotton  
10 folks, the grain folks. I'm not going to stop and mention  
11 names because I would leave somebody out, but we do  
12 appreciate the fact that we also were able to work with  
13 the congressional folks. I know Michael Knight, I saw him  
14 this morning. I'm not sure who else is here from the  
15 Hill, but we had a lot of support on both sides of the  
16 Houses to get the statute to where it is at this point.

17 You see the agenda there.

18 (Slide.)

19 MR. GILL: You see the agenda there. What we're  
20 going to try to do is work our way through the electronic  
21 commerce dialogues and discussion and break for lunch, and  
22 then later this afternoon we will start addressing some of  
23 the specific warehouse issues that were addressed in the  
24 statute.

25 (Slide.)

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1 MR. GILL: For those of you who can stay with us  
2 through the afternoon, we appreciate that very much. We  
3 will hear from several presenters. One of the things  
4 you're going to find out real quick, this is going to be  
5 very informal. I've asked several folks to help me  
6 throughout the presentation, not only Dave, but I'm  
7 looking for OGC away in the back. Okay. John, Terry,  
8 thank you for being here.

9 I was also looking for Ralph. Is he going to be  
10 able to join us later in the day? Great.

11 You're going to be hearing from a lot of us. I  
12 obviously don't have a lot -- you'll find out I don't have  
13 a lot of the answers to the questions you may have, but we  
14 do have the technical folks like David here. The legal

15 types of issues will quickly diver to counsel, so we will  
16 just go back and forth that way. You will see people  
17 popping up and down.

18 As far as the ground rules in terms of what  
19 we're trying to get done this morning, if you could,  
20 before you leave, do sign in if you didn't sign in this  
21 morning. If you have a business card please leave us your  
22 business card. Once we get this thing started and get the  
23 process in motion what we will do is to get back to you  
24 for you to take a look at a proposed regulation once we  
25 put that together, and so for us to keep in contact we

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1 would appreciate your name and also a business card if you  
2 have it.

3 Also, if you have questions, if you're so  
4 inclined we would like for you to use the mikes stationed  
5 in the aisles, but it's real important, because this is a  
6 public meeting, we do have a recorder or a reporter  
7 sitting in the back, and it is important we get names, and  
8 also it would help us if you would identify the companies,  
9 or who you represent today.

10 Other than that, I think what I would like to do  
11 is explain why we asked you to come. To us, there's three  
12 things I would like to get done during the day.

13 (Slide.)

14 MR. GILL: The whole key component to this  
15 session is getting information. For us this is a fact-  
16 finding type of a meeting. We would like to share some  
17 information with you, but, just as important, we would  
18 like to get information from you folks in terms of how  
19 you're doing business, where you think your business  
20 activities may be going in terms of electronic commerce,  
21 and if you can share some of that with us.

22 When we got -- I have to say that when we  
23 started this whole process, started talking about it  
24 internally here in the Department, we got to talking about  
25 what the Department could do electronically. As early as

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1 the nineties, early nineties when we got electronic  
2 warehouse receipts for cotton, at that time we thought  
3 that we were sort of ahead of the curve in terms of  
4 getting some dialogue started, trying to figure out where  
5 the technology was going and what we could do and where we  
6 would fit in in terms of electronic commerce.

7 We're at a point where we're playing catch-up.  
8 Obviously you're already into electronic commerce. This  
9 is your livelihood. You're in it day in and day out, and  
10 so we're now at a point where we would like some  
11 information as to how you're doing it, where our services  
12 can fit in, where our provisions fit in, if they fit in,  
13 and how we can help just keep moving that commerce along.

14 You're going to hear throughout the day some  
15 concepts and some proposals. This for the most part  
16 starts our rulemaking process. We didn't have the time or  
17 luxury -- what we would have liked to have done is issued  
18 advance notice of proposed rulemaking, which is a document  
19 that will go through the rulemaking process and get in the

20 Federal Register that identifies to the public that the  
21 Department is interested and thinking about putting  
22 together a set of proposals, and in doing that, we've some  
23 options we're thinking about doing but we're not quite  
24 sure where to start or how to start or how to implement  
25 it, so the advance notice sort of lays the groundwork for

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1 that. That is what this particular meeting is for.

2 Last but not least, before we break for lunch at  
3 noon, what I would like to do is throw up a slide that  
4 will give you some time frames in terms of things that  
5 have to happen to get the implementation in by the  
6 statutory deadline.

7 Real quick, just for those of you who are not  
8 familiar with the Grain Standards Improvement Act of 2000,  
9 there are three titles to it. Hopefully you got a copy  
10 when you came in. The title we're going to be concerned  
11 or going to be focusing on today is title 2.

12 (Slide.)

13 MR. GILL: It was passed by the Congress in late  
14 October and the President signed it into legislation  
15 November 9, and its goals, and the reason we set up the  
16 meeting the way we have today, it's got two goals.

17 (Slide.)

18 MR. GILL: It's to accommodate electronic  
19 commerce and also to address warehouse issues, and that's  
20 pretty obvious why we set the meeting the way we did.

21 Okay, I guess I jumped ahead of you there. The  
22 statute is set up to streamline and update the U.S.  
23 Warehouse Act, hopefully make it more relevant to how  
24 business is being done today, and specifically it allows  
25 us to start focusing more clearly into how we can help

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1 facilitate the interstate and international commerce.

2 I forgot to introduce at the beginning, I would  
3 like to mention one individual, Jonathan Cutler. If you  
4 would stand up -- I don't know who came the furthest, but  
5 Mr. Cutler is from the University of Greenwich in England,  
6 who gets involved with international activities, and we  
7 have been working together and Jonathan tries to get some  
8 of the warehouse systems set up in several countries  
9 overseas, so thank you for being here, Jonathan.

10 But that, again, the new statute allows us to  
11 get into international and interstate commerce, and  
12 specifically the goals are to -- it's broken down into  
13 warehouse issues in the statute itself. The tight  
14 turnaround on the statute -- David, if you could click a  
15 couple of times --

16 (Slide.)

17 MR. GILL: Is anybody from OMB here? We invited  
18 OMB this morning. I'm not sure they could make it. We  
19 asked for a lot of things in the statute, and we got a lot  
20 of what we had asked for in terms of language we were  
21 looking for that allows the Secretary to do some things.

22 The one thing we didn't ask for -- I'm not sure,  
23 Michael, why this got in there. These kinds of deadlines,  
24 the statute requires us to have a proposal out to you no



25 later than February 7. Obviously we're not going to meet

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1 that deadline. And then it goes on to say that no later  
2 than 180 days after the date of enactment we are to have a  
3 final rule in place out on the street explaining how we're  
4 going to do business no later than May 18. We're not  
5 going to meet that deadline.

6 The deadline we have to meet is, the existing  
7 statute expires on August 1. We have to be in place by  
8 August 1, so that is what is driving us for the most part.

9 (Slide.)

10 MR. GILL: To accomplish that, while the statute  
11 was modified and gives the Secretary a lot of discretion  
12 and a lot of broad authority in setting up regulations and  
13 how we're going to regulate electronic warehouse receipts  
14 and other electronic documents, the one thing you're going  
15 to find is, we're not going to build the infrastructure to  
16 do that. It is not our intent in the Department to hire  
17 people, to buy equipment, to get into the provisions that  
18 we would like to get into. We're going to be looking to  
19 private industry to do that.

20 We have been very successful in that concept,  
21 and in following that with electronic warehouse receipts.  
22 The cotton industry was successful in getting that concept  
23 off the ground.

24 One of the things that quickly that came to the  
25 forefront was how are we are going to do this, so the

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1 first -- and it shouldn't be a surprise to anybody when we  
2 issue a set of proposed rules we're not looking to run the  
3 systems. We're going to be looking to set the criteria,  
4 or maybe the standards, like we do for cotton providers  
5 that we'll get into here in a few minutes, but we don't  
6 plan to build an infrastructure to pull this off.

7 Real quick, what I would like to do -- and in my  
8 opinion the U.S. Warehouse Act has gone through three  
9 phases. The first phase was when it was enacted in 1916.  
10 That, at that point it allowed us to start doing business  
11 with Federal and licensed warehouse operators, and while  
12 the statute has been amended from time to time, a  
13 fundamental revision to the statute was in the early  
14 1990's, which Dave Kirkland is going to get into here in a  
15 few minutes.

16 That expanded the services and also the people  
17 we dealt with at that point. It allowed us to accommodate  
18 operations and transactions that were happening not only  
19 in federally licensed warehouses but also State and online  
20 warehouses in terms of cotton, and obviously it brought  
21 providers to the forefront in how we do electronic  
22 warehouse receipts.

23 The third phase is the phase we're into this  
24 morning, which is the new statute, the U.S. Warehouse Act  
25 of 2000. It keeps and allows us to do business with those

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1 who have been there before, which is the federally  
2 licensed, nonlicensed, and the providers.

3 (Slide.)

4 MR. GILL: But the language in the statute has  
5 been broadened now, where the Secretary can promulgate  
6 regulations with industries and businesses that don't  
7 necessarily have to be tied to a warehouse operation or to  
8 a warehouse operator, so we are entering a new phase for  
9 the statute and for the Department, and we have yet to  
10 create the first page and how this is going to work, and  
11 that is why we've asked you here this morning, if you can  
12 help us get started with that process and how we start  
13 building that.

14 Real quick, David, if yo could turn --  
15 (Slide.)

16 MR. GILL: Just a real quick history before we  
17 make the quantum leap from where we've been and where we  
18 are to where we would like to end up. To make sure we're  
19 all on the same page, the U.S. Warehouse Act, when it was  
20 enacted in 1916, it authorized the Secretary to license  
21 warehouse operations, to store agricultural products.

22 It also allows the Secretary to license  
23 qualified people to sample, inspect, weigh, and grade  
24 agricultural product. This is not to be confused with the  
25 official inspection services which FIS administers here in  
0015

1 the Department, but primarily these licenses are to folks  
2 who are hired by the warehouse operators themselves to do  
3 business with that warehouse.

4 (Slide.)

5 MR. GILL: The U.S. Warehouse Act is voluntary.  
6 It only applies to those who voluntarily apply for the  
7 license. It is regulatory. If you do apply, then you're  
8 agreeing to operate under the provisions and are subject  
9 to the regulations that are out there.

10 (Slide.)

11 MR. GILL: It is intended to protect depositors.  
12 The system is providing depositors with reliable  
13 protection and providing a uniform set of regs or a system  
14 for the storage of products, and it should firmly  
15 establish warehouse receipts that possess real loan value.

16 (Slide.)

17 MR. GILL: To be licensed, federally licensed  
18 under the statute you have to meet certain requirements,  
19 financial, keeping obviously current and accurate records,  
20 obviously operate a facility that is in good working order  
21 and, most importantly, maintain the quantity and quality  
22 of the stored product at all times.

23 (Slide.)

24 MR. GILL: We currently have a little over 1100  
25 licenses. It breaks down to about 125 cotton licenses,

0016

1 1,000 grain, and 25 other licenses. We currently license  
2 a few cottonseed warehouses, dry edible beans, peanuts.  
3 Wool? Do we have any wool? We have a couple of honey  
4 licenses, and so those are the others, and about 12,000  
5 folks that carry licenses to inspect and weigh and grade  
6 for the warehouses.

7 Okay, that's a little quick history. What I  
8 would like to do is at this point start the dialogue, and

9 I'm going to ask Dave to walk us through the electronic  
10 receipts discussion.

11 (Slide.)

12 MR. GILL: This is pulled right out of the new  
13 statute, which states that the Secretary may promulgate  
14 regulations that authorize the issuance, recording, and  
15 transfer of electronic warehouse receipts.

16 At this point I'm going to ask Dave to walk us  
17 through how it currently works for cotton. Again, unless  
18 you tell us otherwise, and what we would like to know  
19 after the discussion is, this is something obviously we're  
20 going to start with in terms of looking at, in terms of  
21 the other product, specifically the grain products, so  
22 with that, David. Are there any questions up to this  
23 point?

24 (No response.)

25 (Slide.)

0017

1 MR. KIRKLAND: Good morning. Some of the events  
2 that have taken place to allow us to get to this point on  
3 electronic cotton receipts. In November 1990 the United  
4 States Warehouse Act was amended to include electronic  
5 warehouse receipts for cotton. The act was again amended  
6 in October of 1992 to further define the use of electronic  
7 warehouse receipts. In August of 1993 the proposed rule  
8 was published with a 60-day comment period, and then on  
9 March 31 of 1994 the final rule was published.

10 (Slide.)

11 MR. KIRKLAND: First, to have electronic  
12 receipts the first thing we have to have is a provider. A  
13 provider is defined as an individual entity that maintains  
14 electronic warehouse receipts in a central warehousing  
15 system, meets the requirements at C.F.R. 735, and signs a  
16 provider agreement with the Farm Service Agency.

17 (Slide.)

18 MR. KIRKLAND: The provider requirements, all  
19 providers must have at least a net worth of \$25,000. They  
20 have to have two insurance policies, one errors and  
21 omissions, and another one for fraud and dishonesty. Each  
22 of these policies must have a minimum coverage of \$2  
23 million and a deductible of not more than \$10,000. Also,  
24 each policy shall contain a clause requiring written  
25 notification to the Farm Service Agency 30 days prior to

0018

1 cancellation.

2 (Slide.)

3 MR. KIRKLAND: All providers are required to pay  
4 user fees to the Farm Service Agency. These fees are  
5 announced in April of each year.

6 (Slide.)

7 MR. KIRKLAND: Providers are required to submit  
8 an audit-level financial statement and an electronic data  
9 processing audit each year. The electronic data  
10 processing audit shall result in the evaluation as to  
11 current computer operations security and disaster recovery  
12 capabilities of their systems.

13 (Slide.)

14 MR. KIRKLAND: The provider's central filing  
15 system must be operated and accessible to the users of the  
16 Farm Service Agency 7 days a week, 18 hours a day, from  
17 the hours of 7:00 a.m. to 6:00 p.m. The agency must be  
18 notified 5 days in advance if these requirements cannot be  
19 met because of maintenance. The agency must also be  
20 notified if for unforeseen circumstances the central  
21 filing system is not accessible for more than 5 minutes.  
22 The agency must have unrestricted access to the  
23 central filing system and all related backup files at no  
24 charge.

25 (Slide.)

0019

1 MR. KIRKLAND: The provider's schedule of fees  
2 must be filed with the agency. The fees shall not be  
3 assessed to users in a discriminatory manner, and must be  
4 in effect for 1 year. A 60-day notice is required on any  
5 changes to the fees.

6 (Slide.)

7 MR. KIRKLAND: The providers are strictly liable  
8 to the agency in its regulatory activities for losses and  
9 costs incurred by the agency associated with a system  
10 failure or lost, damaged, or improperly destroyed  
11 electronic warehouse receipts.

12 (Slide.)

13 MR. KIRKLAND: The provider must maintain a  
14 continuous log of all electronic receipt activities. This  
15 log must capture before and after information on the  
16 receipts records. The log is also to include detail of  
17 any attempts to make unauthorized changes to the receipt  
18 data.

19 The provider must keep electronic receipt  
20 records for 6 years after the December 31 of the year in  
21 which the receipt was canceled. The provider must also  
22 furnish reports as requested by the agency to ensure  
23 compliance with the agreement and the United States  
24 Warehouse Act.

25 The provider must create daily two sets of

0020

1 disaster recovery records. One is to be stored on site in  
2 a fireproof safe, and the other is to be stored off-site.

3 (Slide.)

4 MR. KIRKLAND: The provider shall ensure on-  
5 site security of the computer hardware, software, and the  
6 data.

7 The provider has to have a comprehensive  
8 disaster recovery procedure approved by the agency and  
9 perform a comprehensive test of the disaster plan twice a  
10 year and report those results to the agency.

11 (Slide.)

12 MR. KIRKLAND: At the present time we have five  
13 approved providers. They are Fambro Electronic Warehouse  
14 Receipts, Incorporated, in Fresno, California, Plains  
15 Cotton Cooperative Association of Lubbock, EWR, Inc., of  
16 Memphis, Tennessee, Intelligence Storage Services,  
17 Incorporated, of Raleigh, North Carolina, and Calcot  
18 Limited in Bakersfield, California.

19 (Slide.)  
20 MR. KIRKLAND: The definition of electronic  
21 warehouse receipt is an electronic file in the central  
22 filing system that contains at least the information  
23 required to be included in a warehouse receipt by section  
24 18 of the United States Warehouse Act and part 735.16  
25 regarding a bale of cotton that has been identified to a

0021  
1 holder.

2 (Slide.)  
3 MR. KIRKLAND: Electronic receipts require -- at  
4 a minimum contain the following record data elements, that  
5 include the license number, the receipt number, the bale  
6 tag number, issuance date, receipt status, cancellation  
7 date, name of the warehouse, location of the warehouse  
8 including city and State, the warehouseman, the location,  
9 where the receipt was issued, including the city and  
10 State.

11 (Slide.)  
12 MR. KIRKLAND: Who the bale of cotton was  
13 received from, the grade, which includes color, length,  
14 micronaire, strength, leaf, and extraneous matter, or a  
15 statement on the receipt that states, not graded at the  
16 request of depositor. The net weight is to included, the  
17 name of the person signing the receipt, the current  
18 holder, the warehouse code, the paper receipt number if  
19 applicable, and the terms and the conditions.

20 Terms and conditions contain a statement that  
21 includes the insurance statement, lien statement, delivery  
22 statement, incorporation statement, and whether or not the  
23 receipt is negotiable or nonnegotiable, and any other  
24 terms and conditions within the limitations of the  
25 licensing authority under which the warehouse is licensed.

0022  
1 (Slide.)  
2 MR. KIRKLAND: The receipt may contain  
3 additional information in the receipt record. This would  
4 include data required by the CCC agreement that the  
5 providers are required to sign in order for the receipts  
6 to be placed under loan.

7 (Slide.)  
8 MR. KIRKLAND: The definition of a holder is the  
9 party who has access to the receipt record on the  
10 provider's system. The holder is the only one who can  
11 transfer the receipt to another holder, and a receipt can  
12 only have one holder at a time.

13 (Slide.)  
14 MR. KIRKLAND: To create a receipt, usually the  
15 first thing that happens, the gin enters information.  
16 This information could include the producer who owns the  
17 cotton. It also provides the provider information on who  
18 is going to be the holder, who has rights to that cotton  
19 as far as who can market it or transfer the receipt once  
20 it's sold.

21 That file is sent to the warehouseman. The  
22 warehouseman enters that into their system, adds  
23 additional data that is required, and then transmits this

24 file to the provider. The provider system receives that  
25 data file, verifies the proper ID's and passwords, and

0023

1 then processes the file and creates an electronic receipt  
2 if there are no errors.

3 If there are errors on the data or missing  
4 information the warehouse is notified by the provider so  
5 that they can correct whatever needs to be done and  
6 resubmit the file.

7 The original receipt is issued in the name of  
8 the depositor.

9 (Slide.)

10 MR. KIRKLAND: This kind of flows through how  
11 the warehouse receipt issuance works. The warehouseman  
12 computer contacts the provider system. The host checks  
13 the security. It receives the issue receipts file from  
14 the warehouse. It checks to make sure that all security  
15 has passed. It then signs off the warehouseman. At no  
16 time is the warehouseman logged on to the provider's file.

17 It actually passes the file, logs off, and then  
18 the provider system takes that file and processes the  
19 data. Once that data is processed, then the party that  
20 issued the receipts is notified through mail or fax,  
21 informing him the file was accepted and receipts were  
22 issued.

23 (Slide.)

24 MR. KIRKLAND: To transmit receipts from one  
25 holder to another the warehouse or the holder of the

0024

1 receipts creates a list of the receipts to be transferred  
2 to another individual. At that point, he transfers the  
3 file to the provider. The provider system checks  
4 security, passwords, ID, in some cases Caller ID to be  
5 sure the person who is trying to sign on the system is  
6 allowed to be on the system.

7 Once that takes place, the provider system takes  
8 the transfer file, changes the current holder to the new  
9 holder, and notifies both parties that the transaction  
10 took place, again a notification through the mail or fax,  
11 depending upon how the providers set up their system.

12 These transactions are written to the providers  
13 audit log. The audit log keeps track of all transactions  
14 that take place on electronic receipts. Therefore, we can  
15 go back and trace a receipts history from the time it is  
16 issued until the time it is canceled.

17 (Slide.)

18 MR. KIRKLAND: Once a holder wants his cotton  
19 shipped, he creates a loading order and a shipment file.  
20 At that point, when he transfers his file to a warehouse,  
21 the warehouseman is then made a holder. The warehouse at  
22 the time of shipment notifies the provider system that  
23 these are being canceled on this particular shipping  
24 order, and again these transactions are recorded in the  
25 audit log of the provider's system.

0025

1 (Slide.)

2 MR. KIRKLAND: One of the features of the cotton

3 system is that it will allow draft-to-bank transactions.  
4 This allows the current merchant to transfer the current  
5 electronic receipts to a bank to hold. He also sends a  
6 file to the buyer. Once the buyer makes payment to the  
7 bank, the bank will release receipts to the current buyer,  
8 and the current buyer becomes the holder.

9 (Slide.)

10 MR. KIRKLAND: We've seen a large increase in  
11 the number of users of electronic warehouse receipts  
12 systems. The number of banks, coops, gins, merchants,  
13 warehouses have more than doubled since the first receipts  
14 were issued in 1995.

15 (Slide.)

16 MR. KIRKLAND: The percentage of electronic  
17 receipts issued has increased from 45 percent of the 1995-  
18 1996 crop to over 95 percent of the 1999-2000 crop.

19 (Slide.)

20 MR. KIRKLAND: One of the great benefits of  
21 electronic receipts is, it has allowed us to perform  
22 cotton exams in a more efficient and timely manner. We  
23 have developed a program called WECS, warehouse examiners  
24 communications software. This allows our examiners to go  
25 into a warehouse, contact the provider, and download a

0026

1 file of all the warehouse obligations.

2 He is also allowed to import a file from the  
3 warehouse manager's records, and it lists all the open  
4 bales in his warehouse, which also includes the location  
5 of those bales. At that point he is able to produce his  
6 list for review that contains the warehouse bale locations  
7 right on the printed sheet. It saves the examiner in the  
8 warehouse from sitting down and finding the location of  
9 each one of the bales that we want to location their  
10 system manually.

11 This file also produced two exception listings.  
12 It will identify any bale that's sitting on the provider's  
13 system that is not sitting on the warehouseman's system.  
14 It will also do the reverse, and locate any bale that is  
15 on the warehouseman's files that is not on the provider's  
16 files. This has greatly reduced the time that the  
17 warehouse examiner spends in the cotton warehouses, and  
18 allowed us to get in and get out and do a better job of  
19 completing an exam.

20 MR. GILL: Thank you, David, and before David  
21 takes any questions, and I have few questions to ask this  
22 group, I have asked Joe Wyrick to say a few words  
23 regarding what's happened over the last several years in  
24 terms of providers, and how that has worked, and where he  
25 might see this thing going, and I'll call on a few other

0027

1 providers in the audience. Joe.

2 MR. WYRICK: Thank you, Steve, and welcome  
3 everybody. It's nice to see you this morning. I am Joe  
4 Wyrick with the ERW, Inc., and that's a lot better with  
5 the lights on.

6 We are provider, one of five, as mentioned, in  
7 the cotton industry, and we have been operating since

8 1995, and the good folks at USDA asked me to take some  
9 time and comment to you this morning on some things, based  
10 upon our experience, which need to be taken into account  
11 by this group and by others as we consider the types of  
12 regulations that we need and want to see in the future of  
13 electronic receipts.

14 With that in mind, today what I would like to do  
15 is to provide you some ideas to provoke your thoughts in  
16 three different basic areas, and not that these areas  
17 cover everything, but I think they cover a lot.

18 The first area I would like to talk about are  
19 the entities impacted by electronic receipts. Now, with  
20 that agricultural background through the Cotton Council,  
21 and everybody here has an ag background, we traditionally  
22 think of entities that would be impacted as the producers  
23 and the warehouses, obviously, the merchants, USDA, the  
24 mills, but there are a number of other firms that have  
25 been directly impacted by electronic receipts, and those

0028

1 folks and their interests are going to have to be taken  
2 into consideration.

3 The most obvious to this group is probably the  
4 banking and financial industry. Bankers have had to learn  
5 to accept electronic receipts as collateral, and how to  
6 use electronic receipts for bank drafts. In addition,  
7 banks and financial institutions have learned that  
8 electronic receipts cause what I call long distance  
9 competition.

10 In the paper world, the producer or merchant  
11 would typically go deal with his local bank down the  
12 street, taking his paper receipts in for collateral.  
13 We've seen an increasing trend, with electronic receipts,  
14 of people in one State dealing with banks hundreds of  
15 miles away for collateral purposes or for bank draft  
16 purposes because those banks offer them better services at  
17 cheaper prices, so the banks and financial institutions  
18 certainly have impacted and are undergoing change.

19 The futures exchange in particular, NYBOT, the  
20 New York Board of Trade for cotton is the exchange that  
21 the cotton industry uses, has really taken hold and  
22 accepted electronic certificated receipts. The exchange  
23 likes the idea of a swift, reliable electronic delivery  
24 system so that contracts can be fulfilled promptly.

25 The other thing that the exchange really likes

0029

1 is the audit trail that all of us providers are required  
2 to keep. That audit trail allows the futures exchange to  
3 go back and look at exactly what happened on what day,  
4 when, and who did it. In those cases where controversy or  
5 contention may come up because different traders say they  
6 did different things, the audit trail allows a definite  
7 way to prove exactly what happened, and to alleviate the  
8 discussion.

9 Another entity to consider, State governments.  
10 In at least three States with Department of Agriculture  
11 groups, those departments have gotten involved in the  
12 regulation of electronic receipts within their State



13 boundaries and, of course, it doesn't take a great leap  
14 for you all to figure out some of these regulations  
15 conflict directly with the Federal regulations, and I'm  
16 getting a smile over here.

17       The next logical thing is, whose regulations do  
18 you follow? That problem exists today, has not been  
19 solved, and it is one we are going to have to look to and  
20 address, because it is a problem. When we go, and I'm not  
21 going to mention any particular States, but when we go  
22 into some States and the warehouseman has two different  
23 things he as to do, he wonders which entity is going to  
24 arrest him first, the Federal Government or the State  
25 government.

0030

1       Another group affected have been the software  
2 vendors, the folks who write software for the ag  
3 community. These people have been asked to integrate  
4 additional functionality into their systems in order to  
5 take advantage of the many things that electronic receipts  
6 offer. As a result, they've had to do a lot of software  
7 changing and modification, things that they normally would  
8 not have done.

9       The final one on my list of entities to take  
10 into mind or consideration are audit firms, financial  
11 audits. CPA's have had to learn to accept electronic  
12 receipts as assets or financial statements and as  
13 collateral. Beyond financial audits, we are seeing an  
14 increasing number of EDP audits, where firms are asking to  
15 come in at their expense and assess the security of our  
16 system for their user.

17       This trend is increasing, and we don't see  
18 anything but more and more of it happening, so I'm sure  
19 there are other entities that I have not included, but  
20 these are the ones that have come to mind. Banks, the  
21 future exchanges, State governments, software vendors, and  
22 audit firms, all of these people are going to be impacted  
23 by the regulations, and they're all going to want a seat  
24 at the table when they're discussed.

25       It's going to be very important for us to

0031

1 embrace this group and bring them in so that we can talk  
2 in a unified manner, because I can assure you they want to  
3 think about regulations, and if we don't bring them in  
4 they're going to come in anyway.

5       Now, the second idea I want to talk about are  
6 trends that we've seen and, of course, lots of trends in  
7 the computer and technology industry, but the first that  
8 comes to mind, and the current rage, is e-business, or e-  
9 commerce.

10       EWR has experienced increased requests, and I'm  
11 sure the other providers in cotton have had the same thing  
12 and if not you all correct me, for more and more  
13 electronic documents on their system. We've had more  
14 people ask us, can you put this on, can you put that on.  
15 Not title documents -- we've already got the electronic  
16 receipt -- but ancillary documents that serve the receipt  
17 and make it easier to use.

18           We also, as everybody could guess, have seen  
19 more use of the Internet. It's real interesting to us  
20 that we did a survey 2 years ago of everybody in the  
21 cotton industry that uses our system and found roughly a  
22 third had Internet access at the time, and a similar  
23 survey this summer that showed went up to 75 percent of  
24 the people have Internet access, although only about half  
25 of that admit to having expertise in using the Internet.

0032

1           Internet trading is growing. We've seen a  
2 number of marketing firms developed just in recent months  
3 in cotton and other commodities. It's going to be  
4 important for the providers to interface with these  
5 systems, and the question that we've got is, EWR, are you  
6 neutral? What can you do to assure us as a trading firm  
7 that you're not going to give our information away to  
8 another trading firm?

9           his is a question that some of the merchants in  
10 the group may recall we discussed back in 1994, to make  
11 sure that merchants wouldn't get to see other merchants'  
12 data. It's a legitimate question. It is one that needs  
13 to be addressed, and it is a question of what to what  
14 extent does a provider need to be neutral?

15           I have to, of course, mention in any discussion  
16 of e-commerce the sophistication of hackers. In a  
17 bookstore in Memphis this past weekend I found a book that  
18 had a group of scripts, and all you did was type these  
19 things into your computer go to the Internet, pick a web  
20 site, run the script, and it would tell you whether you  
21 could break into that site or not. This is an off-the-  
22 shelf book. You don't have to have any computer  
23 knowledge. You do have to be able to use your keyboard.

24           The point of this simply is that hacking is  
25 becoming more and more sophisticated, and more and more

0033

1 people are doing it. This is going to be a real challenge  
2 to providers to have the security in place to stay one  
3 step ahead of these folks, and it's not easy, when yo can  
4 go to Barnes & Noble or Borders, like I did, and pick up  
5 books on how to do, how to break into your friendly web  
6 site.

7           Another trend that we've seen is what I call  
8 intercommodity interest. There's probably a better term  
9 for it than that, but basically people who are using  
10 electronic cotton receipts, particularly producers, have  
11 contacted us and asked if it's possible to have electronic  
12 receipts, electronic bill documents for the other crops  
13 that they grow.

14           For example, in cotton we have a lot of folks  
15 who grow rice and soybeans and I've had many of those  
16 folks say, hey, I like electronic receipts in cotton.  
17 They work great. Now I would like to do it for all my  
18 crops. I want electronic title for rice, for soybeans,  
19 for whatever else they're growing.

20           So you're going to see a cascade, I believe. I  
21 believe that's going to be the trend, as these people who  
22 have a taste of electronic receipts want to spread it

23 across everything they do.

24 One final trend that I would find worth  
25 mentioning is that we have noted and been contacted by

0034

1 nonprogram commodities who are intersected in electronic  
2 receipts. A great example is coffee. Coffee is imported.  
3 It's not grown in the United States. It's handled in  
4 public warehouses. It's also traded on the New York Board  
5 of Trade, just like cotton, and they've seen cotton  
6 electronic receipts, and now the coffee industry is asking  
7 how can we also do electronic receipts?

8 As we look to developing regulations, one of the  
9 things that this group will need to consider is, do we  
10 provide some way for nonprogram commodities, non USDA  
11 program commodities to be involved? Can we provide, does  
12 the law even permit it? Certainly the interest is there,  
13 and we're seeing it increasingly.

14 Now, the third and last idea that I would like  
15 to go over is what I call unexpected, the things that we  
16 did not expect back in 1994 and 1995 when we first started  
17 up electronic receipts. I have notes that I looked up  
18 last week in preparation for this meeting that went back  
19 to 1994 and 1995, where we had similar meetings hosted by  
20 USDA, and a number of speakers in those meetings in the  
21 mid-1990's were pretty confident that it would take five  
22 full years before electronic receipts would dominate the  
23 cotton industry.

24 Well, it worked a little faster than that, but  
25 the second year of operation, two-thirds of the industry

0035

1 were using electronic receipts. By the third year it was  
2 approaching 90 percent, except the acceptance of  
3 electronic receipts in cotton proved much faster than we  
4 expected, and probably will so in other commodities, too.

5 We also did not expect the diversity of users  
6 that we have encountered. We found people that use  
7 electronic receipts with everything from old DOS 3.3  
8 systems out there all the way to the latest, greatest,  
9 leading-edge technology, and this diversity has only  
10 increased as new networking software, as new operating  
11 systems like Linux become available on PC's, this  
12 diversity grows and grows.

13 We try very hard to service all these people,  
14 but it becomes increasingly difficult when we have a  
15 broader and broader group that we have to try to provide  
16 to and not to discriminate against anybody.

17 It may be that we want to consider whether we  
18 have the right, or want the regulations to set some  
19 minimum standards. That's something we might want to  
20 consider, because it will be very difficult, when you look  
21 at nondiscrimination clauses in current regulations, for a  
22 provider to be all things to all users.

23 We did not ever expect the audit log that we  
24 keep to be used to the extent that it is. When we first  
25 came up with an audit log we thought it was something that

0036

1 would simply record every transaction on a receipt, and we

2 would put the information on a tape, put it away for 7  
3 years, and then throw it away. That's not what's  
4 happened.

5 That audit log has become an essential piece of  
6 our operation. We are constantly finding uses for that  
7 from users who want to know what happened to what receipt  
8 when, and it's a good reference that proves exactly what  
9 happens when, not just for court cases, not just for legal  
10 matters, but people trying to figure out what they did, or  
11 what went on, so the audit log is something that probably  
12 originally was envisioned, Steve, for backup purposes, and  
13 in turn has turned out to be something that is a readily  
14 used feature of the system.

15 One of the final unexpected things that I will  
16 mention is the current regulations under which cotton  
17 receipts operate. Again, back in 1994 and 1995, when  
18 these regulations first came out, we were trying to  
19 operate under them. I remember conversations with folks  
20 about how these would probably have a couple of years,  
21 then we would have to go in and modify them.

22 The reality has been that the regulations under  
23 which cotton currently operates have proven to be  
24 extremely flexible and have worked well. Certainly they  
25 can use a little fine-tuning. They've generally done a

0037

1 very good job for the industry, and that has also been  
2 enhanced by the prudent and reasonable interpretation of  
3 these regulations by the Department, so those folks who  
4 put those regs together in the first place are to be  
5 highly commended for their foresight to put together  
6 regulations when there was no map to follow.

7 In conclusion, I have basically tried to point  
8 out three things, that there are nontraditional entities  
9 that we have got to start taking into account as we look  
10 at these regulations, because they are going to be  
11 directly impacted, and they're going to want to say things  
12 that there are trends we have to consider, and that the  
13 unexpected things, the things we never expected to happen,  
14 in fact a lot of them did, and we've got to take that into  
15 account, too.

16 Now, I offer these ideas for your consideration.  
17 I believe that these ideas, plus the experience that we  
18 have gained in cotton, will offer us a strong foundation  
19 of knowledge on which to base future regulations, and for  
20 the future use of cotton receipts and receipts in all  
21 commodities, and that concludes my remarks. I appreciate  
22 the invitation, and if there are any questions I'd be  
23 happy to take them.

24 Thank you.

25  
0038

1 questions, we have other cotton providers in the audience.  
2 Any other words of wisdom that anybody else would like to  
3 share? Yes, Allen.

4 MR. NEPPER: I'm from California. You can see  
5 by the attire.

6 I'm Allen Nepper. Fambro Electronic Receipts

7 became a provider years ago and then decided this past  
8 year to ante-up again, and what we have done is, we have  
9 become an Internet-based provider. All of our software is  
10 browser-based, and so what I wanted to talk about a little  
11 bit is, as we look forward, I think we need to look at  
12 what a provider can be and how the regulations fit against  
13 that.

14 One of the things we're doing, and Dave was out  
15 there, we provide an inventory management system as part  
16 of our electronic warehouse receipt. We even provide an  
17 interface for the gins in the cotton industry that the  
18 bale is made at a gin, so that's when it first, if you  
19 will, exists, or is substantiated, and then forward to the  
20 warehouse.

21 So as we look at the regulations, what I would  
22 like to be able to do is keep in mind that this provider,  
23 talking about software and talking about application  
24 service providers, or ASP's, what can it do within the  
25 regulations, and what can it do that may not be within the

0039  
1 regulations but is okay to do.

2 And the example is the warehouses, when they  
3 come on our system as a merchant, sends them a shipping  
4 order. They can then come on our system and print off  
5 where the bale is located, all the ways they set up their  
6 shipments. They can then come on and print up the bill of  
7 lading, and they can then issue all of the shipping  
8 documents that need to be done, and they can forward  
9 information on to the other entities, being mills, or on  
10 to other merchants, so when we talk about this, you have  
11 to understand where is the firewall in the sense of this  
12 information, so I want to perk you up on that.

13 The other thing we have seen is, in interfacing  
14 with all of the other systems out there, being browser-  
15 based is really a simpler task, and so the minimum  
16 requirements we may need may be somewhat less minimum than  
17 we know, because we've interfaced with Unix systems and  
18 with AX-400 systems, with PC systems, and because it's  
19 browser-based it doesn't have the hardware requirement.

20 The only other thing, too, that in adding to  
21 this, the user, what happens when you become Internet-  
22 based is a user can actually come online and do all of  
23 their work while they're online and see stuff while  
24 they're online versus the black box to black box, and that  
25 brings up other levels of security, or whatever we need to

0040  
1 address, but I want to bring that up, because being  
2 Internet-based does have a twist to what we're doing in  
3 the provider system.

4 MR. GILL: Thank you, Allen. Any other comments  
5 from providers at this point? This is good. Thank you  
6 very much.

7 MR. TUBB: I'm Joe Tubb of Plains. We've been  
8 running a provider system for probably 11 years, and I  
9 think one of the factors that made it work well for the  
10 cotton industry in addition to the regulations was the  
11 fact that FSA, the Commodity Credit Corporation, did step

12 up to the plate and adapt their systems to be able to work  
13 with electronic warehouse receipts. I think that's one of  
14 the reasons you see the 95-percent availability that you  
15 see today. I think they ought to be complimented for  
16 that, because I don't think they get many chances to hear  
17 that.

18 The only thing I would like to add to what Mr.  
19 Wyrick and what Allen had to say is, there's one point you  
20 might be interested in, and that's all providers in the  
21 cotton industry operate under a patent.

22 Plains Cotton has two patents for electronic  
23 trading of goods for electronic cotton, and our intent was  
24 not to stifle the cotton industry by any stretch of the  
25 imagination, so we've licensed them to the National Cotton

0041

1 Council and then they sublicense it to the other providers  
2 in the cotton industry, so for the grain folks and other  
3 folks that are interested in getting into electronic  
4 title, you might want to talk to us and contact me after  
5 the meeting, or look at those patents. That's all I have  
6 to say.

7 MR. GILL: Thank you, Joe. Any other comments  
8 from providers?

9 (No response.)

10 MR. GILL: Assuming we get over the patent  
11 issue, which for those who don't know, Ralph Hinden walked  
12 in a few minutes after we started, from the Office of  
13 General Counsel, and we will probably defer several of  
14 those issues to our friends at OGC. You have heard a lot  
15 of things from three providers, and a little bit of what  
16 you saw on the screen. What I'm hearing is, whatever  
17 regs the Department comes up with need to be flexible and  
18 broad to accommodate what's going on out there in the real  
19 world, which we want to throw out this afternoon when we  
20 get to some other issues.

21 MR. GILLEN: Steve, can you ask Ralph to give  
22 his experience in the context that Joe Wyrick mentioned,  
23 and how the Department has assisted (inaudible)?

24 MR. GILL: Neal Gillen has asked if Ralph would  
25 come up here and address some of these things that evolved

0042

1 since we got into the electric warehouse receipts,  
2 specifically on the legal issues, and how --

3 MR. GILLEN: Generally how he deals with  
4 conflicts with the States relations.

5 MR. GILL: And specifically how the Department  
6 deals with conflicts between the Federal regulations and  
7 the State regulations. Ralph, you're on, and thank you  
8 for asking that question, Neal.

9 MR. LINDEN: The first thing I would like to do  
10 is to apologize to all of you that stopped by yesterday  
11 and today and wanted to see me. I've been a little  
12 preoccupied with other things outside the normal course of  
13 business over the last couple of days. It's a little  
14 chaotic trying to find anybody in charge.

15 Neal raises a very interesting point. There's  
16 always this tension in the warehouse area between State-

17 licensed warehouses and federally licensed warehouses, and  
18 one thing we have going for us is, we do have the Supreme  
19 Court, which comes in real handy from time to time.  
20 There's a Supreme Court case called Rice v. Santa Fe,  
21 which came down, I believe -- correct me if I'm wrong -- I  
22 think in the forties, I think 1946 or so, and basically it  
23 laid out when Congress has entered the field in regulating  
24 warehouses the Fed preempts the State.

25 The battle, as it always is in the preemption,  
0043

1 is where does that line get drawn, and I think one thing  
2 that I would call people's attention to -- well, two  
3 things. What we're talking about in electronic commerce  
4 activity is purely 100-percent voluntary. We're not  
5 regulating. We're not calling the shots. We're not doing  
6 anything. We're talking about, if you will, a third  
7 legged system.

8 You've got the paper world that's been out there  
9 since 1500 in the Statute of Frauds in England. That's  
10 still out there, the traditional UCC. You have electronic  
11 commerce that is out there, the Electronic Commerce Act  
12 within, like, the last 18 months. That's out there.  
13 That's fine. People can use it to their hearts content.

14 What we're looking at in the Warehouse Act is a  
15 voluntary system where the Secretary will establish the  
16 rules of the game, if you will, for people who want to  
17 play in his game. It is not going to stop the States from  
18 doing anything, but it's going to say, if you come into  
19 our system, these are the rules.

20 If you come into our system, then the Federal  
21 law is going to preempt the State laws, and I feel fairly  
22 confident on that one when you look in section 3 of the  
23 new Warehouse Act and it says, the Secretary shall have  
24 exclusive power, jurisdiction, and authority to the extent  
25 that this act applies with respect to each warehouse

0044  
1 operator licensed under this act, but, more importantly  
2 for the e-commerce, each person that has obtained approval  
3 to engage in an activity under this act.

4 So we're looking at the provider area here, that  
5 if you come into this voluntary system, that it's going to  
6 be one size fits all, and what we're trying to get to is  
7 competitive advantage for the competitors. We want true  
8 uniform commercial law in the electronic world. We want  
9 to be able to have a system in New Orleans and a system in  
10 New York and a system in San Francisco all playing by the  
11 same rules when it comes in terms of transferring title  
12 within the system.

13 The one thing where the Feds aren't going to get  
14 into and have no business getting into, and we don't to  
15 get into at this point, is priorities of security  
16 interests. The act is very clear that, if I can go back  
17 to section 11 here and section (e)(8) -- excuse me. Not  
18 (e)(8), (e)(5). If more than one security interest exists  
19 in an ag project subject to electronic receipt or other  
20 documents in this act, the priority of the security act  
21 shall be determined by the applicable Federal or State, so

22 if you've got a State law out there calling the shots on  
23 security interests, State law. We're not there.

24 The reference to the law gets into things like  
25 IRS liens, those types of issues, but when it comes to

0045

1 doing the battle of, if you are in our system and which  
2 law is going to prevail, Federal or State, we feel fairly  
3 confident it's going to be a Federal law activity. If  
4 you're not in the system, if you're not a federally  
5 approved provider, State law all the way. We're not  
6 there, don't want to be there.

7 In fact, I think our experience has been, if you  
8 look at the State-licensed warehouse and federally  
9 licensed warehouse, that competition is nice. It causes  
10 Steve Gill to be honest, it causes the States to be  
11 honest. The whole reason the providers seem to work  
12 better is you have five providers. There's competition,  
13 and competition means -- you know, it's kind of a long way  
14 to get around to your question about how we're going to  
15 address the Federal and State law. If it's a federally  
16 licensed provider we're going to take the position these  
17 are Federal rules, Federal preemption of State law, except  
18 for security interests. If you're not in the system,  
19 State law prevails. We don't want to get into their  
20 territory.

21 Steve, I don't know if you want me to get into  
22 some of the e-commerce things, States we've got. I will  
23 be available this afternoon, and some of you have heard  
24 this before, so people like Bill Stubblefield can kind of  
25 fall asleep.

0046

1 VOICE: Before you start that, the purpose of a  
2 regulated line, where does your jurisdiction stop  
3 (inaudible)? Where does your authority stop?

4 MR. LINDEN: Phil's question is, where does  
5 authority start and stop in terms of a regulated  
6 commodity? If it's in the interior of the United States  
7 then it's a corn shipment, and it gets to the steamship in  
8 New Orleans, where does our jurisdiction end? I will  
9 address that as we go through this, because that is really  
10 fundamentally key to what we're trying to do in this  
11 exercise.

12 Two and a half years ago we were yelling and  
13 screaming that we needed to be paying attention to  
14 electronic commerce and, as some of you know, we might get  
15 three people who would listen to us, and we love you for  
16 that. A year ago we got up to about 28 people. Then  
17 about 6 months ago there was about 6,000 people.

18 It's amazing, with the explosion of the e-  
19 commerce all of sudden businesses have started coming to  
20 us and help us. Before, we were trying to pull you along,  
21 and now most of you have gone ahead of us, but what we are  
22 trying to get to when we started this thing 2 years ago  
23 was, a fluid transfer of commerce of ag commodities where  
24 there's no paper involved, and an example we've been using  
25 is, when you sell that, you get that the corn in the field

0047



1 in Wisconsin, deliver it to an elevator in Wisconsin, it  
2 gets on the railroad in Wisconsin over to the Mississippi  
3 River onto a barge, a barge down to New Orleans, into an  
4 elevator in New Orleans on to the vessel that's going to  
5 Jakarta, the game is to make sure every document along the  
6 way is electronic.

7 We don't want to have any paper anywhere, and  
8 when it gets on that ship, as long as it's in the  
9 jurisdiction of the United States, we're good to go that  
10 we have jurisdiction on it. When it leaves the United  
11 States and gets to Djakarta we're going to be dealing with  
12 the Djakarta law. We're going to be dealing with  
13 Indonesian law.

14 As Bill has kind of set this up, there are  
15 people in the United Nations community, the international  
16 bankers, who are all working towards e-commerce once it  
17 leaves this area, once it leaves the jurisdiction of the  
18 United States.

19 The issue that is going to be the interesting  
20 one for the bankers is when we issue a bill of lading, if  
21 you will, on an ocean-going vessel and it gets to  
22 Djakarta, and that poor person in Djakarta is being asked  
23 to unload the vessel and say, give me the warehouse  
24 receipt, and somebody plops out a laptop and says, here it  
25 is. These people may not have seen an electronic

0048

1 warehouse receipt, and those are the issues that are going  
2 to be, I would suggest, the next generation of concerns,  
3 and it's going to be international jurisprudence, how  
4 we're going to address that.

5 But right now, here in the United States, what  
6 we're trying to get to in the system approved by the  
7 Secretary that's all electronic, top to bottom, and  
8 there's some interesting provisions, I would suggest, that  
9 are in here that the Secretary has never had before, and  
10 to be real honest, the people in Congress I think were the  
11 ones that prompted us on this to a large degree to think  
12 outside the box of how to solve where that paper document  
13 is going to pop up, somewhere between Wisconsin and New  
14 Orleans.

15 Maybe it's in Iowa, where suddenly someone is  
16 not electronically based, there's a piece of paper out  
17 there. How do you get that piece of paper back into the  
18 electronic system, and that is what I want to try to  
19 quickly talk through.

20 Key things, in fact, that people may not be  
21 aware of. What's covered? Ag products. Ag products are  
22 defined as commodity, as determined by the Secretary,  
23 including processed products of an ag commodity, so we've  
24 gone beyond the bale of cotton. We're into meat,  
25 vegetables, processed vegetables, corn, corn products,

0049

1 anything you can think of that is an ag product, or an ag  
2 commodity and a product thereof.

3 Again, it doesn't mean we're going to regulate  
4 it. It means that there's an opportunity for people in  
5 that area to come to us to take advantage of the system.

6 What documents are covered? Electronic documents means  
7 documents that are sent, received, stored, or generated,  
8 something that is created in a system by the Secretary,  
9 and that's the key.

10 When you're going along out there and you've got  
11 this paper document pops up, a bill of lading, a  
12 phytosanitary certificate, it's paper, and suddenly the  
13 whole system breaks down because we're trying to speed it  
14 up with the electronic world and move everything  
15 electronically. There's this piece of paper over here  
16 that's going to move one of two ways. It's either Fedex  
17 or by the mail, and that is what we want to get out of.  
18 We don't want to have to wait for that document to get to  
19 the end of the line.

20 So under this act, the provider approved by the  
21 Secretary can in essence generate an electronic document  
22 that duplicates the paper document, and that's the one  
23 thing that I think where the Federal Government has to be  
24 involved, is that somebody has got to be able to give  
25 legitimacy to that document that was paper, that is now

0050

1 electronic, because the electronic document may be a bill  
2 of lading, it may be something that is conferring title.

3 Private entities out there can't confer title.  
4 That's a Government function. It's either a State  
5 function or a Federal function, so what we have got to get  
6 is in our very system the Secretary to be able to have a  
7 provider approved to generate a document. It could be a  
8 duplicate of a paper document. In fact, there's  
9 provisions in here that say how you handle when there's a  
10 duplicate document, and the electronic document includes  
11 things that are sent by electronic data interchange,  
12 telegram, telex, telecopy and, most importantly, e-mail.

13 So now for the first time you're getting into  
14 things where an e-mail can take on some, I would suggest,  
15 legal legitimacy that may not otherwise be out there. As  
16 many of you may have encountered, we have had issues prior  
17 to the e-commerce bill in Congress, what is the legitimacy  
18 of an e-mail?

19 Some of you who went to law school may recall  
20 under the Statute of Frauds, 1500 England, certain  
21 documents have to be in writing. When e-commerce came to  
22 the forefront in the 1860's with the first telegram, the  
23 first telegram that went out that said, I want to buy your  
24 commodity, or I want to buy your widget, that was all fine  
25 and dandy. You couldn't close the deal. Some of these

0051

1 documents had to be in writing.

2 So we have been stumbling from 1580 to 1680 to  
3 1990 with concepts that are 300 and 400 years old, with  
4 terms of written documents, and this act gives it a chance  
5 to get out of that.

6 It gives us the chance to address the issue of  
7 electronic signatures. How are we going to handle  
8 electronic signatures? There are other people in the  
9 Government that are ensuring that all encryptions are the  
10 same, but again you know, we're trying to get you all to

11 think about -- most of you I think are beyond us on this,  
12 getting rid of paper. We want to be pure electronics.

13 The other, I guess, highlight in here is who  
14 gets to play? Warehouses, providers. The warehouse world  
15 is State-licensed warehouses, federally licensed  
16 warehouses, and nonlicensed warehouses. This act makes  
17 very clear that we're not out there stepping on the toes  
18 of State-licensed warehouses in this area.

19 If the State-licensed warehouse wants to get an  
20 electronic receipt under State law, we're not in the game.  
21 We're completely out of it. If the State-licensed  
22 warehouse wants to come to us and play in our game, they  
23 can play in our game, for then they're not with the  
24 States. But they can't be doing both. They can't today,  
25 being federally licensed, issuing electronic warehouse

0052

1 receipts in the Federal system and tomorrow in the State  
2 system. They're either in or they're out.

3 If you go over on the electronic provider side  
4 of the equation, what we're talking about is a pure  
5 voluntary Federal system, and we want to emphasize  
6 voluntary. We're not telling anybody you've got to come  
7 here, but what we're looking for is to set up a framework  
8 for those that are in e-commerce, that are confronted  
9 with, for lack of a better phrase, this junction between  
10 State law and you're trying to move from Utah to New York  
11 to Florida in the shipment, that we're in a position, with  
12 electronic providers that we approve, I think, to  
13 facilitate that, to set up one rule regardless of what  
14 State you're in, except for the priority interest in the  
15 banking rule.

16 Again, I'm not here to address that today, and I  
17 think it's important when we told Steve when we get people  
18 in this room I want to emphasize we need to hear from you  
19 what you want, because we're not going to tell you what  
20 we're going to do, because we don't know what we're going  
21 to do. We want to know what you need to make your systems  
22 work.

23 If you've got a system that's doing warehouse  
24 receipts and you've got a system that's doing bills of  
25 lading, you have a system that's doing grain inspections,

0053

1 a system like Larry McIlvaine has in our export credit  
2 system, where documents are generated, our goal is to make  
3 sure that the Secretary's -- it's not Steve's authority,  
4 it's not mine, it's the Secretary's -- that all of these  
5 are going to fit together in one system so we don't have  
6 this juncture.

7 What you saw in the slides before, that probably  
8 means a lot of attention being paid by the Department to  
9 who our providers are. It's the providers may be doing a  
10 lot more than -- in fact, I know they'll be doing a lot  
11 more than just with the warehouse receipts, bills of  
12 lading, phytosanitary, sanitary certificates, insurance  
13 documents, anything it takes to move a commodity, and the  
14 Secretary hopes to listen to you to tell us what we need  
15 to regulate so they can have it, and I would encourage you

16 to send us those cards and letters. We usually don't want  
17 to hear from cards, but we want cards on what do you want,  
18 what do you need to make it happen.

19 Before I ramble on, Steve, I'm going to shut up  
20 and see if there's any questions.

21 MR. GILL: What Ralph has done, he's brought  
22 into the discussion the other electronic documents, and we  
23 did have a few slides, but to keep this thing going we're  
24 now getting to a point where we've been talking, we  
25 started with electronic warehouse receipts, we're now

0054

1 talking about other electronic documents.

2 You heard Joe and others bring up some things  
3 we need to start thinking about here in the Department.  
4 Between nonprogram crops, what is an agricultural product,  
5 and hopefully you picked up some material outside, where  
6 under Larry McIlvaine's and Ralph's program, GSM and the  
7 other programs, there's like close to 200 products,  
8 agricultural products in the Department, recognized under  
9 the Department programs, and some of them are pretty weird  
10 products, worms, the alcohol beverages, antlers, wood  
11 products, the processed type, so please, before you leave,  
12 if you haven't, pick up that list.

13 Yes, Neal.

14 MR. GILLEN: I have a question for Ralph. One  
15 thing on e-commerce (inaudible). What is the Department  
16 doing about that?

17 MR. LINDEN: Neal's question is, dealing with  
18 electronic commerce top to bottom, is the question of  
19 sanitary and phytosanitary certificates, which are  
20 generally Department of Agriculture for agriculture  
21 commodities. There are people in the Department dedicated  
22 to getting totally on board on that.

23 The reality is, it's just a matter of time, and  
24 it takes, I think all of them have learned that in trying  
25 to do electronic warehouse receipts it takes way longer

0055

1 than we ever thought it was going to just because of the  
2 programming, just because of all of the computer  
3 activities. It's easy to sit down as a lawyer and write a  
4 document on paper. The problem is trying to get it into a  
5 computer-based system.

6 I know that Jim has been trying for, what, 7  
7 years, to get their documents in an electronic base. I  
8 don't know if Gypset is hiding in here today or not.  
9 Gill, is FGIS there this morning? They're doing a pilot,  
10 I know, on one of their documents, but I'm not sure where  
11 it is.

12 MR. LINDEN: The Department has been trying to  
13 get out of paper. As much as sanitary and phytosanitary  
14 are at issue -- Larry, hold up your hand. How thick is  
15 your pile of documents when you do an export credit  
16 guarantee program, when you do CCC's back in the financing  
17 of a shipment of corn, 1 inch or 2 inches?

18 VOICE: Well, first of all there's an  
19 application that they come in for sale, and there's  
20 evidence, the export has to be reported. These aren't

21 really documents I think, because they are -- and what I  
22 want to say, they're not really documents that are being  
23 sent in here. They are reports, basically.

24 The next phase, though, is when you get into, if  
25 there's claims or anything like that, and that is where we  
0056

1 get into the documents on the export credits sent. If  
2 there's a claim, there has to be a bill of lading and a  
3 number of other documents, invoices and stuff like that,  
4 so that's where you really get into the documents on the  
5 export credit part.

6 Prior to that, though, just getting the sale and  
7 everything, ordinarily we don't request too many  
8 documents, but it's still paper flowing in. Evidence of  
9 exports, we get something like 40,000 a year. We are,  
10 though, working on a system, and we hope to have it in  
11 place by the end of this fiscal year, at least phases of  
12 it where we can electronically -- the exporters can  
13 electronically report their sales to us and they can also  
14 electronically file their evidence of exports, these  
15 40,000 documents we get a year.

16 If they go astray, they say they've been filed,  
17 we don't have a record of it. We hope once we get into  
18 this, that will take care of that. But with regard to  
19 documents, it's only when you get into the claim issue and  
20 something goes bad.

21 MR. LINDEN: And I think that's important.  
22 Joe's talking about the audit trail. The sections the  
23 Government worries about are audit trails. If we've got  
24 money involved, we want to know where the money went and  
25 that the transactions happen properly, and I would imagine  
0057

1 as we get into this e-commerce document scheme, including  
2 the warehouse receipts and the whole 9 yards, I think that  
3 the audit trail that the provider is going to have is  
4 probably going to be our biggest benefit, because we'll be  
5 able to turn to the provider at any point in time.

6 How we get all of the documents on one system is  
7 Herculean, because everybody in the Department wants to do  
8 their own thing, and I kind of feel somewhat like a  
9 hypocrite, after trying to encourage you to say, well, we  
10 want you in our system to talk to each other. We can't  
11 get everybody in the same room in the Department to talk  
12 to each other, and there is a chief information officer in  
13 the Department of Agriculture who is charged with being  
14 sure we do speak to each other.

15 Those are the issue we're going to be addressing  
16 hopefully over the next 6, 7 months, but the one that is  
17 going to come up for all of us is the difficult area,  
18 electronic signatures. The question is going to be, how  
19 is the trade going to feel comfortable showing that a  
20 document is transferred from A to B or from B to C in an  
21 electronic environment because right now you usually have  
22 signatures. Somebody signs something. It may be  
23 illegible, but at least there is something signed, and  
24 that is the one we're struggling with to ensure that the  
25 banks, the insurance companies, everybody is comfortable

0058

1 with encrypted signatures.

2 E-mails look great when you're sending notes  
3 back and forth, but they don't really tell you who  
4 actually -- you don't really know who's sent the document,  
5 you don't know who received it, and so you've got to have  
6 this issue about how you're going to have an electronic  
7 signature in your environment. How will that work, or  
8 will the provider say, because I know you people so well  
9 and we've got a separate agree you don't need a signature,  
10 we will take your e-mails, and those are the issues that  
11 we don't have an answer for but need you to tell us how  
12 your different businesses are going to talk to each other.  
13 How are you going to keep this thing totally seamless?

14 I know there's a lot of problems we had, but  
15 Neal and I have gone through, I think, two bankruptcies  
16 over the last 10 years that have caused us to take pause  
17 on occasion. One is called Julian Cotton in the late  
18 eighties, early nineties, and then most recently Sea  
19 Island Cotton in Georgia, and I think you'll find because  
20 of the litigation you're going to see our shop suggest  
21 that we may have to make some modifications where we  
22 currently have the warehouse receipts. We've learned, and  
23 you learn sometimes because you lose.

24 And there's issues about, bankruptcy courts are  
25 throwing some curves at us about what is a holder and what

0059

1 are the priorities. We have to address. Again, that is  
2 why it's so important for you all to tell us what your  
3 priorities have been, because we don't know.

4 MR. GILL: While Ralph is still here and before  
5 he leaves real quick what I'd handed Ralph was to answer  
6 Larry's question.

7 I had asked Mark what kind of paperwork does it  
8 take to export a product, and the screen we have up  
9 here -- and I don't know if you can see it in the back,  
10 but the department, if you're going to export flour to  
11 Angola, here's what the Department of agriculture requires  
12 in terms of what you have to file with the Department to  
13 move the product, and that's just the Department of  
14 Agriculture.

15 What you're hearing, or at least conceptually,  
16 obviously we're going to start with what we know best n  
17 terms of trying to write sort of draft regulations in  
18 terms of electronic warehouse receipts and other  
19 electronic documents. We envision a system or systems  
20 where, as information is entered, it's all entered into  
21 one data base so that when someone needs a warehouse  
22 receipt you push a button and out comes a warehouse  
23 receipt. If you need a scale ticket, the data is already  
24 in the data base, so you would just simply push that  
25 button and you get what you need out of the system, out of

0060

1 the data base.

2 What we're envisioning is a system that is  
3 flexible enough that you only enter the data once and it's  
4 being created wherever it's being created, whether it's

5 from the gin to the warehouse or warehouse to the farmer,  
6 when a farmer delivers the corn to a house, that's the  
7 sort of record we're talking about, that it all gets into  
8 the data base.

9 So what we're envisioning is eventually  
10 somewhere down the road we have a data base, and whatever  
11 the user requires or needs you just punch it out.

12 Getting a little bit to Neal's question, where  
13 are we with trying to expedite and continue to move the  
14 cotton in terms of phytosanitary certificates, what do we  
15 envision, and Ralph hit it a little bit. We have been  
16 handed a new statute with some pretty broad authority for  
17 the Secretary of Agriculture. We're not exactly sure yet  
18 how far that authority goes. We're still in the learning  
19 process. How far can we go? What are the legal  
20 ramifications?

21 So these are things we're going to have to learn  
22 as we go along. What we had envisioned was a system  
23 where -- and I make the analogy to move documents. When  
24 you drive up to a bank you put your documents in a tube  
25 and the tube shoots it over to the building. We don't

0061

1 want to be -- we're not talking about the warehouse  
2 statute dictating or setting the standards on those  
3 documents in terms of what it takes to issue those kinds  
4 of documents.

5 Rather, we want to set up the system where the  
6 documents are required and it shoots over to wherever it  
7 needs to go to, so in that regard, Neal, we're hoping that  
8 when it's all said and done any document you have to touch  
9 can't be funneled through a provider and just  
10 electronically transmitted, and to get there we're going  
11 to have to sit down with the APHIS and our sister agencies  
12 first in the Department to talk about what is it you  
13 require and how can we help facilitate this transaction.

14 We've got a long way to go. We're now trying to  
15 find out how far the Department should go in keep coming  
16 back. What do you need from us, what would you like to  
17 see offered?I

18 MR. LINDEN: I think there's two things we  
19 talked for in terms of the regs. One, I'm just kind of  
20 talking about the ag interest and the banking interest.

21 The one thing, example that some of you are  
22 tired of hearing, but we had a situation with the  
23 Indonesian financial crisis where all of a sudden people  
24 are selling commodities in the United States, they're  
25 selling them in Indonesia.

0062

1 There were a couple of shipments where people  
2 were real reluctant to have the big boat leave New Orleans  
3 to get to Djakarta, to get unloaded and paid in Djakarta  
4 where the currency was dropping 5, 10 percent a day, so we  
5 had a letter of credit scenario.

6 It could be a letter of credit situation where  
7 the bank in New York is going to confirm on the sale, but  
8 the bank in New York wasn't going to issue the payment to  
9 the seller until they had certain documents physically in

10 their hand, and what happened is, these documents were to  
11 leave New Orleans on a Friday morning in order to get to  
12 New York in the afternoon for payment to be made.

13 Well, it didn't happen. Fedex made it from New  
14 Orleans to Memphis and got fogged in, and it didn't get  
15 out of Memphis until Saturday. Sunday rolled around,  
16 Monday, it gets there, it gets to New York, the documents  
17 didn't get there before noon. They got there in the  
18 afternoon. The bank considered them to be received on  
19 Tuesday.

20 The ship is sitting in New Orleans. My  
21 recollection is, it was between \$15,000 and \$18,000 a day  
22 in demurrage because the plane got fogged in in Memphis,  
23 and that is what we're trying to avoid here, and we want  
24 the tube to go instantaneously. We want to get the  
25 documents out there.

0063

1 One thing this act provides is, the provider can  
2 generate electronic document. The act also says when  
3 that document is presented the receiver has to treat it as  
4 if it is written, so they can't say I'm not going to play.  
5 They have to take it. So you get in a situation where you  
6 get a reluctant banker who says no, I really want to do it  
7 the old-fashioned way, which I can't imagine there's many  
8 out there, but if there is, this gives the user of the  
9 system the ability to say no, it is up there, it is legal,  
10 you have to give credence to it.

11 So our goal is, we want to put Fedex out of  
12 business. We want to put the Mead Paper Company out of  
13 business. We want to keep these things moving along, but  
14 the dilemma I have is how to craft a reg to do that.

15 People talked about the reg that's out there in  
16 the warehouse receipts that was created out of whole  
17 cloth. Everybody knew where we were going, and that's  
18 good and bad. We need to probably put some things in  
19 there we have learned by experience, but the dilemma I  
20 have is, Canada is getting a reg cleared.

21 In the big Federal Government if we get a reg  
22 through it's a miracle these days, and once it's through,  
23 it's more of a miracle to get it changed, so one side of  
24 me says that having done this for 18 years I'm going to  
25 get it right the first time. I want to get it out of the

0064

1 building right so I don't have to look back.

2 The reality side of me says that's not going to  
3 happen. I know that we're going to put something out and  
4 we're not going to catch everything. That's where you  
5 need to tell us where the problems are and where you need  
6 help, because we need help in drafting this, and one  
7 dilemma that seems to be working is maybe everything  
8 doesn't go in the regulation, say. Maybe it goes in the  
9 provider agreement.

10 Again, the provider is approved by the  
11 Secretary. The Secretary says what all the rules are, not  
12 the provider. The provider can do extraneous stuff over  
13 here, but if you're playing with our stuff it's got to be  
14 the way we tell you to play, and I'm leaning right now to



15 maybe we put more of the provisions of what we're doing in  
16 the provider agreement that the provider has with the  
17 Secretary.

18 Each of them could be a little different, and I  
19 would imagine each of the providers may want to offer a  
20 different service. I would imagine that shipping corn is  
21 a little bit different than shipping cotton. There may be  
22 niche markets where these providers aim for certain types  
23 of commodities, certain types of transactions, and it may  
24 be to our benefit and your benefit that those are more  
25 detailed in the provider agreement so that when someone

0065

1 comes to use the system, instead of pulling out their  
2 handy-dandy Federal Register with all the regs which  
3 everybody carries around they would ask the provider to  
4 provide a copy of the provider agreement.

5 The provider agreement would lay out what they  
6 do and what the Secretary has approved, and that would  
7 allow us to, on an individual adjudication basis, change  
8 as opportunities change. I think all of you would have to  
9 agree that the Government is not real good about reacting  
10 to electronic invention. We're always slow to get there,  
11 and again we want to keep this moving. We don't want to  
12 slow things down. We just want to, for lack of a better  
13 phrase, put that imprimatur of approval on. We don't want  
14 to tell you what to do. We just want to bless it.

15 MR. GILL: I know I promised you a break, and  
16 I'm not going to give you one so we can keep Ralph here.

17 VOICE: Does USDA plan on requiring the  
18 signatures? What is the time frame? I represent the  
19 community bankers (inaudible).

20 MR. LINDEN: Anybody who says they won't use  
21 this for another 3 to 5 years are the same people that  
22 said that on the warehouse receipts 5 years ago. It took  
23 about 3 months, because as soon as their competitor does  
24 it and it saves them money they get forced to do it, and  
25 that is why I said the competition will probably drive

0066

1 things faster than you can handle, and the question was,  
2 will we require electronic signatures?

3 When you have got the e-commerce act out there  
4 that talks about electronic signatures, it's got to be in  
5 a certain format. Utah, as I recall, was the first State  
6 to come up with an electronic signature law, and it was  
7 like, it was the greatest thing since sliced bread. It  
8 was the forefront of technology 6 years ago.

9 It's now at the end of the line, because the  
10 technology has moved on. My recollection is that the  
11 Bureau of Standards was charged within the Federal  
12 Government to come up with an electronic signature, one  
13 size fits all, for the Federal Government to make sure  
14 there was standardization.

15 The banking community probably actually is ahead  
16 of us in terms of what they're requiring for electronic  
17 signatures. In the provider agreements there's nothing  
18 that would require that these transactions occur with an  
19 electronic signature. The question is one of comfort for

20 people playing in the system. Are they going to want the  
21 electronic signature?

22 There's a document that we have in the cotton  
23 world called a 605. It's a power of attorney, for lack of  
24 a better phrase, that can be transferred from one  
25 individual to another. If that's issued to the first

0067

1 agent out there, let's say there's five other agents in  
2 between, and the power of attorney designation doesn't go  
3 with the agent, it goes with the cotton bale, how does the  
4 provider know who is actually holding that power of  
5 attorney at any given point?

6 People are going to be looking for signatures.  
7 Sending an e-mail who is saying this power of attorney is  
8 out there and I'm number 5, I've got it, I've just given  
9 it to number 6, if I send the e-mail, the person on the  
10 other end's going to say, well, I got the e-mail from this  
11 building that says, you know, so-and-so sent it to me.  
12 You don't know if he had authority to send it.

13 Those are the issues that the industry is  
14 grappling with and we're grappling with, is how do you  
15 authenticate a transmission, and I think at this point  
16 again you see the holdover from 15(a). People want to see  
17 a written signature. Now they want an electronic  
18 signature, but the people are looking for a signature for  
19 authentication, and I don't know -- I'm not bright enough  
20 to say it's going to be electronic.

21 It may be a thumb print. It may be an  
22 individual agreement that the providers have, but again,  
23 that is what we need to hear from the bankers, and  
24 probably the bankers and the bankers and the bankers,  
25 because they're the ones calling all the shots, because if

0068

1 you don't get the money the sale is not going to go  
2 through, so you have to work with the bankers and the  
3 financial community about what is going to make your  
4 customers happy.

5 VOICE: A follow-up question. (inaudible)

6 MR. GILL: I've a slide to throw up before we  
7 break for lunch.

8 MR. LINDEN: Again, I think you're -- I mean,  
9 normally I tend to be dictatorial in things and say, we're  
10 going to do it this way, because we've just got to move on  
11 and get going. This is one where it's 180 degrees the  
12 other way. We really don't want to tell people what to  
13 do. We really do want to have you tell us what you want,  
14 because we want to just bless what you're doing.

15 We want to give you the legal coverage, cover,  
16 if you will, so you don't have concerns about whether if  
17 you're doing an electronic signature in Utah and it's  
18 going to Maine and it's going over to Paris, is there any  
19 legitimacy, and I know that Bill and I were up at the U.N.  
20 last year and there's a real concern overseas in terms of  
21 electronic documents. How do you transfer -- what's the  
22 protocol going to be?

23 And again, that is being handled at the State  
24 Department level in trying to come up with some uniform

25 international kinds of electronic signatures.

0069

1 MR. GILL: Ralph has hit on several issues, and  
2 David, if you could throw up a different slide up there.

3 MR. LINDEN: Larry had a comment.

4 VOICE: Ralph, one of the things Mark and I have  
5 been going over here, I'm a little confused on where there  
6 is not a warehouse receipt specifically involved, does  
7 this section 210 cover that?

8 Let's just get back to the food aid programs, or  
9 whatever. Is this authority covered?

10 MR. LINDEN: I think Larry's got a good  
11 question. Where warehouses are involved, the Warehouse  
12 Act was a vehicle, a very convenient vehicle to get the  
13 Secretary to e-commerce. The Warehouse Act really has two  
14 things. It has 1916, regulation of the warehouse industry  
15 in the Federal bailiwick, and that's still there.  
16 Sprinkled throughout are these little magic things, e-  
17 commerce, that don't have anything to do with warehouse,  
18 but because warehouse receipts were the first game in town  
19 we've worked off of that in the Warehouse Act.

20 So you will have situations in here where you  
21 never see a warehouse receipt issued, and this act is  
22 going to apply in a voluntary context. Remember, the  
23 warehousing side is regulatory. The e-commerce part of  
24 this is voluntary. You have a voluntary system. You may  
25 have, and the statute is broad enough to cover moss and

0070

1 lichens. While lichen is an agricultural commodity I  
2 don't think we're going to see a warehouse receipt on  
3 lichen, but we may very well have a sales document where  
4 there's a bill of lading involved. There might be a bill  
5 of lading on canned hams.

6 Those are the types of things that could be in  
7 here regardless of any warehousing activity, and that's  
8 where we talked about what Mark and Larry have.

9 What's an ag product is a matter of great  
10 debate. Those of you inside the beltway probably follow  
11 with great interest the sanctions legislation involving  
12 Cuba, Libya, North Korea, a big battle. What is an ag  
13 commodity? Agricultural commodities are going to be  
14 treated differently for sanctions.

15 Well, there's a big debate within the executive  
16 branch what's an ag commodity. A 2 X 4 is an ag  
17 commodity. Is rough lumber an ag commodity? I think on  
18 the first two the answer is yes. I think we've gotten  
19 into the ag commodity world.

20 What if you take two 2 X 4's and make an A frame  
21 for a roof that's got 22 nails and a steel plate on it?  
22 Is it now an ag commodity?

23 Those are the issues we're stumbling with about  
24 how far can we go. Bulk commodities, semi-processed veg  
25 oil, all of those are in the game. The question is, where

0071

1 does it quit being a processed ag commodity and become  
2 something else?

3 I don't know if Bill Gillen's shirt is an ag

4 commodity. I never know if he's wearing cotton or  
5 polyester. But those are the types of issues you're going  
6 to get into.

7 You have ethanol. The alcohol itself is an ag  
8 commodity. What if you blend it with gasoline? Is it 50-  
9 50, 90-10? Where do you get into these issues?

10 Those are the ones that we're going to have to  
11 struggle with on coverage, but the bottom line is that  
12 it's very broad, and you don't have to be in a warehouse  
13 to play in the game.

14 MR. GILL: I wanted to shoot real quick up here  
15 our time frame. Ralph hit on the rulemaking process, and  
16 what it takes to get a regulation out of the Department.

17 (Slide.)

18 MR. GILL: When you keep hearing, we get started  
19 and help us, what we're going to have to do and quickly,  
20 based upon the legislation, what we're hoping to do is  
21 meet some deadlines, self-imposed deadlines. The last one  
22 being, of course, the statutory deadline where by the end  
23 of the month we want to continue the dialogue either  
24 through letters, written comments, getting notices out to  
25 the affected industries or interested parties.

0072

1 The second bullet is, we are available  
2 throughout the rulemaking process for one-on-ones in terms  
3 of coming out and doing something similar to what we're  
4 doing here today as we progress throughout the rulemaking  
5 process. We basically have to back into the August 1 date  
6 so we are hoping to have proposed rules out at least no  
7 later than March 24. That's pretty aggressive, because we  
8 still have to get it through the Department and through  
9 OMB, and you folks in terms of what we're going to put in  
10 that proposed reg.

11 It will have a 30-day comment period, meaning we  
12 could start analyzing and preparing the final regs as  
13 early as April 24. We would like to get a final rule out  
14 by June 20 so that we can -- that gives us 30 days to -- a  
15 little more. It gets us about a month-and-a-half to do  
16 business or send some documents out again, because it all  
17 has to take effect August 1.

18 MR. LINDEN: It's important on that, too, to  
19 point out those dates are more important on the regulatory  
20 warehouse side of the street because the current Warehouse  
21 Act is repealed as of August 1.

22 The electronic commerce part isn't regulatory.  
23 It's a scheme we set up. It's voluntary. It's  
24 discretionary in the Secretary to begin with, and  
25 obviously we're going to do it, but I'm not as concerned

0073

1 about getting that August 1 date as a lawyer, I'm  
2 concerned about hitting the August 1 date as a matter of  
3 reality, because I need to get that part of the reg  
4 through, and the warehouse part coming to an end on  
5 August 1, that's going to create some pressure on OMB to  
6 clear it, which means I'm probably can get the others to  
7 go along with it.

8 That's why it's important we hear from you about

9 the broad concepts. What do you want in the e-commerce  
10 world?

11 Steve, we talked about maybe breaking up this  
12 afternoon to do e-commerce, and I need to run. I have to  
13 go find a reg.

14 MR. GILL: Here's what we're going to do,  
15 because you were kind enough to sit in here. Ralph has  
16 agreed to lead the dialogue on e-commerce for us this  
17 afternoon at 1:00, for those of you who are interested.

18 It's going to be in room 107A, which is the  
19 administration building. You have to go to the third  
20 floor, go through the walkway, and then we will reconvene  
21 here at 1:00 to talk about specific warehouse issues that  
22 are specific to federally licensed warehousemen, for those  
23 who have any interest. We do want to throw out some  
24 proposals that are specific to federally licensed  
25 warehouses.

0074

1 Any more questions for Ralph as he's walking  
2 away?

3 (No response.)

4 MR. GILL: Okay. Just to summarize real quick,  
5 we're going to have to start writing a set of proposed  
6 regs rather quickly, and you've heard me say this already.  
7 We're going to start with what we know. We're going to  
8 take a look at what is currently out there.

9 What I am hearing is a couple of comments that  
10 the cotton reg, or the regs addressing the electronic  
11 warehouse regs for cotton seem to have been working rather  
12 well. There could be some fine-tuning.

13 I also heard they need to be, whatever we do it  
14 has to be broad enough and flexible enough to accommodate  
15 what is going on out there. What I'm suggesting, I guess  
16 what I'm saying is you're going to see some pretty broad  
17 set of regs, at least initially to start with, to get  
18 something out there and to get our feet on the ground, and  
19 to see, and then we can talk about adding things to the  
20 regulations themselves.

21 This afternoon, you've already heard Ralph get  
22 into part of the proposal. Maybe it's time we started  
23 shifting some of the specifics of the regs into other  
24 documents, the licensing documents for federally licensed  
25 warehouses, the provider agreement in terms of providers,

0075

1 so our initial approach to this whole process will be a  
2 broad set of regs, at least to get started.

3 Questions, comments?

4 The only other receipts we're familiar with, of  
5 course, are the grain receipts, so that's where we're  
6 going to start. What you heard as far as the process that  
7 Dave walked us through in terms of what it takes to have a  
8 provider and a bona fide warehouse receipt, other than  
9 spinning that towards the specific characteristics,  
10 quality factors, and use certificates of a particular  
11 product, whether it be grain, corn, and wheat, we plan to  
12 start with the same concepts that Dave walked us through.

13 Yes, sir.

14 MR. BOGGS: Good morning. My name is Charlie  
15 Boggs, and I'm with APL. We operate liner vessels in the  
16 international trade, and I was noticing a couple of  
17 slides ago you had the requirements for the 416(b)  
18 program, and if you might scroll back to that I would like  
19 to address a couple of things.

20 As we know, the 416(b) program is so me of the  
21 title I programs. A lot of the commodity that is moving  
22 is bulk commodities, of course, and it appeared that the  
23 requirements addressed probably quite adequately the  
24 requirements to move bulk commodities, but, of course, the  
25 416(b) being monetized and a lot of refinements, refined

0076

1 package products that are moving in this trade, and  
2 packaged products that are a part of the title I  
3 significantly a part of Food for Progress, and the type II  
4 programs, what we would suggest to you is if this is the  
5 requirement and it's rigid, it certainly doesn't meet the  
6 needs and requirements for the movement of packaged  
7 products in international trade, and I would suggest to  
8 you that we put forward at least a parallel, or some type  
9 of bridging mechanism that would identify those  
10 requirements for packaged products versus bulk.

11 MR. GILL: Thank you. I appreciate those  
12 comments. This was an attempt to just show you quickly  
13 some of the documents we get involved with. We do  
14 envision, whatever system or mechanism we come with, we  
15 would like for it to be able to accommodate all of the  
16 documentation, required transportation papers, the  
17 financing papers, the program requirement documents, so  
18 when we say documents it's a pretty broad category. What  
19 is it you have to touch? What is it you have to move from  
20 point A to point B? That's where we want to go.

21 So thank you for those comments. Basically we  
22 have to sit down and start identifying it, and you have to  
23 identify which of your documents in your business, so we  
24 will look forward to that.

25 Yes, sir.

0077

1 VOICE: Will copies of the slides be available?

2 MR. GILL: We don't have extra sets here this  
3 morning, but yes, they will be. They are available. If  
4 you will just give me your name on a business card I can  
5 give those to you.

6 I guess before I let you go for lunch, I want to  
7 go back to get us Mr. Boggs question or concern. Again,  
8 in terms of electronic documents, again we think of a data  
9 base, and a data base should have all the information you  
10 need to do business, whether it's electronic warehouse  
11 receipts, or whatever.

12 What we're also envisioning, at some point where  
13 we would like to go is -- and the e-dot companies may  
14 already be there. What this statute does is, basically it  
15 gives the Secretary of Agriculture the authorization to  
16 become an e.com company. We're not going to go out and  
17 buy the equipment or the infrastructure to do that, but  
18 what we envision is a concept where we have two parties, a

19 buyer and a seller. They don't have to be domestic. One  
20 can be domestic, one can be international. They want to  
21 consummate a transaction, but it requires certain  
22 documents.

23 What we envision is certain documents coming  
24 through a provider concept, where the documents are  
25 starting to get e-mailed. Not e-mailed, but

0078

1 electronically transferred to the provider of this data  
2 base, and they start racking up -- in other words, there's  
3 a firewall between the buyer and the seller. That is what  
4 those little X's mean.

5 If you go to the next slide --

6 (Slide.)

7 MR. GILL: And as these documents are coming  
8 into this date base they're held in suspense, like pieces  
9 of a puzzle. They start to rack up against each other,  
10 then eventually all of the required documentation is  
11 there, in one focal point.

12 (Slide.)

13 MR. GILL: So when you have everything that  
14 matches up, you have a simultaneous transaction between  
15 the documents required and the payment that is required.  
16 That is sort of how we envision something going down, and  
17 you may already be there in terms of how you're doing  
18 business. That is part of where we're wrestling in terms  
19 of -- and we don't know your business as well as we  
20 should, and we need help in setting this thing up. What  
21 is it you're doing? How are you doing it? Is this a  
22 concept, and if you're already doing this, how does  
23 the Department fit in in terms of facilitating it even  
24 further? That is what we want to be able to help with.

25 Thank you for your attention. Any comments?

0079

1 Yes.

2 MR. BAIONI: Based upon what I've heard it seems  
3 to me that you could use a system modeled after the cotton  
4 warehouse receipt system where you have a provider, that's  
5 the black box, and then you have agreements between those  
6 that want to play the game and the black box, and then the  
7 black box would authenticate the documents, and then the  
8 issuer uses the holder concept, and it can continue the  
9 transfer of the documents regardless of whether it's a 605  
10 or bills of lading, et cetera. I think the framework is  
11 already there.

12 MR. GILL: We do too, to that extent. What we  
13 hear from the other commodity groups is, is that a concept  
14 that is going to work for the other commodity groups, and  
15 unless we're told otherwise that's how we're going to  
16 start and go, and just build on that concept.

17 MR. JEFFERSON: Good morning. I have a question  
18 on why there's such a focus on some of the international  
19 documents. When you deal with bills of lading and you  
20 look at other countries, obviously there's a lot more  
21 jurisdictions, both countrywise -- as you know now with  
22 the bill of lading there's U.S. Customs that can get  
23 underway there. Internationally I've done a lot of work

24 in Latin America and the Far East, and I'm concerned that  
25 if you try to include that in your quick writing

0080

1 requirements, you might in some way sort of slow your  
2 process down as you start to look at that.

3 I wonder if there's a way to sort of address the  
4 things that are regionalized and make an allowance for  
5 some future integration, but I'm just concerned, if you  
6 address that too heavily you're going to really slow down,  
7 and it could be several years, as it's taken a lot of  
8 other people.

9 MR. GILL: You're suggesting we start slow and  
10 look at what is happening here in the United States before  
11 we expand.

12 MR. JEFFERSON: I guess what I'm suggesting is,  
13 when we introduce some of those you may want to either  
14 have representation or all of the parties that have  
15 jurisdiction involved, because there's a number of issues,  
16 as many people in here can let you know about.

17 MR. GILL: Thank you.

18 Are you ready for a break? Are there any final  
19 comments, questions, concerns, things we need to consider?  
20 Let's see, it's a little after 11:00. We will reconvene  
21 here at 1:00 and start the other session. Thank you very  
22 much.

23 (Whereupon, at 11:05 a.m., the meeting recessed,  
24 to reconvene later this same day.)

25

0081

1 AFTERNOON SESSION

2 (1:05 p.m.)

3 MR. GILL: We've got a few more slides to go  
4 over this afternoon. What I would like to do is throw out  
5 some concepts and then make ourselves available to the  
6 different associations who will have meetings coming up in  
7 the next several weeks, so we can just do one-on-one's.

8 We will be in San Diego for the National Cotton  
9 Council coming up this weekend. We've been invited to the  
10 UGFA meeting in March, early March, mid-March, whenever  
11 that is, so you will continue to hear this concept, these  
12 changes in the provisions we've worked through on the  
13 warehouse side, and with that I will turn it over to Roger  
14 and go from there.

15 MR. HINKLE: I'm the chief of the Warehouse  
16 Authority Branch here in Washington, D.C.  
17 (Slide.)

18 MR. HINKLE: I'll start out our presentation  
19 first by thanking everyone that was involved from our  
20 people up on the Hill to the different trade associations  
21 and different individuals that relentlessly stayed hooked  
22 up and didn't get worn down, and get into a rewrite of the  
23 Warehouse Act finally accomplished. There's a lot of  
24 people that put in a lot of time and effort in taking and  
25 negotiating different things, and forming the coalitions,

0082

1 and moving this thing forward, and we're very much  
2 appreciative of their efforts.



3 (Slide.)

4 MR. HINKLE: As we talked about a little bit  
5 earlier this morning we didn't ask for this thing to  
6 happen in maybe such a short turn-around, but we have kind  
7 of got it now, and we're going to have to take and get  
8 this thing pulled together in a short time and take and  
9 try to use enough vision that maybe we will get this thing  
10 done so we don't have to do anything else to it for the  
11 next 50 years, so these are some of the things we're  
12 facing.

13 (Slide.)

14 MR. HINKLE: A couple of things Steve Gill  
15 talked about this morning, we talked about the concept of  
16 taking the day-to-day type regulations that are in the  
17 regs currently and move them over into more or less of a  
18 licensing agreement that is kind of terms and conditions  
19 of and how a warehouse can operate on a day-to-date basis  
20 and leave the regulations themselves very broad in a  
21 manner that they can take and cover the real issues of the  
22 license itself and be able to not have to be relooked at  
23 too often.

24 (Slide.)

25 MR. HINKLE: There are things that are specific  
0083  
1 to the things we will have to take and look at the regs at  
2 the same time. This is going to be very much similar to  
3 what we have had in the past. As far as the licensing  
4 agreement itself it will be similar to what we have in the  
5 cotton storage agreement or the grain and rice storage  
6 agreement.

7 (Slide.)

8 MR. HINKLE: The new regs or statutes, rather,  
9 took and redefined warehouses, where it's a little broader  
10 than what it has been in the past.

11 (Slide.)

12 MR. HINKLE: It actually covers any type of  
13 agricultural product that is involved in interstate or  
14 international commerce, so that's a little broader term  
15 than we're used to with grains, so we feel like we've got  
16 a little broader authority than maybe we have in the past.

17 One thing that we still are -- primarily our  
18 objective in this is to take and protect the depositors.  
19 Currently, the protection underneath the current statutes  
20 and regulations provide protection for the original  
21 depositor that still has a beneficial interest, the  
22 holders of warehouse or seed, or the third parties having  
23 clear title to commodities that may have been purchased in  
24 store. Does anybody have any thoughts that maybe we ought  
25 to expand this protection to anyone else, or is this

0084  
1 sufficient coverage for the industry is one of the  
2 questions that I think we wanted to try to raise and try  
3 to get some input on.

4 (Slide.)

5 MR. HINKLE: In the new statutes that improvise  
6 for enforceability of arbitration -- and I think as tied  
7 up as the courts are with things so cumbersome there, that

8 the different parts of the industry took and came up with  
9 different ways that their members are able to settle their  
10 differences without having to move through a costly court  
11 battle, and this ties up funds and resources over a long  
12 period of time, and so anything that is enforceable under  
13 the arbitration rule that we are all in favor of and we're  
14 not going to stand in the way of.

15 (Slide.)

16 MR. HINKLE: One thing that in regard to the  
17 forwarding of grain from one warehouse to another one when  
18 it's necessary is that they are able not only to just go  
19 to a licensed house, but they will also be able to go to a  
20 State-licensed house or a nonlicensed house, as long as  
21 they have some type of licensing authority behind to take  
22 them back up to the warehouse, that is, a public warehouse  
23 operating as such, but it would be where the first time  
24 that you transfer grain, or some commodity, to the  
25 receiving warehouse, that a receiving warehouse will not

0085

1 be permitted to forward it on the second time, if it is a  
2 legitimate forwarding, that it shouldn't be stopped there.

3 If you pass that, we get into a situation where  
4 it leaves a lot of opportunity within the type of  
5 operation where you could take and go on and you never  
6 would be able to track down the grain, that we have run  
7 into some problems in some of the Midwest areas that some  
8 of the local trade people there call arbitrage, and it has  
9 been pretty vicious in some areas of how many times this  
10 grain is daisy-wheeled down the road, and so we have tried  
11 to put a line there that shouldn't be crossed.

12 One thing we have done also in this new statute  
13 has been a thing that has kind of been contentious for the  
14 last few years, is a requirement that any grain that  
15 remains in storage in the warehouse over 1 year must have  
16 a warehouse receipt written on it.

17 (Slide.)

18 MR. HINKLE: So we've relaxed that, and that's  
19 no longer a mandatory request or regulation.

20 (Slide.)

21 MR. HINKLE: One thing, too, that the new  
22 statute allows us to do when we have different test pilots  
23 and new kinds of programs we're trying out, it allows us  
24 the flexibility to implement these in a timely manner if  
25 they are a worthy type of program that we need to take and

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1 make permanent.

2 One such thing is like the block-stacking of  
3 cotton. I know when we started out years ago that -- it's  
4 probably at least 10 years ago that we started out with  
5 block-stacking of cotton. It's still really a test  
6 program because we haven't been able to go through the  
7 regulatory process, so the new statute will give us an  
8 opportunity to press these issues more rapidly.

9 (Slide.)

10 MR. HINKLE: I will talk a little bit about risk  
11 management, that I think we have taken and been doing a  
12 lot of, different looks of how we do business, and how our

13 licensees are doing business, and is there some other  
14 things, other than bonding and financial statements, we  
15 need to be looking at.

16 It's taking a warehouse operator's condition to  
17 determine where he's taking care of business and able to  
18 fulfill his requirements to his depositors. We've had  
19 meetings with the FDIC, the Farm Credit Administration,  
20 the CFTC, the SEC, a lot of different other regulatory  
21 people that are using those types of risk management, and  
22 we feel like there is some merit in what they're doing,  
23 and we maybe can take and glean some of those areas and be  
24 able to make it applicable to what we're doing and be able  
25 to provide maybe a little more protection for the overall

0087

1 industry in these matters.

2 (Slide.)

3 MR. HINKLE: Currently, as the slide this  
4 morning talked about, the number of licensees we have, we  
5 have approximately 12,000 inspector -- well, I shouldn't  
6 say inspectors, but all of these service licensees we have  
7 out, which is a large number, and at times we as an agency  
8 have received some criticisms of being self-certifying in  
9 this, and lacking really the overview and accountability,  
10 maybe, that needs to be there.

11 It seems like there is some criticism that comes  
12 along pretty often on this, so we want to look at some  
13 ways we can strengthen this part of our regulations in  
14 regard to the service licensing program of the people that  
15 weigh the scales and grade the grain and grade the cotton,  
16 or pull the samples for the cotton, these type of  
17 services.

18 (Slide.)

19 MR. HINKLE: I think maybe we had a slide  
20 earlier this morning and this may be a little bit of a  
21 repeat, but talking about spending a little bit on the  
22 financial assurances of the program, that besides the  
23 normal bonds and Treasury notes and things like that, that  
24 we have, that we foresee being able to use letters of  
25 credit and Treasury notes and anything that is legitimate

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1 that we can take and use in this regard, that we will  
2 certainly take a look at, and we would like to have your  
3 input to let us know what those things might be that we  
4 need to be taking a look at.

5 (Slide.)

6 MR. HINKLE: Currently we require financial  
7 statements yearly, and usually these things are done on a  
8 year-end basis as far as the business is concerned, and  
9 usually it's probably close to 3 months before they're  
10 prepared and we get them, and so we're talking being out  
11 15 months, really, before we have an idea of the condition  
12 of that company, and we are just wondering where we need  
13 to look at some other ways that during the interim time,  
14 to be able to analyze where there's any big changes in the  
15 warehouseman's financial strength or condition during this  
16 time. Is there some other third party reports or analyses  
17 that we should be using and taking into account during

18 this time?

19 (Slide.)

20 MR. HINKLE: This gives you a little bit of what  
21 our current net worth requirements are for different  
22 grains, talking about, and how it's calculated.

23 (Slide.)

24 MR. HINKLE: This is our bonding rates, and how  
25 they're calculated on the same commodities.

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1 (Slide.)

2 MR. HINKLE: It's been several years since we've  
3 really had any true analyzing or upgrading or adjusting to  
4 our bonding and net worth requirements, and we're just  
5 wondering if it's not the time and do some analysis on  
6 that to see maybe where we need to strengthen that side of  
7 our program, where we can make it a little stronger  
8 licensing program.

9 (Slide.)

10 MR. HINKLE: Also, the new statute takes and  
11 doesn't prohibit a warehouse operator entering into  
12 agreement with a certain depositor to allocate a certain  
13 amount of space for their use at the warehouse.

14 (Slide.)

15 MR. HINKLE: One thing that we feel like the new  
16 statute allows us to do, and one that we would hope to  
17 take and be able to do through the regulations themselves,  
18 is to be able to take and use improved storage and  
19 handling methods and have them incorporated as we go, new  
20 accounting methods, business and management processes, the  
21 marketing side of things.

22 (Slide.)

23 MR. HINKLE: One thing that we've kicked around  
24 a little bit, voluntary licensing is what we consider  
25 third parties, which we've already been doing somewhat

0090

1 with a provider agreement with our EWR providers, and as  
2 this goes on a little further it should be taken and look  
3 at the e-dot companies as being part of this family that  
4 should be underneath the lasting program.

5 Also, should the other e-business processes that  
6 facilitate the management in our merchandising of an  
7 agricultural product, that involves interstate or global  
8 process, be part of this group also, and are there any  
9 other third party groups that we should be looking at as  
10 far as expanding the licensing agreement out a little  
11 farther?

12 (Slide.)

13 MR. HINKLE: One thing that we're thinking about  
14 too, that is to take and try to maybe provide a little  
15 more a la carte services to our licensees, and plus maybe  
16 to the general public, which involves doing inventory  
17 measurements for CPA firms, and doing full warehouse  
18 examinations at the request of the warehousemen for  
19 interim things. It wouldn't be part of the normal  
20 licensing process.

21 Providing expert testimony for depositions or  
22 court cases, doing outside consulting, and maybe software

23 analysis and training, or taking -- and we've been doing a  
24 little bit of work in the side of the ISO and the type of  
25 audits and some of the CCC programs over the last few

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1 years, and being able to take and expand that maybe over  
2 into some other areas also.

3 (Slide.)

4 MR. HINKLE: One question that we have been  
5 dealing with in all of the other licensing authorities,  
6 and the industry also, over the last few years especially,  
7 it came right in the last few months with the Starlink  
8 issue and the different types of specialty grains, and I  
9 took and kind of put up here what our position has been,  
10 and our question to the industry as a whole is, is this  
11 sufficient, or do you want to go a little bit different  
12 way than what would be on these specialty grains?

13 We've always felt like a warehouseman has got to  
14 take and maintain a sufficient total inventory of quantity  
15 and quality for each kind of grain to prevent any measured  
16 shortage in the quality or quantity, and he's got to be in  
17 balance by class, subclass, or even special grades.

18 (Slide.)

19 MR. HINKLE: We use the United States grain  
20 standards as the basis of what is really considered an  
21 official grade. However, there is specialty regional type  
22 things that will be involved that may be a little  
23 different things that fits the local, regional markets.  
24 The warehouseman has to maintain a daily position as a  
25 total or combined, that combines all of the inventory and

0092

1 obligations for each kind of grain.

2 (Slide.)

3 MR. HINKLE: Now, he may keep a separate  
4 position or record of the specialty grain, but he still  
5 has to reflect that same quantity back into this total or  
6 combined daily position record for that kind of grain.

7 (Slide.)

8 MR. HINKLE: The warehouse operators must have  
9 sufficient in-store inventory to redeliver any such  
10 product as identified in any special storage arrangement,  
11 or as shown on the source documents which usually is a  
12 scale ticket or something along that sort of thing, or  
13 maybe the settlement sheets, or on the warehouse receipts.

14 (Slide.)

15 MR. HINKLE: This is kind of where we've kind of  
16 been at, and trying to help the warehouseman protect  
17 himself a little bit, that we felt like if things were  
18 contested and carried in front of a judge or a court, that  
19 if the warehouseman took and made a note on the scale  
20 tickets, or in some kind of a document that was an  
21 official warehouse document of some type, that this would  
22 actually be, that it creates obligation for the  
23 warehouseman to the depositor of that particular grain, or  
24 whatever it might be, that the note in the tickets are  
25 there, that would actually probably be considered as

0093

1 conveying an obligation to the warehouseman, which these

2 value-added crops and specialty trades can be identified  
3 on a non-GMO, on a scale ticket that can take and become  
4 widely controversial at times in different areas.

5 (Slide.)

6 MR. HINKLE: This is kind of a repeat of an  
7 earlier slide that Steve put up on kind of the time lines  
8 we're working against, and where we're trying to get the  
9 regs out, and the drop-dead date is August 1. We've got  
10 to have something on the street or we won't have anything  
11 to operate with.

12 That is the end of what I've got prepared  
13 formally, and I would take any questions that anyone might  
14 have, or any statements anybody wants to make.

15 MR. GILL: Let's see, Bruce or Rebecca from  
16 cotton, basically what we're saying this afternoon is,  
17 we're going to have to issue a new set of regs, so this is  
18 an opportunity to clean up what is in there.

19 As you heard Roger say, and you heard us say  
20 this morning, we're thinking of shifting some of the  
21 specifics out of the regs and into the documents and  
22 licensing documents and come up with maybe a generic set  
23 of regs that are broad and flexible enough to change when  
24 you all need to change, and when you do change we don't  
25 get caught up in this long, extended rulemaking process.

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1 That's part of what is driving our proposal in  
2 terms of changing from a specific set of regs to a broad  
3 set of regs. At the same time, though, it sort of gives  
4 everybody the opportunity, what are some things that we  
5 need to address, whether they be in the regulations or in  
6 the licensing documents themselves.

7 Pretty much we're used to taking a look at the  
8 CCC storage agreements, whether they be the UGRSA or the  
9 cotton storage agreement that has a set of terms and  
10 conditions that go with that. We're thinking of doing  
11 something comparable for the licensing, the Federal  
12 license program. We would move the specifics out of the  
13 reg itself and put it into that kind of a document so it  
14 would be somewhere. They don't have to always show up in  
15 the regs, but it would be some kind of a legal document.

16 We're not sure, we're still waiting to hear from  
17 the industry. We've had a couple of, I guess, sessions,  
18 I'm not sure, or meetings on the specialty grain side and  
19 we're still looking for some proposals from the grain  
20 industry on that in terms of where we ought to go with  
21 regulating specialty grains. We've had a couple of  
22 meetings on that.

23 As we expand the regulations and the authority  
24 on the financial assurance, what is -- right now, the  
25 current statute says if you're going to be federally

0095

1 licensed you have to have a bond, and now the statute says  
2 the Secretary determines what kind of financial assurance  
3 he or she needs to grant that license, and talking about  
4 the financial assurances, the letter of credits, the  
5 Treasury notes, that quickly leads us into a discussion of  
6 risk management practices.

7           In addition to that, if we don't require a bond  
8 up front, what are the things we can be looking at that  
9 Roger mentioned a few minutes ago in terms of talking to  
10 other agencies who do something comparable in terms of  
11 doing compliance work or the regulatory work on some of  
12 those industries?

13           So those are the kinds of discussions we're  
14 having internally, and so when we put together a set of  
15 proposed rules you're going to see some ideas like this  
16 come out. If you have some major heartburn, or some ideas  
17 as to where it ought to go or not go, now is the time to  
18 tell us, between now and March 24. Shoot for March 24 as  
19 your time frame.

20           One thing that we have not put up here, we  
21 didn't do it this morning, nor did we do it this  
22 afternoon. The statute still revolves around user fees,  
23 Vern Highley's favorite subject. Unfortunately one of the  
24 things we were not able to get from Mr. White and others  
25 up on the Hill was appropriations to administer this

0096  
1 particular statute. It still revolves around user fees.

2           That has not changed, and will not change, so  
3 one of the things we're struggling with that you're going  
4 to hear us ask for comment on is, who should we assess the  
5 fee to? If we're going to expand the customer base to the  
6 services that we would like to provide under the new  
7 statute, who should pay for that service?

8           Right now, in today's environment, there's two  
9 entities that pay into the system. That is the federally  
10 licensed warehouseman and the Commodity Credit Corporation  
11 as the user of the system, so that's an issue that we're  
12 going to continue to struggle with and talk about as we  
13 progress, so that has not changed.

14           Bruce, comments?

15           MR. BENSCHODER: Bruce Benschoder Farmland Grain  
16 Division. Steve, as in the past, and Roger, our industry  
17 has always worked very closely with you folks in  
18 developing these programs. I can only assume that once  
19 again that will be the case.

20           Whatever we do, though, and whatever we come up  
21 with, let's not make it a more difficult system. Let's  
22 make sure we make it a simpler system to provide that  
23 protection, and I think that's what we're all about to  
24 start with.

25           Those issues you have raised, Roger, yes, have

0097  
1 been issues in the industry for some time relative to  
2 buying, relative to providing protection of the depositor,  
3 is the depositor and the holder one and the same, all of  
4 those issues need to be addressed.

5           All I can ask for, that is, if, in fact, you do  
6 want us as part of the process, which you do, then the  
7 sooner you can assemble a group of us together to address  
8 those issues through the National Grain & Feed Association  
9 or whatever, the sooner we can move forward with the  
10 initiative, but it would seem to me that a lot of the  
11 answers and a lot of the questions will derive from the e-

12 commerce initiative at the same time, so it seems to me  
13 that they have to move in parallel to some degree, so that  
14 we can make sure that we do provide the protection that is  
15 demanded and expected within the system, even as we move  
16 into the e-commerce initiatives and do the same thing.

17 So I guess really all I can say, Steve and Roger  
18 is, we're there to help. We want to be part of it,  
19 obviously, but you must continue to ask as you have.

20 MR. GILL: Thanks.

21 MR. LINDEN: I'm Vern Highley with the Cotton  
22 Warehouse Association. I'm really glad to hear about all  
23 the progress being made.

24 I don't know how that will impact our position  
25 on no user fees for State-licensed warehouses, but I'm

0098

1 glad to see this, because we have objected, largely  
2 because we felt that there was maybe some overkill in the  
3 area of examinations. When I say overkill, I mean there  
4 was some undue dawdling, I think, out in the field, when  
5 people would come out, that would contribute to  
6 unnecessary expenses.

7 I heard something this morning that caught my  
8 ear, and that was when you have an examination, warehouse  
9 examination, you now have a protocol to where you can  
10 maybe use e-mail or the Internet, or some way, a protocol  
11 to make this more efficient, and it would be less costly.  
12 I hope that also is going to apply to the State-licensed.  
13 I hope that protocol will fit everybody in their  
14 examinations, and we would certainly endorse that.

15 Thank you.

16 MR. GILL: Thanks. It's a lot easier to react  
17 to something that is out there right now, or at least for  
18 today's session we have been talking about proposals,  
19 concepts. My guess is we would get a little further along  
20 if we could actually show you, this is what we're going to  
21 propose, so when we come out and speak we have a little  
22 more meat to the bone, the concept being, build it and we  
23 will come, sort of a concept.

24 Unfortunately we're not in that position, to  
25 hand you a document today saying, this is sort of the

0099

1 proposed rule, or draft proposed rule we want you to react  
2 to, but that's the next step we have to go through, is to  
3 come up with a draft proposed rule to start getting some  
4 more specific comments and feedback to where we actually  
5 want to go.

6 If I'm federally licensed and currently have to  
7 provide the bond, I would be interested to know from the  
8 Department, will you look at my financial statement? If I  
9 have a strong financial statement, will that do, so I  
10 don't have to go out and buy a bond or do the expenses in  
11 terms of a letter of credit and that kind of stuff, so  
12 those are the kinds of things we're going to have to work  
13 through here rather quickly.

14 It's easy to say, but how far do we actually  
15 carry it, and we, too, have to get comfortable with that  
16 concept. Well, not the concept, but what do we do to



17 protect depositors of the warehouse, so it is a little bit  
18 of a learning process as we go through this.

19           Any other comments, questions? Are there some  
20 things that you were hoping we would bring up in terms of  
21 areas that we should be touching on that you didn't hear  
22 specifically? No? Okay.

23           That's all I have. That's it for this  
24 afternoon, so thank you for coming. Thanks for sticking  
25 with us for the afternoon. We appreciate you being here,  
0100

1 and we will be knocking on your doors or calling you on  
2 the telephone to continue the dialogue, so thanks again.

3           (Whereupon, at 1:40 p.m., the meeting  
4 adjourned.)

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2001

October 3, 2001

Roger Hinkle, Chief  
Licensing Authority Branch  
Warehouse and Inventory Division  
Commodity Operations-USDA  
Mail Stop-0553 -- Room 5968-S  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

RE: Proposed Rule on Implementation of the United States Warehouse Act (USWA)-RIN:0560-AG45

66 FR 46310

Dear Mr. Hinkle:

This letter is being submitted during the public comment period on the Farm Service Agency's (FSA) proposed rule issued on September 4, 2001 governing electronic warehouse receipts (EWRs). We appreciate FSA's efforts to modernize the system involving warehouse receipts by moving to an electronic system for all commodities. The ICBA represents 5,000 community bank members across the United States including several thousand banks that lend to agriculture. ICBA is the only national trade association that exclusively represents community banks.

The ICBA is generally supportive of FSA's efforts to make U.S. agriculture more competitive in both domestic and foreign markets through the use of up-to-date computer technologies and information management systems. This new electronic system is intended to provide long-term benefits for agriculture and rural communities by streamlining the current system and lowering overall transaction costs. However, some of our community bank members have expressed concern over several provisions included in the proposed rule.

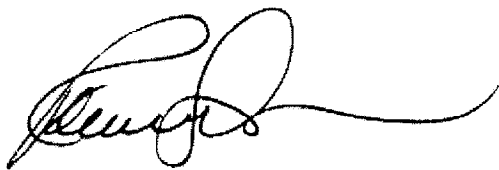
One of the concerns relates to any fees that could be assessed by FSA on "other users of the USWA." It is our understanding the fees assessed on warehouse operators and approved providers are intended to offset the cost of operating the revised USWA. We would be opposed to having producers and their lenders bear the cost of this new program. In addition, any fees assessed related to this program must be reasonable, easily identifiable and properly justified.

Another concern relates to the issuance of an EWR by the warehouse operator when it takes delivery of any agricultural product from the depositor. Currently, the proposed rule is silent on whether a bank that holds a security interest on an agricultural product should be notified of this transaction. We urge FSA to require warehouse operators to notify all lien holders whenever a depositor delivers the agricultural product to the warehouse operator regardless of whether an EWR is issued or not. At a minimum, any payment issued by the warehouse operator should be made payable jointly to the depositor and lien holder.

Some community banks also have expressed concern with FSA relying exclusively on the laws of New York State to determine all disputes arising under any transaction conducted through the use of an approved electronic provider. FSA should ensure that conflicting state laws are not pre-empted.

Thank you for the opportunity to comment on this important proposal. If further information is required, please contact Richard Gupton at (202) 659-8111 or via e-mail at richard\_gupton@icba.org.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Gullledge", with a long horizontal flourish extending to the right.

Robert I. Gullledge

Chairman, ICBA

October 3, 2001

Mr. Roger Hinkle  
USDA, Stop 0553  
1400 Independence Av., SW.  
Washington, D. C. 20250-0553

RE: Proposed USWA Regulations

Dear Ms. Hinkle:

On September 4, 2001, the USDA published proposed USWA regulations and requested comments on these regulations. We have now had an opportunity to review the regulations and would like to offer you our comments on them.

As you know, Staplcotn is one of the largest cotton warehouse operators in the United States. We have very closely monitored the USDA's progress towards the implementation of these rules and have maintained a very guarded position as to the proposed changes. We have successfully worked with the USDA to delete several undesirable sections of the new Warehouse Act before its enactment by Congress.

In reviewing the proposed regulations to be implemented in conjunction with the new act, we find objectionable issues that were deleted from the Warehouse Act now resurrected in the form of proposed regulations.

### **MANDATORY ARBITRATION**

One of the chief objections that Staplcotn raised in the revised Warehouse Act related to the inclusion in the Act of any type of mandatory arbitration. While the concept of arbitration itself is not an objectionable subject, we feel that a party's desire to arbitrate or litigate a subject is a matter that should be left to the contracting parties. Binding arbitration should not

be forced upon the contracting parties by a mandate from the USDA. Because of the efforts of numerous interested parties like Staplcotn, approximately ten pages of mandatory arbitration provisions were deleted from the original draft of the U.S. Warehouse Act. In its final form, the U. S. Warehouse Act left arbitration as a matter of choice between the contracting parties. The proposed regulations and licensing agreements as published have made arbitration mandatory again.

Under Section 735.9 (page 10) of the proposed rules, any dispute between warehouse operators and their customers or shippers may be resolved by arbitration between the parties. The terms of this regulation are consistent with the provisions that were adopted in the new Warehouse Act. Since these provisions allow for freedom between the parties to contract between themselves as to arbitration, we have no objection to the wording of these regulations. However, the proposed regulations did not stop here but make arbitration mandatory in the proposed licensing agreement.

Under paragraph 8 of the Cotton Licensing Agreement, the USDA has included a provision for mandatory arbitration between the parties. According to this paragraph, federally licensed cotton warehouse operators would agree to the following:

8. To resolve any claim for noncompliance with the cotton shipping standard through established industry, professional, or mutually agreed upon arbitration procedures. The arbitration procedures will be nondiscriminatory and provide each person equal access and protection relating to the cotton shipping standard.

We object to this language and will continue to object to the inclusion of this language in any regulation or licensing agreement. As mentioned, arbitration is the proper subject for the contracting parties to any agreement. Whether to arbitrate or not is a matter that should be left to the mutual agreement of the parties involved in dispute.

The U.S. Warehouse Act as amended by Congress in no way mandates that arbitration be used as the means for resolving disputes between parties. The provisions of the U. S. Warehouse Act leave arbitration as a voluntary means of resolving disputes. Inasmuch as Congress did not mandate arbitration, the USDA is without authority to implement any type of regulation or licensing agreement that would require that the parties arbitrate in every instance.

Staplcotn strongly objects to the inclusion of mandatory arbitration as a part of any regulation or licensing agreement to be implemented by the USDA in conjunction with federally licensed warehouses.

## **REGULATION VS. LICENSING AGREEMENT**

The USDA states in their proposed regulations that the new regulations have been modified so as to make the regulations themselves applicable to all commodities and not just to cotton. For the most part, the new regulations are a word-for-word rewrite of the regulations

that presently exist for cotton. Only the number and location of many of the regulations has been changed.

Under the new regulations each federally licensed warehouse operator will be required to sign a licensing agreement. While this document is termed an agreement, it is very doubtful that the agreement will have terms that can be negotiated between the parties or that the warehouse operator will have any meaningful input into the wording of the agreement. Thus, what the USDA has labeled as a licensing agreement will serve as nothing more than additional regulations for warehouse operator.

Staplcotn would contend that the terms of the licensing agreement represent regulations that have general applicability and legal effect that would necessitate that they be published as regulations in the Federal Register before being incorporated into any licensing agreement. The publication of these regulations in the Federal Register would allow for the general public to comment on any aspect of the regulations prior to their implementation. The need for the inclusion of the terms of the licensing agreement as regulations that should be published in the Federal Register first becomes most obvious in the mandate arbitration provisions of the agreement pointed out above.

It is our concern that future changes in the licensing agreement will not be published in the Federal Register despite the fact that the terms in the licensing agreement are regulatory in nature. A warehouse operator would have to subject himself to the changes in order to maintain his license but would have no say in the change in the agreement. Since these types of terms of the licensing agreement serve to regulate, they must be published in the Federal Register.

## **NEW YORK LAW APPLICATION**

Under the proposed regulations, the USDA has indicated that the laws of the State of New York will govern all transactions entered into with the use of the new provider system. This section states:

All disputes arising under any transaction conducted through the use of a provider approved under Sec. 735.402 shall be determined by the application of the laws of New York State except that the laws of New York relating to the legal doctrines of the choice of law and determination of venue shall not be applicable.

The only aspects that would be left to the courts are the choice of law and venue issues for the cause. Staplcotn finds these provisions to be objectionable in that the USDA is in no position to determine that the laws of one sovereign state are better than those of another. We are convinced that any litigation that follows after the implementation of these rules should be resolved in accordance with the laws of the sovereign in which the cause of action arose.

Under the proposed New York Rule, it is not hard to imagine a situation where a Texas Red River Valley cotton grower produces his cotton in Texas but stores the cotton in

Texarkana, Arkansas. This same producer then sells his cotton to a mill in North Carolina. A dispute later arises with regard to the warehouse and the parties find themselves in Arkansas Federal Court in a case involving parties from Texas, Arkansas, and North Carolina who are forced to resolve their dispute by applying New York law. This does not seem to make good walking around sense, and appears to be a further attempt by the USDA to choose the forum in which the parties are to resolve all their disputes. Again, this is wholly outside the scope of the powers of the USDA.

## **FINANCIAL STATEMENTS**

Under Section II (b) (1) of the Cotton Licensing Agreement, all warehouse operators must submit financial statements to the USDA annually within 90 days of the close of their fiscal year. Staplcotn would like to see this part of the agreement revised to increase the deadline to 120 days. The reason for this request is simply the practicality of being able to provide a financial statement within 90 days. At the close of its fiscal year, Staplcotn delivers to the account firm of Deloitte & Touche its financial documentation. Presently, Deloitte & Touche takes in excess of 90 days to review these documents before issuing their final financial statement. Thus, Staplcotn would not be able to comply with the 90 days requirement of the present proposed regulation but could comply with the regulation if the term were increased to 120 days.

We certainly understand that the regulation provides for an extension of an additional 30 days. Staplcotn would like to forego having to request an extension of 30 days from the original 90-day period. If the regulation were increased to provide for 120 days initially, many warehouse operators, such as Staplcotn, would be able to comply with this timeline without the necessity of making additional applications for extensions.

## **SUMMARY**

Staplcotn is very much interested in the regulations that are to be implemented by the USDA in conjunction with the new Warehouse Act. For the most part, the regulations that are being proposed by the USDA are simply rewrites of regulations that were applicable to cotton warehousing facilities anyway. However, the few changes that have been noted above are changes that were not previously included in the regulations covering cotton warehouses. These few proposed changes cause us serious concern inasmuch as they take away from our ability to decide whether or not we want to litigate or to arbitrate. They also take away our ability to choose the forum in which we would like to resolve our disputes. Neither of these is an area that should be allowed to be regulated by the USDA.

We are very much interested in any further amendments or changes that may be made to these proposed regulations and ask that you notify us as soon as any such changes are proposed. If you have any questions, please feel free to contact me.

Sincerely,

Kenneth E. Downs  
General Counsel

KED/eba





# Cotton Growers Warehouse Association

1687 E. Castlebrook Dr., Fresno, CA 93720 Telephone: 559-434-1775, Fax: 559-434-1774  
E-mail: vernhighley@sierratel.com

October 3, 2001

Via E-Mail: [USWA1@wdc.usda.gov](mailto:USWA1@wdc.usda.gov)

Mr. Roger Hinkle  
Chief, Licensing Authority Branch  
Warehouse & Inventory Division  
Farm Service Agency  
USDA  
STOP 0553  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

*Regarding The Proposed Rule: Implementation of the US Warehouse Act, 66 F.R. 46310,  
September 4, 2001*

Dear Mr. Hinkle:

On behalf of the Cotton Growers Warehouse Association, representing nine warehousing organizations doing business in 11 or more states, whose combined membership represents over 25,000 producers, who annually produce over 5-million bales of cotton, I am making comment on the above-referenced Federal Register notice involving the US Warehouse Act:

Arbitration

Our Association has repeatedly instructed the Agency that we are opposed to any form of arbitration other than mutually agreed upon procedures in addressing disputes involving our members in cotton flow or other disputes. We object to the implication in this proposed rule that mandatory arbitration can be applied in certain instances in settling disputes.

Sincerely,

Vern F. Highley  
Executive Director

E-003



**Data Transmission Network Corporation**

9110 West Dodge Road, Suite 200  
Omaha, NE 68114  
(402) 390-2328

***DRAFT***

October 4, 2001

Roger Hinkle, Chief,  
Licensing Authority Branch  
Warehouse and Inventory Division  
Farm Service Agency  
United States Department of Agriculture  
STOP 0553  
1400 Independence Avenue, SW.  
Washington, DC 20250-0553

Dear Roger,

In response to the implementation of the United States Warehouse Act;  
Proposed Ruling, DTN would like to offer the following comments on Farm  
Service Agency, 7 CFR Parts 735,736, et al.:

**Comment Number 1:**

*Page 46318, Part 735 – REGULATIONS FOR THE UNITED STATES  
WAREHOUSE ACT, Subpart E (Electronic Providers), Section 735.401, Sub-  
Section (a)(2) – Electronic warehouse receipt and USWA electronic document  
providers.*

Insurance coverage (Fraud & Dishonesty and Error's and Omission)  
requirements: (Each Policy = \$4,000,000)

DTN has two main issues surrounding the Insurance coverage:

- 1) DTN needs a better definition as to what the USDA/FSA requires in this area. We want to abide by the ruling, but need a better understanding as to what the needs are to meet the insurance requirements
- 2) Insurance premiums and additional "business practice" requirements from

Insurance Companies will add a huge financial strain on becoming a provider of EWR's. Insurance Company has stated they will not insure DTN with the \$10,000 proposed retention rate from USDA. Their suggestion was \$75,000-\$100,000. The carrier also insists on the creation of an internal audit department for the Fraud and Dishonesty coverage that could cost an additional \$50,000 to implement which would severely limit DTN from becoming a provider. At this time, DTN has not had a quote relating to "Errors and Omissions, but the carrier stated this would be less of a problem than the Fraud and Dishonesty requirement.

Net worth requirements: (\$100,000)

DTN would suggest that net worth requirements be in-line with "other electronic documents", and therefore would suggest a \$1,000,000 net worth minimum for Electronic Warehouse Receipts.

Possible Insurance Solution:

A better definition of the insurance requirements is necessary. DTN would suggest changing both the "Fraud and Dishonesty" and "Error's and Omission" coverage level to \$1,000,000.

**Comment Number 2:**

*Page 46318, Part 735 – REGULATIONS FOR THE UNITED STATES WAREHOUSE ACT, Subpart E (Electronic Providers), Section 735.402, Sub-Section (a)(2) – Providers of other electronic documents).*

Insurance coverage (Fraud & Dishonesty and Error's and Omission) requirements: (Each policy = \$25,000,000)

- 1) Again, DTN needs better definition as to what the USDA-FSA requirements are regarding the insurance needs, especially surrounding the Fraud and Dishonesty policy.
- 2) DTN feels the \$25 Million requirement is extremely high related to the actual "risk" that is created in this arena. With DTN handling electronic documents that are similar to the current "paper documents", we obtain data from trading partners computer systems and "transport" this data electronically. This is no different than a current "paper" transport company such as the U.S. Post Office, UPS, or Federal Express. All data that will be carried by DTN can easily be re-generated in "paper" format. DTN feels that this requirement should be no higher than the insurance requirements under Subpart E 735.401 dealing with Electronic Warehouse Receipts.

- 3) Insurance Premiums for this amount of protection will no doubt be cost-prohibitive for DTN. Our Insurance carrier states that premiums could be significantly high. With this amount, DTN would probably not be able to apply for "other document" provider status.

Possible Net Worth Solution:

Make the "Other Document" net worth requirements the same at "Electronic Warehouse Receipts", or \$1,000,000 as suggested earlier.

Possible Insurance Solution:

Reduce the amount of insurance to the same amount required by Electronic Warehouse Receipts (suggested at \$1,000,000). The argument could be made that providers for EWR's have a greater risk than simply exchanging electronic documents due to the ownership issue related with EWR's.

In the arena of "other electronic documents", each trading partner has the original data, DTN is just acting as an electronic post office as well as mapping electronic file formats. All of this is data that could be reproduced if needed.

**Comment Number 3:**

*Page 46342, Part 735 – REGULATIONS FOR THE UNITED STATES WAREHOUSE ACT, Exhibit F "Provider Agreement to Electronically File And Maintain Other Electronic Documents", second paragraph, middle column reading:*

*If a non-negotiable document in a non-electronic format is presented to the Provider for transmission in their CFS, the Provider may generate an electronic version of such document but must maintain custody of the original nonnegotiable document except as is authorized by FSA.*

We would suggest the removal of this paragraph.

**Comment Number 4:**

*Page 46343, Part 735 – REGULATIONS FOR THE UNITED STATES WAREHOUSE ACT, Exhibit F "Provider Agreement to Electronically File And Maintain Other Electronic Documents", III. Suspension or Termination, part A:*

DTN would suggest changing the written notification from 60 to 90 days.

**Comment Number 5:**

*Page 46343, Part 735 – REGULATIONS FOR THE UNITED STATES  
WAREHOUSE ACT, Exhibit F “Provider Agreement to Electronically File And  
Maintain Other Electronic Documents”, Addendum No. 1: Fees:*

DTN would suggest that the application fee of \$9,000 proposed, be lowered to the previous amount for cotton at \$2,000 annually. External audits of providers (which our insurance carrier has already suggested) could augment the annual audit by FSA. If the \$9,000 fee is kept, we would like a breakdown of what we are paying for.

**Comment Number 6:**

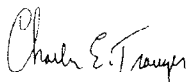
DTN would suggest the addition of a “Force Majeure” section to the Proposed Rules.

DTN would also like to state that in response to this rulemaking, we endorse the NGFA statement in its entirety.

Roger, I appreciate you taking the time to review DTN's comments on this extremely important project. You and your team have put a lot of hard work into this project and DTN looks forward to participating in it to help make Electronic Warehouse Receipts a reality for the Grain Industry.

Please feel free to contact me with any questions you might have relating to our comments and thoughts.

Sincerely,



Charles E. Trauger  
Vice President – Business Development  
Data Transmission Network Ag Services Division

# AAWCO

ASSOCIATION OF AMERICAN WAREHOUSE CONTROL OFFICIALS (Founded in 1939)

October 3, 2001

Roger Hinkle, Chief  
Licensing Authority Branch  
Warehouse and Inventory Division  
Farm Service Agency  
United States Department of Agriculture  
STOP 0553  
1400 Independence Avenue, SW.  
Washington, DC 20250-0553

Dear Roger,

We appreciate the opportunity to comment on the proposed rule pertaining to the United States Warehouse Act. We appreciate the amount of time and effort you and the USDA staff have put into this effort and trust you will find our comments have merit.

In response to the Implementation of the United States Warehouse Act; Proposed Ruling, the Association of American Warehouse Control Officials (AAWCO) would like to offer the following comments on Farm Service Agency 7 CFR Parts 735, 736, et al.:

Page 46318 - Section 735.401, Sub-Section (a)(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Maximum deductible amounts will be prescribed in the applicable provider agreement. Each policy must have a minimum coverage of \$4 million. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation;

AAWCO believes that the cost for the \$4 million "fraud and dishonesty" and the \$4 million "errors and omissions" policies with deductible provisions of a minimum of \$10,000.00, as stated in Exhibit C and Exhibit F may severely limit the participation of prospective providers. We recommend policies of \$2 million each with maximum deductible of \$50-75,000 would be adequate protection for a provider of electronic warehouse receipts.

Page 46318 - Section 735.402, Sub-Section (a)(1) Have and maintain a net worth of at least \$10 million;

AAWCO believes that a \$10 million net worth requirement on providers of other electronic documents is excessive and would severely limit the firms interested in participating as a provider. We recommend a \$1million net worth would be adequate for these providers.

Page 46318 - Section 735.402, Sub-Section (a)(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Maximum deductible amounts will be prescribed in the applicable provider agreement. Each policy must have a minimum coverage of \$25 million. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation;

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AAWCO WEBSITE: [www.aawco.org](http://www.aawco.org)

2001 5

# AAWCO

ASSOCIATION OF AMERICAN WAREHOUSE CONTROL OFFICIALS (Founded in 1939)

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Roger Hinkle  
October 3, 2001  
Page 2

AAWCO believes that the cost of the \$25 million "fraud and dishonesty" and the \$25 million "errors and omissions" policies with deductible provisions of a minimum of \$10,000.00, as stated in Exhibit C and Exhibit F may severely limit the participation of prospective providers. We recommend policies of \$2 million each with maximum deductible of \$50-75,000 would be adequate protection for a provider of other electronic documents.

Page 46318 Section 735.402, Sub-Section (b)(2) Suspended or terminated providers may not execute any function pertaining to USWA documents or EWRs during the pendency of any appeal or subsequent to this appeal if the appeal is denied except as authorized by DACO.

**AAWCO WEBSITE:** [www.aawco.org](http://www.aawco.org)

# AAWCO

ASSOCIATION OF AMERICAN WAREHOUSE CONTROL OFFICIALS (Founded in 1939)

AAWCO believes this section should read: Suspended or terminated providers may not execute any function pertaining to USWA documents or EWRs **issued under this act** during the pendency of any appeal or subsequent to this appeal if the appeal is denied except as authorized by DACO.

Exhibit F - Draft Provider Agreement To Electronically File And Maintain Other Electronic Documents - Paragraph 3: If a non-negotiable document in a non-electronic format is presented to a provider for transmission in their CFS, the Provider may generate an electronic version of such document but must maintain custody of the original non-negotiable document except as is authorized by FSA.

AAWCO believes this paragraph should be deleted in its entirety. We recommend that providers should only be required to accept documents in electronic format and should not be required or allowed to enter documents on behalf of any person that is unable to generate the document electronically himself.

Page 46318 Section 735.401 Sub-Section (c)(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.

Page 46318 Section 735.402 Sub-Section (c)(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.

AAWCO recommends that the notice of termination without cause should be increased to 90 days to allow issuers time to select an alternate provider.

AAWCO believes the \$9,000 Providers application and annual renewal fee to be exorbitant. We believe the requirements of an applicant and or Provider to submit to FSA an annual audited financial statement and electronic data processing audit that encompasses the provider's fiscal year to be a significant expense for the Provider. We would recommend application and renewal fees be reviewed in order to base them on the actual expense incurred by FSA in licensing and monitoring the Provider. We would recommend that initial start up fees not exceed \$5,000 for an application and \$2,500 for a renewal. Fees could then be adjusted as FSA is able to review their costs after monitoring the providers.

In addition, AAWCO believes that licensing of personnel to sample, inspect, grade or weigh grain should not be included under the USWA. It is ultimately the warehouseman's responsibility to provide the required weighing and grading equipment and staff training to weigh and grade grain, handled by the warehouse, in accordance with the United States Grain Standard Act. AAWCO recommends if "service licenses" for weighing and grading are to be issued that they be voluntary through the Federal Grain Inspection Service.

AAWCO is concerned with the current structure of the proposed rules that would allow FSA to make changes in the provider agreements without notice or comment prior to implementing those changes.

Roger Hinkle  
October 3, 2001  
Page 3



# AAWCO

ASSOCIATION OF AMERICAN WAREHOUSE CONTROL OFFICIALS (Founded in 1939)

AAWCO recommends that FSA, in an effort to be responsive to industry and state warehouse control agencies, establish a format for review and taking of comments regarding the proposed changes in the provider and licensing agreements including all parties that may be effected by those changes. Those parties affected would include state warehouse control agencies, regulated parties (licensees and Providers), and associations representing those parties. In addition, AAWCO would recommend that FSA conduct an annual meeting for licensees, providers, state warehouse control officials, any other parties that may be regulated by the act and any associations that would represent these parties to address ways to minimize fees, reduce costs, and more efficiently use available assets to effectively implement this act.

Respectfully Submitted,

Gary Graalman, President

John G. Steinhart, Chairman  
AAWCO Computer Technology Committee

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PRODUCERS • GINNERS • WAREHOUSEMEN • MERCHANTS • LESSEES • COOPERATIVES • MANUFACTURERS

October 4, 2001

Mr. Roger Hinkle  
Chief, Licensing Authority Branch, Warehouse and Inventory Division  
Farm Service Agency  
United States Department of Agriculture  
STOP 0553  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

*Re: Proposed Rule: "Implementation of the United States Warehouse Act," 66 F.R.  
46310 (September 4, 2001)*

Dear Mr. Hinkle:

The National Cotton Council of America (NCC) hereby submits comments on the proposed rule designed to implement title II of the Grain Standards and Warehouse Improvement Act of 2000 which amended the United States Warehouse Act (the "USWA"). The proposal would establish the rules governing the licensing of agricultural commodity warehouses under the U.S. Warehouse Act as well as rules governing the use of electronic warehouse receipts and other electronic documents related to sales and transfers of agricultural commodities. NCC generally supports the proposed rule, including its revisions to regulations governing federally licensed warehouses and its incorporation of rules for electronic warehouse receipts and other electronic documents.

The National Cotton Council is the central organization of the United States cotton industry. Its members include producers, ginnors, cottonseed crushers, merchants, cooperatives, warehousemen, and textile manufacturers. While a majority of the industry is concentrated in 17 cotton producing states, stretching from the Carolinas to California, the downstream manufacturers of cotton apparel and homefurnishings are located in virtually every state.

The NCC offers the following specific comments with respect to the proposed rule and the sample agreements accompanying the publication.

#### **1. Structure**

In general, the NCC supports the overall structure of the proposed rule and its accompanying agreements. The NCC is concerned, however, that some important provisions governing licensed warehouses or the use of electronic receipts or documents that should be given universal application in the regulations have, instead, been shifted to

individual agreements. In addition, in at least one instance, the accompanying agreement contains a mandatory requirement that appeared to be discretionary in the regulation.<sup>1</sup>

It is arguable that some provisions that were placed in the accompanying agreements should be in the regulation. For example, with respect to the information required to be included on a warehouse receipt, the underlying statute states: “Each receipt issued for an agricultural product stored or handled in a warehouse licensed under this Act shall contain such information, for each agricultural product covered by the receipt, as the Secretary may require by regulation.”<sup>2</sup> However, the regulation does not spell out this requirement.

To the extent that the Department determines to finalize the regulation with the same fundamental structure as the proposed rule, the NCC recommends that a procedure for amending the accompanying agreement be developed and included in the regulations. Such a procedure should provide for an opportunity for notice and comment by persons likely to be affected by any such amendment.

## **2. Levying of fees**

Section 735.4 of the regulation sets out general authority for the charging of fees by USDA. However, neither here, nor in other provisions concerning fees contained in the proposed rule or in the accompanying agreements, does the authority reference the statutory directive that the fees be designed to “cover the costs of administering this Act.”<sup>3</sup> We recommend that section 735.4 be amended to include this statutory limitation on fees.

## **3. Arbitration**

Section 735.9 states that disputes under the Act “may be resolved by the parties involved through mutually agreed upon arbitration procedures.” This provision is consistent with section 16 of the USWA. However, section 735.9 goes further and provides authority to proscribe different rules concerning arbitration in the applicable licensing agreement. The included cotton storage licensing agreement contains an arbitration provision that is mandatory with respect to disputes concerning delivery of cotton from a warehouse. This example highlights the NCC’s concern over the structure of the regulation and agreements. Section 735.9 implies that arbitration is discretionary, yet the accompanying agreement makes it mandatory in certain instances. The NCC recommends that the position of the regulation on arbitration be clarified and that care be taken to ensure that provisions in the accompanying agreements do not run counter to the general rule as expressed in the final regulation.

## **4. Warehouse receipt requirements**

Section 735.300 sets out certain requirements for warehouse receipts. Section 735.300(a) omits any direct reference to information required to be contained on a receipt.<sup>4</sup> The structure of subsection (a) also makes the mandatory and discretionary parts of that subsection somewhat unclear as to their scope.

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<sup>1</sup> See item 3 below.

<sup>2</sup> Section 11(c) of the United States Warehouse Act (7 U.S.C. 250(c)),

<sup>3</sup> Section 4(a) of the USWA (7 U.S.C. 243(a)).

<sup>4</sup> See section 11(c) of the USWA and discussion above at item #1.

The NCC recommends that subsection (a) be revised to clarify its scope and intent and suggests the following revision:

*(a) Warehouse receipts:*

*(1) must comply with the requirements of the Act and be in a format approved by DACO;*

*(2) may be negotiable or non-negotiable; and*

*(3) may be in a paper or electronic format.*

Even with this change, this subsection does not make a direct reference to “information” that is to be on the receipt. The NCC encourages USDA to make a more direct reference to “information” on the receipt at this place in the regulations. The NCC also encourages the agency to consider whether a more detailed statement of warehouse receipt information in the regulation is required by section 11 of the USWA.

### **5. Section 735.302 Electronic warehouse receipts (EWRs)**

The NCC has several concerns about section 735.302 and its relationship to section 735.300(a) and to certain sections of the accompanying agreements.

In general, the proposal does not appear to fully incorporate an important premise of the revised USWA – that warehouse receipts may now be issued in paper or electronic format. While section 735.300 clearly states as much, section 735.302 describes electronic receipts as an “option” and names them EWRs. The first sentence of section 735.302 seems to be a redundancy.

The accompanying agreements seem to further undermine the effort to fully incorporate electronic receipts into the warehouse system. In the licensing agreement for cotton, for example, Section IV.N. is entitled “Warehouse Receipts,” and yet the entire section deals with a warehouse operator’s responsibilities concerning EWRs.<sup>5</sup> The next section is headed “V. Paper Warehouse Receipts,” and yet seems to deal with both electronic and paper receipts in some parts and only paper receipts in other parts. Further, it is only in section V.B. of the licensing agreement for cotton that information required to be on the receipt is spelled out. It is not clear in context, however, whether this requirement applies to paper receipts, electronic receipts or both. There are numerous references throughout section V. to “written or printed terms” or “printed or stamped.”

The NCC encourages the agency to review its structural approach to incorporating electronic formats into the normal warehouse receipt system. It would seem more appropriate for the regulation and the accompanying agreement to describe common requirements for receipts in general, and then specifically break out requirements only applicable to electronic receipts and those only applicable to paper receipts.

The NCC also recommends that the statement of nondiscrimination of EWRs and the treatment of a holder of an EWR be more directly stated in the regulation. It is unclear to

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<sup>5</sup> Note also that section V.N.1. applies when the warehouse operator is “choosing the option to issue Electronic Warehouse Receipts (EWRs) instead of paper warehouse receipts.” There appears to be no reference to such an “option” in the agreement. The “option” reference, therefore, must refer back to the regulation – but this is unclear.

the NCC whether the statement that an EWR “possesses the following attributes” is an appropriate way to convey the legal standing of EWRs issued in accordance with the Act.

The NCC recommends that section 735.302 be amended as indicated below:

*(a) Warehouse receipts issued in electronic format are referred to as Electronic Warehouse Receipts (EWRs).*

*(b) Warehouse operators licensed under the Act and warehouse operators not licensed under the Act may issue EWRs for the agricultural product stored in the warehouse.*

*(c) Any warehouse operator choosing to issue EWRs must:*

*(1) Only issue...*

*(2) Inform DACO ...*

*(3) Before issuing ...*

*(4) When using ...*

*(5) Cancel an EWR ...*

*(6) Correct information ...*

*(7) Receive written approval ...*

*(8) Notify all holders ...*

*(d) An EWR establishes certain rights and obligations with respect to an agricultural product stored in the warehouse that issued the EWR.*

*(e) The person identified as the ‘holder’ of an EWR will be considered to be in possession of the EWR.*

*(f) Only the current holder of the EWR may transfer the EWR to a new holder.*

*(g) The identity of the holder must be included as additional information for every EWR.*

*(h) Only one person may be designated as the holder of an EWR at any one time.*

*(i) An EWR may not be issued for a specific identity-preserved or commingled agricultural product lot if another warehouse receipt representing the same specific identity-preserved or commingled lot of the agricultural product is outstanding. No two warehouse receipts issued by a warehouse operator may have the same warehouse receipt number or represent the same agricultural product lot.*

*(j) An EWR may only be issued to replace a paper warehouse receipt if requested by the current holder of the paper warehouse receipt.*

*(k) Holders and warehouse operators may authorize any other user of their provider to act on their behalf with respect to their activities with this provider. This authorization must be in writing, and acknowledged and retained by the provider.*

*(l) A depositor or current EWR holder may request a paper warehouse receipt in lieu of an EWR.*

*(m) A warehouse operator that is licensed under State law to store agricultural products in a warehouse and who elects to issue an electronic warehouse receipt under State law does not issue such receipts in accordance with this subpart.*

Section 735.302(b)(7) provides a very broad authority to authorize others to act on the behalf of a holder of an EWR. That paragraph also appears to enable warehouse operators to authorize others to act on their behalf. The NCC is somewhat concerned about the breadth of this paragraph and the possibility that may enable a warehouse operator to authorize someone else to issue EWRs with respect to cotton stored in its warehouse. It is unclear whether the paragraph would prohibit a warehouse operator or a holder to authorize the system provider to take certain action on their behalf as the power to authorize another appears to be limited to “user(s)” of the provider.

## **6. Electronic providers and electronic documents**

It is unclear what the regulation establishes with respect to electronic documents other than electronic warehouse receipts. We were unable to find any reference in the regulation to section 11(e)(4) of the USWA as it applies to electronic documents.

Although the regulation purports to establish oversight of systems in which electronic documents will be transferred, it does not indicate the legal status of any such electronic document – with the exception of electronic warehouse receipts.

The requirement of a \$10 million net worth applicable for a provider agreement to establish a system to issue and transfer other electronic documents should be carefully examined. It is not clear what risks this net worth requirement is designed to help offset. The NCC recommends that the agency review this net worth requirement and tie it more closely to the type of electronic document, and corresponding risks, that are to be undertaken by the system provider.

## **7. Cotton warehouse licensing agreement.**

Under section II.B.1. of the cotton warehouse licensing agreement, all warehouse operators must submit financial statements within 90 days of the close of the fiscal year. The NCC suggests that this deadline be increased to 120 days.

The NCC does not understand the meaning of the reference to “non-licensed cotton” and “licensed cotton” in section IV.A.3. of the cotton warehouse licensing agreement.

The NCC recommends that the agency review the structure of section IV.N. and V. as discussed previously. Further, the NCC notes, for example, that section IV.N.2. states that the warehouse operator “will ensure that an issued EWR establishes the same rights and obligations with respect to an agricultural product as a paper warehouse receipt....” Can the warehouse operator make such assurance? Whether the EWR establishes the same rights and obligations would seem to be a matter for the applicable State or Federal law. The concept that the EWR shall have the same legal status as a paper receipts would seem to be a provision more appropriately relegated to the published regulation.

The previous recommendations concerning section 735.302(b) of the regulation are also applicable to this portion of the cotton warehouse licensing agreement. The NCC

recommends that the structure of section V. Paper Warehouse Receipts be reconsidered to better incorporate electronic and paper requirements.

#### **8. Information on EWRs**

The NCC notes that in the Addendum to the Provider Agreement to Electronically File and Maintain Cotton Warehouse Receipts, it is stated that “It is each individual warehouse operator’s responsibility to supply the necessary data to complete each element.” While the NCC agrees with this statement, we are unsure to what extent such a statement in the agreement with the system provider can bind warehouse operators. We encourage the agency to review both the regulation and all accompanying agreements to ensure that warehouse operators licensed under the Act and those not licensed under the Act that wish to issue EWRs are required to supply the data necessary to issue an EWR.

#### **9. Use of New York law**

The NCC is unsure why the proposed rule seeks to establish New York law as the applicable legal precedent under the regulation. This choice of a jurisdiction may be confusing to companies throughout the United States that are familiar with their own commercial laws. The cotton electronic warehouse receipt system has operated for several years without a specific jurisdiction’s laws being imposed on that system.

We appreciate the opportunity to submit these comments.

Sincerely,

William A. Gillon  
General Counsel and Director of Trade Policy



October 4, 2001

Mr. Roger Hinkle  
Chief, Licensing Authority Branch, Warehouse and Inventory Division  
Farm Service Agency  
United States department of Agriculture  
STOP 0553  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

Re: Proposed Rule: "Implementation of the United States Warehouse Act," 66 F.R.  
46310 (September 4, 2001)

Dear Mr. Hinkle:

The Seam offers its comments on the Proposed Rule that seeks to implement Title II of the Grain Standards and Warehouse Improvement Act of 2000. The Seam is an electronic marketing and services firm based in Memphis, Tennessee providing online cotton exchanges for growers, ginner, merchants, cooperatives, warehouses and textile mills.

We commend the Department for its efforts to move agriculture more fully into an integrated electronic environment. Through the adoption of electronic warehouse receipts for cotton, the industry has saved hundreds of millions of dollars over the past six years. Adoption of electronic bills of lading, letters of credit, and other accompanying documents will increase these savings exponentially. Use of electronic documents throughout the supply chain, including an electronic marketplace, is important for the timely execution of transactions and ultimate delivery of a commodity.

We also wish to add our support to the requirement of a substantial net worth requirement for providers of electronic documents. When the industry moves beyond electronic warehouse receipts into the realm of other electronic documents, the corresponding risks are greater. We believe that USDA is fully justified in seeking to protect the users of electronic documents by requiring a net worth of \$10 million.

Thank you for the opportunity to submit these comments.

Sincerely,

Phillip C. Burnett  
President and CEO



# CARGILL

P.O. Box 5606  
Minneapolis, MN 55440-5606  
952/742-6183  
karen\_suedmeyer@cargill.com

Karen A. Suedmeyer  
Warehousing Specialist

## Via Email

October 4, 2001

Roger Hinkle, Chief  
Licensing Authority Branch  
Warehouse and Inventory Division  
FSA, USDA  
Stop 0553, 1400 Independence Avenue, S.W.  
Washington, DC 20250-0553

Dear Mr. Hinkle:

Cargill, Incorporated appreciates the opportunity to review and comment on the proposed rules for implementing the provisions of the Grain Standards and Warehouse Improvement Act of 2000 (2000 Act), and commends FSA on the new structure and proposed rules pertaining to electronic documents, and adaptation of licensing agreements.

As a result of my review of the proposed rules, I would like to offer the following comments:

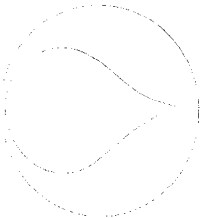
- Background
  - Note language reflects in part "The 2000 Act amendments provide for licensing and inspection of warehouses used to store agricultural products..."
  - Inasmuch as a recent Federal Court determined that "The Act" also covers merchandising activities, wouldn't the language be more representative if it stated "The 2000 Act amendments provide for licensing and inspection of warehouses used to store and merchandise agricultural products..."
- Subpart A - General Provisions, Para. 735.3 Definitions, Service License
  - Frequently federally-licensed warehousemen are advised by State regulatory agencies that although they are a Federally-licensed warehouseman, they must obtain State weigher, grader and/or handler licenses, which is redundant and should be unnecessary. Perhaps additional clarification language could be included in this definition which would clarify that a Federal Service License precludes the need for State licensing in this area.
- Subpart B - Warehouse Licensing, Para. 735.102 Financial Assurance Requirements (3)
  - Irrevocable letters of credit, while a good tool, are quite expensive and its' my understanding that often times banks will only issue them for a period not to exceed twelve months.

Cargill appreciates having received the opportunity to share its' comments regarding the proposed rules, and hereby requests to retain the right to submit additional comments for your review and consideration in the near future.

Sincerely,

Karen A. Suedmeyer  
Warehousing Specialist

KAS:mkt



## Dale Vaughan - Re: EWR Comment Letter

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**From:** "USWA USWA" <uswa@WDC.USDA.GOV>  
**To:** <Karla.Pineda@botcc.com>  
**Date:** 10/4/01 6:11 PM  
**Subject:** Re: EWR Comment Letter

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Karla,

I received your email and the attachment did not open properly, could you resend it at your convenience.

Please extend our thanks to Mr. Dutterer for commenting on our proposed rule. We appreciate him taking time out of his busy schedule to provide these comments to us.

Sincerely,  
Roger Hinkle

>>> "Karla Pineda" <Karla.Pineda@botcc.com> 10/04/01 17:34 PM >>>

October 4, 2001

Mr. Roger Hinkle  
Chief Licensing Authority Branch  
Warehouse and Inventory Division-  
Commodity Operations - USDA  
Mail Stop -0553 Room 5968 S  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

Re: (66 FR 46310; September 4, 2001)

Dear Mr. Hinkle:

On behalf of the Board of Trade Clearing Corporation ("Clearing Corporation"), I would like to extend our congratulations on the significant progress that the United States Department of Agriculture ("Department") has made with regard to electronic documentation.

Based on a tradition of independence, integrity, and innovation, the Clearing Corporation has established itself as the model for the majority of the world's clearinghouses. It has an unequalled reputation for financial integrity and proactive systems development. At the same time, the Clearing Corporation maintains the lowest clearing costs in the industry. Over three decades ago, the Clearing Corporation recognized the need for paperless clearing and developed what was the industry's first cost-effective, on-line system for entering, editing, and distributing trade information. To this day, the Clearing Corporation is an industry leader with respect to developing, implementing, and administering state-of-the-art technology and systems.

The Clearing Corporation performs clearing and settlement functions for all futures and futures options trades executed on or through the facilities of the Chicago Board of Trade "CBOT", the MidAmerica Commodity Exchange ("MidAm"), and The Merchants' Exchange of St. Louis. Such trades include the vast majority of futures and futures options contracts on domestic agricultural products executed on the markets located in the United States. The Clearing Corporation, which has been guaranteeing the financial integrity of these futures markets for more than 75 years, is the preeminent clearinghouse for agricultural derivatives in the world and is "AAA" rated by Standard & Poor's Corporation. The Clearing Corporation's "AAA" rating is the result of its: significant and highly liquid capital base, approximately \$180 million; \$100 million default insurance; and \$200 million line of credit.

In addition to clearing and settling futures and futures options

contracts, the Clearing Corporation facilitates the physical settlements on futures contracts. Specifically, Clearing Corporation systems provide the means for the holder of a short futures position to invoice his intention to deliver. Clearing Corporation systems then assign the delivery to the holder of the oldest corresponding long futures contract. The Clearing Corporation's systems process numerous delivery instruments pursuant to this process including: federal warehouse receipts, shipping certificates, and barge placement certificates.

The Clearing Corporation appreciates this opportunity to comment on the proposed regulations. We support most of the provisions of the proposal and look forward to their rapid implementation. We would, though, like to point out the following issues and concerns:

Insurance requirements for providers. The Clearing Corporation notes that the minimum requirements are specific and apparently inflexible. For example, the required maximum deductible insurance levels may not allow well-capitalized Providers, such as the Clearing Corporation potentially, to obtain insurance more economically. Moreover, well-capitalized companies, such as the Clearing Corporation, are in a position to cover the risk at issue without insurance. Thus, the insurance requirements proposed by the Department would impose an unnecessary layer of cost on the process.

Transition. The Clearing Corporation recommends that the Department be more explicit in how it will handle issues that may arise from the transition of warehouses to electronic issuance.

The co-existence of both paper and electronic versions of warehouse receipts raises practical and legal concerns. At §735.302(a)(4) the Department would require such warehouse initially to issue all receipts in electronic form; however, the proposed regulations state at §735.302(b)(8) "A depositor or current EWR holder may request a paper warehouse receipt in lieu of an EWR." The Clearing Corporation is concerned that if such a process is not defined more specifically, the above regulations might inadvertently allow for two documents (one electronic and one paper) for the same underlying commodity. This would be extremely problematic if the two documents were transferred to two separate holders in interest.

Provider Agreements. The Department is proposing to use the individual agreements with Providers as the basis of the relationship between Providers and the Department. The proposed forms of agreements are essentially one-sided and, therefore, may invite a level of arbitrariness in administration that will threaten the commercial viability of being a Provider. Additionally, a Provider may be subject to other regulatory oversight obviating the need for some of the more strict provisions of the draft Provider Agreements relating to the provided services and related systems. The Clearing Corporation suggests that a better approach would be for the Department to simply list the types of provisions that would be contained in a Provider agreement but leave the specific terms open to negotiation based on a Provider's particular circumstances.

Fees. The Department's proposal that it be given the right to approve all fees charged by a Provider would put any business planning at risk. A Provider would not be able to assess the profitability of any services or products in advance of knowing what fees are acceptable to the Department. The Clearing Corporation encourages the Department to allow the free market to work in this instance to price the services appropriately.

The Clearing Corporation believes that electronic documentation will provide important enhancements as well as cost reductions to the grain storing and handling industries. The Clearing Corporation is seriously considering leveraging its existing processes and technology systems to offer the services contemplated by the proposed regulations. If the business case merits such a venture, the Clearing Corporation looks forward to working with the Department to accomplish the goal of making U.S agriculture more competitive through efficiencies and cost savings provided by today's technology and information systems.

Respectfully submitted,

Dennis A. Dutterer



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## National Grain and Feed Association

October 4, 2001

Mr. Roger Hinkle  
Chief, Licensing Authority Branch  
Warehouse and Inventory Division  
Farm Service Agency  
U.S. Department of Agriculture  
STOP 0553  
1400 Independence Ave., S.W.  
Washington, D.C., 20250-0553

Dear Mr. Hinkle:

The National Grain and Feed Association is pleased to submit the following statement in response to the U.S. Department of Agriculture Farm Service Agency's (FSA's) proposed rule for implementing the U.S. Warehouse Act (USWA) Amendments of 2000, as well as the proposed Licensing Agreement for Grain and proposed provider agreements, as published in the September 4, 2001 *Federal Register*.

The NGFA is the U.S.-based nonprofit trade association that consists of more than 1,000 grain, feed, processing and grain-related firms comprising 5,000 facilities that handle more than two-thirds of U.S. grains and oilseeds. The NGFA's membership encompasses all sectors of the industry, including country, terminal and export elevators; feed millers and manufacturers; cash grain and feed merchants; end users of grain and grain products, including processors, flour millers, and livestock and poultry integrators; commodity futures brokers and commission merchants; and allied industries, such as railroads, barge lines, banks, grain exchanges, insurance companies, computer software firms, and engineering/design/ construction companies. The NGFA also consists of 37 affiliated state and regional grain and feed associations, as well as two international affiliated associations, and has established strategic alliances with the Grain Elevator and Processing Society and the Pet Food Institute.

The NGFA was a strong proponent of the rewrite of the U.S. Warehouse Act, which was approved by Congress and signed into law on Nov. 9, 2000. The new law represents the most fundamental changes to the statute since its inception in 1916, and provides important flexibilities to USDA to modernize and streamline its regulations to reflect current warehouse industry trade practices. The NGFA strongly encourages FSA to utilize this flexibility in several important respects.

The NGFA particularly commends FSA for utilizing the authority provided in the statute to include provisions in its proposed rule that:

- authorize warehouse operators who store and handle grains, oilseeds and other agricultural products to issue electronic warehouse receipts, as well as other business documents under the authority of the U.S. Warehouse Act.
- expressly authorize arbitration as a means for resolving disputes between warehouse operators, depositors and other parties for activities authorized under the statute. The Federal Arbitration Act provides a firm U.S. statutory foundation for using arbitration as an alternative to costly and time-consuming court proceedings. The National Grain and Feed Association for more than a century has operated what is believed to be the oldest industry-based arbitration system in North America, and is an ardent advocate of this alternative form of dispute resolution as being a knowledgeable, fair, time-efficient, and cost-effective mechanism for resolving disputes.
- allow warehouse operators to forward stocks to other federal- or state-licensed or Commodity Credit Corporation-approved warehouses;
- enable warehouse operators to meet financial requirements by furnishing bonds, treasury notes (or other public debt instruments), letters of credit or certificates attesting to compliance with USDA-approved state indemnity funds;
- recognize current warehouse industry trade practices concerning the allocation of available storage space to traditional customers and storage of commodities traditionally handled in the geographical area in which the warehouse operates; and
- eliminate the previous requirement that federal warehouse receipts be issued on all grain within one year after deposit, and to instead require that warehouse receipts be issued upon the request of the depositor.

But the NGFA has major concerns with – and proposes alternative language for – several sections of FSA’s proposed regulations, Licensing Agreement for Grain, and provider agreements for computer services seeking FSA approval to transmit electronic warehouse receipts and other electronic documents. In particular, the NGFA opposes:

- the lack of a specific mechanism whereby FSA will obtain input from parties and organizations representing warehouse operators, depositors, providers, state warehouse control agencies and others directly affected by the agency’s regulations implementing the USWA and associated licensing and provider agreements;

- the overly expansive language concerning the types of disputes that potentially could be subject to arbitration under the proposed regulations;
- language in the proposed Licensing Agreement for Grain that fails to address and resolve the storage and delivery obligations of warehouse operators handling specialty grains and oilseeds with quality characteristics that exceed the numerical grade factors of the official U.S. Grain Standards;
- the proposed requirement that personnel of federally licensed warehouses who perform inspection and weighing of agricultural products be subjected to a test or examination to demonstrate their competency, rather than having this be the responsibility of the licensed warehouse operator;
- the proposed levels of financial and insurance requirements for providers of electronic warehouse receipts, other USWA electronic documents, and other electronic documents issued by FSA-approved providers;
- the proposed limit under which warehouse operators could change providers no more frequently than annually, regardless of circumstances; and
- outdated proposed language in the Licensing Agreement for Grain concerning the process for requesting an appeal of an inspection result.

The remainder of this statement provides specific comments concerning USDA's proposed regulations, proposed Licensing Agreement for Grain (Exhibit B), and proposed provider agreements for electronic warehouse receipts and other electronic documents (Exhibits C and E). The comments reference either the topic or the section number of the proposed rule or proposed agreement. *[Note: When recommending changes in the USDA-proposed language, new language is **boldfaced and underscored**, while deleted language is ~~stricken~~ through.]*

### **Proposed Regulations to Implement USWA**

The NGFA offers the following comments on FSA's proposed regulations to amend 7 CFR Part 735 to implement the new U.S. Warehouse Act:

1. **New Regulatory Format:** The NGFA is troubled by the underlying reason – namely, the time-consuming and resource-intensive process of amending regulations – that has led FSA to propose a new regulatory format under which it would implement a single, broad, generic set of regulatory requirements that would apply to all warehouse operators licensed under the USWA, and reserve commodity-specific provisions for separate licensing

agreements that would be renewed annually. The NGFA would prefer that the rulemaking process itself be made responsive, rather than for government to attempt to devise creative approaches that circumvent the valuable public notice-and-comment that such a process entails.

The NGFA's major concern with the proposed regulatory format is that there is no requirement for FSA to provide advance notice or solicit comments from the affected industry sector(s) before implementing changes in the licensing agreements. Nor is there any restriction on the frequency with which such licensing agreements could be amended by FSA. Under the approach proposed by FSA, the only recourse afforded to licensees or providers is to utilize the voluntary nature of the federal warehouse system to discontinue their participation if either the licensing requirements or fees become onerous.

Thus, the **NGFA's support for FSA's proposed new regulatory framework is contingent upon FSA including as part of its regulations a specific mechanism through which to obtain input** from parties and organizations representing warehouse operators, depositors, providers, state warehouse control agencies and others directly affected by the agency's implementation of the U.S. Warehouse Act, as well as the licensing and provider agreements implemented under these rules. Further, the NGFA believes FSA should create a mechanism for soliciting input from affected parties and organizations in fulfillment of the statutory provisions found at Section 4(e) of the U.S. Warehouse Act amendments, which require the secretary of agriculture to publish an annual report on actions taken to minimize fees, improve efficiencies and reduce costs associated with the federal warehouse system.

**NGFA Recommendation:** To address this significant concern, the NGFA urges that Section 735.1 be amended as follows:

- Amend Section 735.1(b), which pertains to the applicability of the proposed regulations, to read as follows: ***"Additional terms and conditions may be set forth in applicable licensing agreements, provider agreements and other documents. Any amendments of a substantive or material nature to the applicable licensing and/or provider agreements shall be made only after FSA provides prenotice and at least 90 days to consult with, and obtain feedback from, affected parties."***
- Add a new Section 735.1(c) to read as follows: ***"No less than annually, FSA will convene a meeting with parties regulated under the Act, as well as organizations representing such parties, and State warehouse control agencies, concerning ways to minimize fees, reduce costs and enhance the efficient use of personnel to the extent practicable and consistent with the effective implementation of this Act."***



2. **Provider Agreements:** The NGFA strongly supports FSA's proposal to implement a system of computer system "providers" for transmitting electronic warehouse receipts and other electronic documents under the authority of the U.S. Warehouse Act. The NGFA also believes it is prudent for FSA, in consultation with the warehouse industry and state warehouse control officials, to standardize the formats for electronic warehouse receipts.

However, the NGFA believes FSA should **not** intervene to alter or dictate the format of other electronic documents – such as grade and weight certificates, phytosanitary certificates, bills of lading, export evidence certificates or other business-related documents required by letters of credit. The NGFA believes the formatting and content of these documents are more appropriately the role of other government agencies (such as the Federal Grain Inspection Service in terms of grade and weight certificates or the Animal and Plant Health Inspection Service in the case of phytosanitary certificates) or the private sector.

As noted in its previous comments to the agency, the NGFA, through its EDI Guidelines Committee, already has developed ANSI-based standardized business documents for bills of lading for rail, truck and barge; grade and weight certificates; and an invoice and settlement document. The NGFA believes this is an appropriate role for the association, given its long history of developing industry trading rules. In addition, an AgXML group has been working for several months to develop XML standards for the grain, feed and processing industry. This group's initiatives have focused on contracts, bills of lading (rail, truck and barge), and grade/weight certificates. Major industry participants are involved, as are several e-commerce companies (including Rooster.com, Pradium and 1<sup>st</sup> Ag). On the futures side, Refco has been an active participant. Monsanto and Pioneer Hi-Bred also have participated.

To facilitate the acceptance of e-commerce within the industry, it is important that these time-consuming and costly efforts to develop standardized documents continue. But the NGFA believes this is a role best suited for the private sector. Perhaps the most appropriate role for USDA – from both a technical expertise and cost standpoint – would be to become involved as an observer/participant in ongoing private-sector initiatives, and to assure that document formats include the information necessary under the USWA.

3. **Section 735.3 – Definitions:** The NGFA suggests amending the following proposed definitions:

- The proposed definition for “agricultural product” is inconsistent with the statute, and the NGFA recommends amending it to read: “*Agricultural product means an agricultural ~~produced product~~ **commodity** stored or handled for the purposes of interstate or foreign commerce, including a processed product of an agricultural product as determined by DACO.*”
  - The NGFA suggests adding the phrase “XML” to the list of electronic means cited in the definition of electronic document, as follows: “*Electronic document means a document that is generated, sent, received or stored by electronic, optical or similar means, including electronic data interchange, **XML**, electronic mail, telegram, telex or telecopy.*”
  - The NGFA recommends that FSA establish a definition for “USWA electronic documents” to clarify what types of documents are covered by this phrase, which is used repeatedly throughout the proposed rule.
  - The NGFA suggests that the proposed definition for “schedule of fees” be amended to read as follows: “*Schedule of fees means the fees charged **by FSA for regulatory oversight of warehouse operators and providers licensed** services provided under the Act*” so as to avoid confusion with fees assessed by warehouse operators or providers for services performed under the USWA.
  - The NGFA suggests that the proposed definition for “warehouse” be amended to be consistent with the statute, as follows: “*Warehouse means a structure or other approved storage facility, as determined by DACO, in which any agricultural product may be stored or handled **for the purpose of interstate or foreign commerce.***”
- 4. Section 735.9 – Dispute resolution and arbitration of private parties:** As noted previously, the NGFA commends FSA for including in its proposed regulations the new statutory provision that authorizes the use of arbitration to resolve disputes arising under the U.S. Warehouse Act. However, the NGFA believes that the FSA-proposed language found in Section 735.9(a) is too broad. For instance, the use of the proposed phrase “another party” conceivably would permit arbitration of disputes between providers and those using such services, as well as disputes between government agencies and warehouse operators, depositors and providers. The NGFA does not believe this was FSA’s intent, and suggests that the scope of Section 735.9(a) be narrowed to apply to disputes involving the agricultural products stored or handled under the Act, unless contractually agreed otherwise by the parties.

This recommendation could be accomplished by amending this section to read as follows: “(a) Any claim for noncompliance or unresolved dispute between a warehouse operator **and a depositor or holder of a warehouse receipt, or a provider and another party** with respect to **the storage or handling of agricultural products** activities authorized under the Act may be resolved by the parties through mutually agreed-upon arbitration procedures or as may be prescribed in the applicable licensing agreement, **or as contractually agreed by the parties.**”

The NGFA also wishes to advise FSA that the ultimate determination of whether a dispute is arbitrable will depend upon the Arbitration Rules of the organization to which the case is submitted. For instance, under the NGFA’s Arbitration System, arbitration is compulsory only if the parties are NGFA members or if arbitration is referenced in the contract and at least one of the parties is an NGFA member. Concerning the latter, it has been the NGFA’s experience that courts frequently refer cases to arbitration. Since arbitration is a membership service, the NGFA does not arbitrate disputes unless at least one of the involved parties is an NGFA member.

The NGFA also believes that FSA should be more specific concerning the “arbitration assistance” it envisions offering under proposed Section 735.9(b). The NGFA suggests that such assistance be limited to providing documents or expert witnesses that may be requested by one or more parties involved in an arbitration case, and that this subsection be revised to specifically state that FSA will **not** be responsible for providing recommendations or representation to parties engaged in a dispute subject to an arbitration proceeding.

For these reasons, the NGFA proposes that Section 735.9(b) be revised as follows: “(b) In the event a party requests arbitration assistance from DACO, the initiating party will be responsible for all costs incurred by DACO. **In no case will DACO provide representation to parties involved in an arbitration proceeding arising with respect to activities authorized under the Act.**”

5. **Section 735.106 – Excess storage and transferring of agricultural products:** The NGFA suggests that Section 735.106(b) be amended to expressly provide for exchange of warehouse receipts as a method for transferring stored agricultural products to another warehouse, as well as to provide the flexibility for the deputy administrator for commodity operations (DACO) to authorize other methods not expressly provided for in the licensing agreement.

Specifically, the NGFA proposes that Section 735.106(b) be amended to read as follows: “(b) A warehouse operator who desires to transfer stored agricultural products to another warehouse may do so either by physical movement, transfer of warehouse receipts, or by other methods as may be provided in the applicable licensing agreement or as authorized by the DACO.”

6. **Section 735.108 – Inspections and examinations of warehouses:** The NGFA recommends that this section be amended to specifically state that the types of books and records accessible by warehouse examiners are those directly associated with the warehouse operator’s obligations under the USWA.

Specifically, the NGFA proposes that Section 735.108 be amended to read as follows: “Warehouse operators must permit any agent of the Department to enter and inspect or examine, on any business day during the usual hours of business, any licensed warehouse, the offices of the warehouse operator, and the books, records, papers and accounts directly pertaining to the warehouse operator’s obligations under this Act.”

7. **Section 735.111 – Fair treatment:** The NGFA commends FSA for replicating the new U.S. Warehouse Act’s language pertaining to the fair treatment of depositors by warehouse operators, which more appropriately reflects current trade practice.
8. **Section 735.200 – Service licenses:** FSA proposes in Section 735.200(b)(3) that the warehouse operator provide evidence that the applicant for a USWA license to sample, inspect, grade and weigh an agricultural product “is competent.” Subsequently, USDA proposes in Section IV.B. of the Licensing Agreement for Grain that employees inspecting or weighing grain at federally licensed warehouses be subjected to a competency test, on which we provide specific comments later in this statement.

The NGFA opposes the proposed testing requirement, believing that the USWA warehouse operator bears the ultimate responsibility for the education, training and performance of all employees, including graders and weighers licensed under the USWA. Therefore, the NGFA believes that Section 735.200(b)(3) should be revised to retain the current requirement that the warehouse operator certify that such employees are competent to perform these tasks.

- 9. Section 735.300 – Warehouse receipt requirements:** The NGFA strongly supports FSA’s proposal to require that: 1) USDA approve the format for paper and electronic warehouse receipts; and 2) the warehouse operator not be required to issue warehouse receipts unless requested by the depositor. This latter provision would remove the current requirement that a warehouse receipt be issued within one year of deposit, regardless if requested by the depositor or owner. The current regulation has resulted in warehouse receipts being issued to parties who did not recognize their significance and who promptly lost or misplaced them, resulting in additional costs and business disruption for the warehouse operator. The NGFA would not be averse to FSA requiring that the warehouse operator provide other forms of written notification, such as a letter on company stationery, to depositors/owners of grain who do not request warehouse receipts as a means of communicating their ownership of such grain.

The NGFA also suggests that a new subsection (5) be added to this section to reflect the U.S. Warehouse Act’s prohibition on issuing duplicate warehouse receipts for the same agricultural product. Specifically, the NGFA suggests the addition of the following provision as a new Section 735.300(b)(5) applicable to paper warehouse receipts to replicate a similar provision found at Section 735.302(b)(5) for electronic warehouse receipts: **“May not issue, unless authorized by the DACO, an additional warehouse receipt under this Act for a specific identity-preserved or commingled agricultural product lot (or any portion thereof) if another warehouse receipt representing the same specific identity-preserved or commingled lot of the agricultural product is outstanding and uncanceled by the warehouse operator. No two warehouse receipts issued by a warehouse operator may have the same warehouse receipt number or represent the same agricultural lot.”**

The NGFA further notes that FSA proposes in Section 735.300(b)(5) that if any information is omitted purposely from a warehouse receipt, the blank should be notated to show that is the intent. In the proposed Licensing Agreement for Grain (Exhibit B), FSA proposes that such an omission be designated with a line drawn through such a space. The NGFA notes that this is not practical for electronic warehouse receipts. As an alternative, the NGFA suggests that if there is sufficient room in the fields for both paper and electronic warehouse receipts, that the phrase **“Intentionally Left Blank”** be used to designate such omissions. Further, the NGFA recommends that FSA communicate this requirement and how it is to be accomplished for both paper and electronic receipts as part of the agency’s information and education program when implementing the regulations.

**10. Section 735.302 – Electronic warehouse receipts:** To enhance the use of electronic warehouse receipts and other electronic documents under the USWA, the NGFA believes that FSA should reduce by half the proposed amount of lead time that warehouse operators are required to provide to the agency – and the time accorded to the agency to respond – when changing providers for electronic warehouse receipts or other electronic documents.

The NGFA questions the intent of Section 735.302(a)(4), since subsection (a) of this section already states that if a warehouse operator elects to issue electronic warehouse receipts, he/she cannot issue paper receipts. The NGFA also believes it is important to clarify that this section does **not** preclude the warehouse operator from generating a nonnegotiable paper copy of an electronic warehouse receipt to present to a depositor or holder upon request.

Finally, contrary to the proposed rule, the NGFA also believes that FSA should **not** impose an artificial limit on the number of times that a warehouse operator could change providers during a calendar year. Such changes may be necessitated by a provider going out of business. Or, a change may be advantageous to the warehouse operator and its depositors/customers because of competitive factors in the marketplace, including the level of service furnished and the fees charged by the provider.

Therefore, the NGFA recommends that FSA **delete** the proposed requirement that warehouse operators not be allowed to change providers more frequently than once per year. However, if there is a cost incurred by the agency if a warehouse operator changes providers more frequently than annually (except in the case of the provider exiting the business), the NGFA would not be averse to the warehouse operator being charged the actual out-of-pocket costs incurred by FSA in making such a change.

For these reasons, the NGFA recommends the following changes:

- Section 735.302(a)(2): Amend to read as follows: *“Inform DACO of the identity of their provider, when they are a first-time user of EWRs, ~~60~~ **30** calendar days in advance of issuing an EWR through that provider. DACO may waive or modify this ~~60~~ **30**-day requirement as set forth in §735.2(b).”*
- Section 735.302(a)(4): Amend to read as follows: *“~~When using an approved provider,~~ **If electing to use EWRs, issue all warehouse receipts initially as EWRs. If requested by the depositor or holder, warehouse operators issuing EWRs also may issue a non-negotiable paper copy of the EWR, which shall be marked clearly as a ‘copy’ on its face.**”*

- Section 735.302(a)(7): Amend to read as follows: “*Receive written approval from FSA at least ~~30~~ **15** calendar days before changing providers. Upon approval, they may request their current provider to transfer their EWR data from its Central Filing System (CFS) to the CFS of the approved provider whom they select. ~~Warehouse operators may only change providers once a year.~~ **A nominal fee may be charged by FSA to the warehouse operator to recover the actual out-of-pocket costs incurred if he/she changes providers more frequently than once a year.**”*
- Section 735.302(a)(8): Amend to read as follows: “*Notify all holders of EWRs by inclusion in the CFS at least ~~30~~ **15** calendar days before changing providers, unless otherwise required or allowed by FSA.*”
- Section 735.302(b)(5): Replace in its entirety the proposed language pertaining to issuing duplicate warehouse receipts for electronic warehouse receipts to be identical with the NGFA-suggested language for paper receipts cited earlier: “**An EWR under this Act may not be issued for a specific identity-preserved or commingled agricultural product lot (or any portion thereof) if another EWR representing the same specific identity-preserved or commingled lot of the agricultural product is outstanding and uncanceled by the warehouse operator. No two warehouse receipts issued by a warehouse operator may have the same warehouse receipt number or represent the same agricultural lot**”;
- Finally, the NGFA recommends that FSA include provisions in this section under which warehouse operators may discontinue the use of electronic warehouse receipts if they so choose. Such a provision is appropriate to give warehouse operators the flexibility to respond to customer preferences, changing business conditions or cost structures associated with electronic warehouse receipts, or service-related issues.

Specifically, the NGFA recommends creation of a new Section 735.302(d), which would read as follows: “**A warehouse operator at any time may elect to discontinue issuing electronic warehouse receipts, in which case the operator must notify FSA, the provider and all holders of uncanceled electronic warehouse receipts at least 30 calendar days in advance. Outstanding and uncanceled electronic warehouse receipts may be transferred to paper receipts upon notification to FSA and the holder.**”

- 11. Section 735.401 – Electronic warehouse receipt and USWA electronic document providers.** The NGFA strongly opposes the levels of financial and insurance requirements proposed by FSA for providers of electronic warehouse receipts and other USWA electronic documents.

There is substantial evidence that the costs of insurance in the amounts proposed by FSA are prohibitive, and that the availability of insurance at such levels of coverage may be extremely difficult to obtain. Further, the NGFA believes that the coverage levels being proposed are not justified by the risks, since providers simply are the transmitters of electronic documents – the information for which is generated by the warehouse operator – and do not take title to the commodity. In this respect, providers are akin to a distributor of paper documents, such as the U.S. Postal Service or other express delivery service. In addition, there is evidence that insurance carriers are unwilling to offer policies with the deductibility provisions proposed by FSA in its separate provider agreements.

For these reasons, the NGFA believes that FSA's current proposals would, at best, dramatically reduce the number of providers willing or able to offer such services. Such an outcome would limit the ability of warehouse operators and others to capture the efficiencies that may result from increased use of electronic warehouse receipts and e-commerce. And it would inhibit the market efficiencies that could result from competition among providers. At worst, the FSA-proposed financial and insurance requirements could preclude any providers from participating.

These concerns over the availability and cost of insurance are exacerbated by the recent terrorist attack on the United States. In the aftermath of these tragic events, insurance carriers expect – at least for the foreseeable future – to incur significant financial losses, which could further tighten the availability and escalate the costs for insurance coverage.

The importance of FSA adopting realistic and achievable financial and insurance requirements for providers is further magnified by the fact that State warehouse licensing authorities indicate that they intend to recognize only FSA-approved providers for issuing electronic warehouse receipts under State warehouse laws. Thus, FSA is placed in the role of being the “gatekeeper” through which providers must pass. If FSA's regulatory or financial standards are excessive, it will undermine the viability of electronic warehouse receipt systems developed under state law, or create a patchwork of standards for providers that will not serve the interests of warehouse operators, providers, depositors, government or other parties. As an additional oversight safeguard, FSA also should recognize that companies providing insurance coverage to providers have indicated that they will be performing their own frequent internal audits.

Therefore, particularly at the outset of this program for grain, it is important that USDA implement prudent but realistic regulatory and financial requirements for providers.



In consultations with potential providers of electronic warehouse receipts and other e-documents for grain warehouse operators, as well as existing providers of electronic warehouse receipts for cotton and state warehouse control officials, the NGFA strongly urges FSA to reduce substantially the proposed financial standards for providers of electronic warehouse receipts and other USWA electronic documents. While the NGFA has not been able to arrive at a consensus recommendation, we generally believe that financial requirements approximating or somewhat greater than the following may be appropriate:

- Minimum net worth of \$100,000 for providers of electronic warehouse receipts **and** other USWA electronic documents, the same level proposed by FSA.
- Maintain two insurance policies, one for “errors and omissions” and one for “fraud and dishonesty,” each with a minimum coverage of \$1 million (as opposed to the \$4 million for each proposed by FSA). In addition, the NGFA recommends that FSA evaluate the feasibility of allowing providers to furnish other forms of financial assurance, similar to those allowed for warehouse operators under Section 735.102 of the proposed regulations, to meet the insurance requirements under this section. These other forms of financial assurance could include bonds, letters of credit, Treasury bills and irrevocable letters of credit.
- The NGFA also believes USDA should reexamine the feasibility of the proposed \$10,000 deductible requirement for insurance for providers.

Under the aforementioned NGFA recommendations, providers that have and maintain a minimum net worth of \$100,000 and maintain two insurance policies – for “errors and omissions” and “fraud and dishonesty” – with coverage of \$1 million each, or which provide other forms of financial assurance acceptable to FSA to offset part or all of these insurance requirements, would be eligible to engage in services for transmitting **both** electronic warehouse receipts and other electronic documents as provided under Sections 735.401 and 735.402 of these regulations.

To provide additional assurance to users of providers’ services, as well as to government, the NGFA recommends that FSA consider relocating the financial and insurance requirements found in proposed Sections 735.401 and 735.402 to the provider agreements themselves, so that they may be modified more expeditiously if conditions warrant. This also would be consistent with the treatment of financial assurance requirements applying to warehouse operators, the specific requirements for which are found in the Licensing Agreement for Grain (Exhibit C) rather than in Section 735.102 of the proposed regulations.

Also concerning Section 735.401, the NGFA seeks clarification of what other types of documents FSA has in mind when it uses the term “USWA electronic documents” in Section 735.401(a). How, if at all, do these electronic documents differ from “other electronic documents” addressed under Section 735.402?

12. **Section 735.402 – Providers of other electronic documents:** Consistent with the comments made pursuant to Section 735.401 – and for the same reasons – the NGFA strongly urges FSA to reduce the financial and insurance requirements for providers of other electronic documents issued under the authority of the USWA. While the NGFA has been unable to reach a consensus recommendation, it generally believes that financial standards approximating or somewhat greater than the following may be prudent:

- Minimum net worth of \$100,000, rather than the \$10 million level proposed by FSA.
- Maintain two insurance policies, one for “errors and omissions” and one for “fraud and dishonesty,” each with a minimum coverage of \$1 million (as opposed to the \$25 million for each proposed by FSA). In addition, consistent with the recommendations made pursuant to Section 735.401, the NGFA recommends that FSA evaluate the feasibility of allowing providers to furnish other forms of financial assurances, similar to those allowed for warehouse operators under Section 735.102 of the proposed regulations, to meet the insurance requirements under this section. These other forms of financial assurance could include bonds, letters of credit, Treasury bills and irrevocable letters of credit.

The NGFA notes that in the preamble of the proposed rule (*page 46311*), FSA attempts to justify the “significantly greater” financial and insurance requirements for providers of other electronic documents by stating that these documents somehow constitute a greater risk or that providers distributing them assume a greater liability because they “generate” these documents. It is the NGFA’s understanding that is not the case, any more than it is for electronic warehouse receipts. These providers merely transmit electronic documents containing information generated by other parties.

However, to reduce perceived risk, the NGFA subsequently in this statement recommends two changes to the proposed provider agreement for these documents:

- First, the NGFA suggests eliminating a clause that permits providers to generate electronic files of paper documents submitted to them, as well as the eliminating – for the time being – letters of credit as an electronic document covered under this provider agreement. [*See page 26.*]

- Second, FSA could defer approval of providers to transmit letters of credit electronically until later, or create a higher financial standard for providers seeking USDA approval of their systems for transmitting letters of credit because of the inherent complexity of these particular documents.

The NGFA offers these additional recommended changes to this section:

- Section 735.402(a): The NGFA believes it is important that FSA clarify that the intent of this section is to authorize USDA to grant approval of providers that meet the agency's financial and oversight requirements, not the specific content or format of electronic documents other than electronic warehouse receipts. For these reasons, the NGFA suggests that this subsection be amended to read as follows: "*(a) Application for a provider agreement to establish a **USDA-approved** system to issue and transfer other electronic documents may be made to FSA upon forms prescribed and furnished by DACO. Each provider operating pursuant to this section must meet the following requirements:...*" In this regard, the NGFA suggests that the preamble of the proposed regulations be amended to include a paragraph clarifying that this section is voluntary and simply allows the provider to indicate that its service has been approved by FSA for issuing the specified electronic documents, but does not imply FSA oversight or approval of the format or content of electronic documents other than electronic warehouse receipts or other electronic USWA documents.
  - Section 735.402(c)(2): The NGFA suggests that this section be amended to specifically reference that the type of electronic documents being addressed are those the provider has been authorized to issue by FSA under the authority of the U.S. Warehouse Act. We do not believe FSA's "reach" should extend to other electronic documents over which the agency does not exercise regulatory oversight. Specifically, it is recommended that this subsection read as follows: "*(2) Suspended or terminated providers may not execute any function pertaining to any electronic ~~document~~ **warehouse receipts or other electronic USWA documents it has issued pursuant to Provider Agreements executed under the authority of this Act** during the pendency of any appeal or subsequent to this appeal if the appeal is denied, except as authorized by DACO.*"
13. **Section 735.404:** The NGFA recommends that this section be amended to not preclude reductions in fees charged by providers over the course of a year. Specifically, the NGFA recommends the following changes to subsections (b) and (c):

- “(b) Fees charged any user by the provider must be in effect for a minimum period of one year, except that fees may be reduced at any time.”
- (c) Providers must furnish the FSA and all users a 60-calendar day advance notice of their intent to ~~change~~ increase any fee. FSA and all users are to receive notice of any reduction in fees within 30 days after they have taken effect.”

### **Proposed Licensing Agreement for Grain (Exhibit B)**

The NGFA offers the following comments concerning FSA’s proposed licensing agreement for grain found in Exhibit B:

1. **Section III.A. Financial Assurance Requirements – Computation:** The NGFA recommends the following changes to this section:
  - Section III.A.3.: In its list of descriptors to letters of credit, the NGFA recommends that USDA replace the term “clean” with “unconditional” and add the additional modifier “assignable,” so that this sentence would read: “*Any letter of credit must be ~~clean~~ unconditional, assignable, irrevocable, issued by a commercial bank payable to the Farm Service Agency by sight draft and insured as a deposit of the Federal Deposit Insurance Corporation.*”
  - Section III.A.4.: The NGFA seeks clarification from USDA concerning the types of conditions existing at a warehouse that it believes would warrant requiring additional financial assurance.
2. **Section III.B. Financial Assurance – Acceptable Forms:** The NGFA commends FSA for providing alternatives to bonding for warehouse operators to meet deficiencies in net worth.

However, the NGFA recommends that Section III.B.5. be amended, consistent with its suggested changes to the proposed rule, to authorize FSA to approve other forms of financial assurance that are not prescribed in the licensing agreement and related addenda. It is suggested that this subsection be revised to read as follows: “5. *Other forms of financial assurance as may be prescribed in the applicable licensing agreement and related addenda, or as may be deemed acceptable by the Farm Service Agency.*”

### 3. Section IV.A. Duties of Warehouse Operator:

- **Section IV.A.2.:** The NGFA commends FSA for incorporating provisions of the statute that reflect current trade practice regarding the allocation of available storage space to traditional customers.
- **Section IV.A.3.:** The NGFA recommends that the phrase “specially binned grain” be revised to read **“identity-preserved grain”** to be consistent with Section IV.N.
- **Section IV.A.5:** The NGFA recommends that the phrase “straw, detritus, rubbish or accumulations” be deleted because it is outdated and replaced with the term **“deleterious.”** It also is recommended that a provision be added that stipulates that the warehouse is to be accessible to examiners during normal business hours. These changes could be accomplished with the following suggested language: *“5. Keep the warehouse reasonably clean at all times and free from ~~straw, detritus, rubbish, or accumulations~~ of **deleterious** materials that ~~will~~ **may** create a hazard or interfere with the handling of grain, ~~and~~ provide a safe environment in and around the warehouse, ~~and will~~ provide all **reasonable and** necessary assistance in the execution of inspections and examinations by representatives of the Farm Service Agency **during normal business hours.**”*
- **Section IV.A.6.:** The NGFA recommends that this subsection specifically reference that it applies to commingled grain, and that the phrase **“for the numerical grade”** be inserted at the end of the last sentence, so that it reads: *“...in case the grades of **commingled** stored grain should get out of balance with grades represented by outstanding storage obligations, to effect the necessary corrective actions to regain the quality and quantity equity **for the numerical grade.**”*

### 4. Section IV.H. Excess Storage and Transferring Grain:

- **Section IV.H.1 and 2:** The NGFA notes that this language is redundant with requirements already included in the proposed regulations at Section 735.106(a).
- **Section IV.H.2.c.:** The NGFA commends FSA for permitting the transfer of grain from a federally licensed warehouse to another federal- or state-licensed warehouses – or to Uniform Grain Storage and Rice Agreement warehouse in states without licensing authorities – to maximize the efficiency of such transfers.

- **Section IV.H.2.h.:** The NGFA recommends the following revisions to be consistent with recommendations made subsequently pursuant to Section IV.N. concerning commingled and identity-preserved storage: *“**In the case of commingled storage, Nothing in this agreement will in any way diminish the right of the owner of the grain to receive on delivery, or the obligation of the warehouse operator of a licensed warehouse from which the product is transferred, to deliver to the owner, grain in the quantity, and of the kind, ~~quality~~ numerical grade, class (and the subclass white club wheat) and grade called for by the warehouse receipts or other evidence of storage. In the case of identity-preserved storage, nothing in this agreement diminishes the right of the owner of the grain to receive the identical grain originally stored in the warehouse.**”*
- 5. **Section IV.J. Inspections, Examinations of Warehouse:** It is recommended that this section be revised to stipulate that FSA’s authority to examine warehouses and records is limited to activities performed directly related to the U.S. Warehouse Act. The NGFA suggests the following language: *“The warehouse operator agrees to permit any officer or agent of the U.S. Department of Agriculture, authorized by the Farm Service Agency, to enter and inspect or examine on any business day during the usual hours of business any warehouse for which they hold a license, the office, ~~the~~ books, records, papers, and accounts **directly relating to activities performed under this Act** and the contents thereof, and will furnish that officer or agent the assistance necessary to enable making any inspection or examination.”*
- 6. **Section IV.L. Storage of Identity-Preserved Grain:** The NGFA recommends that Section L.2.a be revised to read: *“a. Clearly mark with identification each bag, ~~or~~ container **or bin.**”*
- 7. **Sections IV.N (Delivery of Fungible Grain), O (Storage Obligations), P (Out-of-Condition and Damaged Grain) and Q (Reconditioned Grain):** One of the NGFA’s highest priorities in implementing regulations under the new U.S. Warehouse Act is to resolve, consistent with current trade practice, the storage and delivery obligations of warehouse operators handling specialty grains.

It is a customary trade practice for warehouse operators handling specialty grains to store such commodities on a commingled basis. Further, warehouse operators should not be required to receipt specialty grain on an identity-preserved basis; in many cases, the warehouse operator instead pays a premium to the producer of specialty grains to reflect the additional intrinsic quality characteristics. But the language proposed by FSA in these sections of the licensing agreement fails to address this issue in a satisfactory manner.

In addition, the NGFA recommends that language in these sections of the grain warehouse licensing agreement that requires the warehouse operator to request payment for accrued charges be deleted, since this is a trade practice of the cotton – but not the grain – warehouse industry.

The NGFA also recommends that the provisions related to the acceptance, storage and delivery of grain be consolidated into a single section.

For these reasons, the NGFA recommends that Sections N., O., P., and Q. of the proposed licensing agreement be struck in their entirety and replaced with the following new section:

**“N. Obligations for Storage and Delivery of Fungible Grains and Oilseeds**

**“1. The warehouse operator is free to store in any manner that results in his/her ability to deliver grain, as a bailee for hire, that meets or exceeds the quantity and quality specifications shown on the warehouse receipt or the original delivery receipt (scale ticket) appropriate for a commingled or identity-preserved lot as described below:**

**“a. Commingled Storage: Upon proper presentation of a warehouse receipt for any grain, other than identity-preserved grain, and payment of all accrued charges associated with the storage of the grain, deliver to the depositor or lawful holder of the warehouse receipt grain in the quantity, and of the kind, class (and the subclass white club wheat) and numerical grade called for by the warehouse receipts or other evidence of storage; or**

**“b. Identity-Preserved Storage: Upon proper presentation of a warehouse receipt for any identity-preserved grain and payment of all accrued charges associated with the storage of the grain, deliver to the person lawfully entitled thereto, the identical grain stored in the warehouse. Nothing in this section shall require the warehouse operator to offer identity-preserved storage.**

**“2. The warehouse operator is not required to accept delivery of grain that is of a kind, type or quality not customarily stored or handled in the area in which the warehouse is located, or that is tendered in a manner that is not consistent with the ordinary and usual course of business.”**

**“3. Out-of-Condition and Damaged Grain: The warehouse operator may refuse to accept grain offered for storage if its condition is such that it will adversely affect the condition of existing grain in the warehouse, unless the warehouse operator chooses to separately bin and condition the grain.**

**“4. Reconditioning Grain: The warehouse operator agrees to:**

**“a. Immediately notify the owners and the Farm Service Agency when grain is going out of condition, if the warehouse operator is unable to condition the grain and stop the deterioration; and**

**“b. Follow instructions received.”**

8. **Section IV.R. Warehouse Receipts:** To improve the organization of the licensing agreement, the NGFA recommends that this section be retitled as **“Section V. Warehouse Receipts,”** and that the retitled section consist of two major subsections: **“V.1. Electronic Warehouse Receipts”** and **“V.2. Paper Warehouse Receipts.”**

Concerning the time frames specified in the licensing agreement pursuant to changing providers and issuing electronic warehouse receipts, the NGFA recommends that they be amended to be consistent with the NGFA’s comments relative to Section 735.302 of the proposed regulations.

Alternatively, these duplicative sections could be deleted in either the licensing agreement or the proposed regulations, since they are redundant.

- Existing Section IV.R.1.b. should be amended to require warehouse operators to notify all holders of electronic warehouse receipts at least 15 (rather than 30) calendar days before changing providers. In addition, the last sentence that prohibits warehouse operators from changing providers should be deleted in its entirety.
  - Existing Section IV.R.1.g. should be amended to require warehouse operators to notify FSA 30 days (rather than 60 days) prior to issuing electronic warehouse receipts through a new provider.
  - Existing Section IV.R.2.c. through g.: The NGFA notes that these sections are redundant with the proposed regulations found at Section 735.302(b)(3) through (7), and questions whether they need to be included in both places.
9. **Section V. Paper Warehouse Receipts:** As noted previously, the NGFA recommends that this section be retitled as **“Section V.2. Paper Warehouse Receipts.”** In addition, the NGFA recommends that:
- Existing Section V.B.2.i. be revised to be consistent with the NGFA’s recommended changes to Section 735.300(b)(5) of the proposed regulations – specifically to incorporate the phrase **“Intentionally Left Blank”** to designate an intentionally blank space on warehouse receipts.



#### 10. Section VI. Service Licenses:

- Section VI.B.: The NGFA strongly opposes FSA's proposal to implement a new requirement that personnel licensed to sample, inspect, grade or weigh grain under the USWA submit to an examination or test. As mentioned previously, it is the NGFA's view that the warehouse operator is responsible for determining the qualifications and training of his/her personnel, and ultimately for every employee's performance. Further, since this is a new requirement, it would entail additional costs not accounted for in the Regulatory Impact Analysis prepared by FSA. The NGFA recommends that this section be deleted in its entirety.
- Section VI.F.3. The NGFA believes this section, which pertains to the availability of inspection results, is written too broadly, and could be misinterpreted to apply to lenders or other curious individuals. The NGFA suggests that it be revised to apply only to the depositor or holder of the warehouse receipt. The NGFA suggests the following alternative language: *"3. As soon as possible after grading any grain, 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~~ **depositor of the grain or holder of the warehouse receipt** ~~is involved~~ at the location of the license, a copy of the inspection certificate issued by the licensed inspector."*

**11. Section VII. Grain Grading:** The NGFA is concerned that Section VII.B. (which is redundant with Section 735.202 of the proposed regulations) could create confusion as currently written. For most whole grains and oilseeds, official standards already exist under the U.S. Grain Standards Act.<sup>1</sup> Thus, it appears that of the commodities listed in the proposed definition of grain in Section I. of the licensing agreement, proposed Section VII.B. applies primarily to field peas, safflower seed, emmer and millet. Further, it is the NGFA's understanding that FSA is considering a separate licensing agreement for persons wishing to be licensed under the USWA for processed commodities, such as soybean oil or soybean meal, which currently are not being stored or handled under the U.S. Warehouse Act, but which potentially could be under the broad definition of "agricultural product" contained in the new statute.

To provide clarity, the NGFA believes it would be useful for the licensing agreement to specify in Section VII the specific types of grains and oilseeds for which official standards exist, particularly since it could be amended periodically to reflect any changes. The following language is suggested:

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<sup>1</sup> Official standards under the U.S. Grain Standards Act currently are established for barley, canola, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sunflower seed, triticale and wheat.

*“A. Official Grain Standards of the United States. The Official Grain Standards of the United States are hereby adopted as the ~~official grain~~ standards for inspecting and grading grain the purposes of the under this Act and the regulations, for barley; canola; corn; flaxseed; mixed grain; oats; rough, brown and milled rice; rye; sorghum; soybeans; sunflower seed; triticale; wheat; and whole dry peas, split peas and lentils.*

*“B. Standards of Grade for Other Grain. Until Official Standards of the United States are ~~fixed and~~ established for ~~the kind of grain~~ emmer, safflower seed, millet and such other products stored in grain warehouses that are to be inspected, the grade quality of the grain will be stated, subject to approval of the Farm Service Agency...(continue with existing subsections VII.B.1 through 3.)”*

**11. Section VIII. Grain Appeals:** The NGFA recognizes that the language proposed by FSA for conducting appeals of the results of inspections of grain graded under the Act is identical to the existing regulations found at Sections 736.80, 736.81 and 736.82 under the old statute.

However, the NGFA believes these provisions need to be updated to reflect current industry trade practice, and present several operational impracticalities as currently written. In particular, it is impractical to require a warehouse operator to retain the entire lot of grain pending possible appeal by the depositor or his/her agent after the grain is deposited. Instead, a retained sample representative of the commingled lot should be used for appeals, unless the depositor requests that the grain be stored on an identity-preserved basis and assumes the responsibility for charges associated with such storage.

The NGFA also notes that in some respects, the use of the term “grade” may be inappropriate if an official grain standard has not be developed for the commodity. Finally, the process outlined in the FSA-proposed language in Section VIII.C.5. is inconsistent with actual appeal inspection procedures currently in effect.

For these reasons, the NGFA suggests that Section VIII. B., and C. be revised as follows:

*“B. Request for Appeal*

*“1. The warehouse operator agrees to accept a request for an appeal inspection if notified in writing by the depositor or holder of the warehouse receipt ~~made by written notice to the warehouse operator before the identity of the lot of grain has been lost and not~~ by no later than the close of business on the first business day ~~following furnishing of~~ after being furnished a statement of the results of the original grade inspection.*

*"2. If the appeal is requested by the warehouse operator, notice must be given promptly to the owner of the grain. Oral notice may be made if followed by written notice." [Unchanged from FSA proposed language.]*

*"3. ~~Where it is not practical for the warehouse operator to maintain the identity of all grain being received for storage until depositors receive a statement of grade and consequently an opportunity for appeal, a~~ **For commingled grain, a** depositor or agent, before or at the time of delivery of grain, may request that the warehouse operator retain ~~the identity of a~~ **representative sample from** such lot until ~~the~~ depositor has been furnished with a statement of the ~~grade~~ **inspection result** for the lot and has waived or requested and received an appeal inspection ~~grade~~ **result.***

*"4. ~~The warehouse operator need not preserve the identity of the lot in the original conveyance; but with the knowledge and consent of the depositor or agent may use other means to preserve such identity. Further, if compliance with such request would adversely affect receiving, storing or delivering the grain of other depositors, the warehouse operator may defer unloading the grain until such time as would not disrupt service to other depositors but without unnecessary delay to the party making such request.~~*

*"C. Appeal Sampling, Preservation, Delivery and Examination.*

*"1. **For commingled grain, The a retained sample representative of the** lot of grain for which an appeal is requested **shall be used to determine the appeal inspection result. For identity-preserved grain, the lot** ~~must~~ **may** be re-sampled in such manner and quantity as the depositor or holder of the warehouse receipt and the warehouse operator agree results in a representative sample of the lot acceptable to each for appeal purposes. If the parties are unable to agree on such a sample, a sample drawn by a duly licensed inspector in the presence of the ~~interested party~~ **depositor or holder** ~~must~~ **shall** be deemed binding. In no case will the sample be less than 2,000 grams by weight.*

*"2. ~~The sample must be packaged, to the satisfaction of the interested parties, so as to preserve its original condition.~~"*

*"3. 2. Delivery. [No suggested changes from FSA-proposed language.]*

*"4. 3. The sample must be accompanied by: [No suggested changes from FSA-proposed language.]*

*“5. 4. The sample of the grain involved in the appeal ~~must be examined~~ is to be submitted for inspection as soon as possible. Such tests ~~must be applied~~ are to be performed as are necessary to determine the quality of the commingled grain based upon the applicable standards governing such grain under Section VII.B., or other relevant quality factors in the case of identity-preserved grain. Unless the appeal is dismissed, an appeal inspection grade certificate must be issued by the person ~~determining the grade~~ performing the appeal inspection, showing the ~~grade assigned by them~~ inspection results for such grain. The appeal certificate will supercede the inspection certificate originally issued for the grain involved. The original or a copy of the ~~new grade~~ appeal certificate will be sent to the party requesting the appeal, and copies shall be further distributed to the depositor or holder of the warehouse receipt, the warehouse operator and the licensed inspector making the original ~~determination of grade~~ inspection result.”*

### **Proposed Provider Agreement to Electronically File and Maintain Electronic Warehouse Receipts and U.S. Warehouse Act Documents (Exhibit C)**

In addition to the comments provided pursuant to the proposed regulations applicable to providers as found in Section 735.401, the NGFA offers the following recommendations on FSA's proposed provider agreement (Exhibit C) for computer services seeking FSA approval to electronically transmit warehouse receipts and other USWA documents:

- 1. Section II.B.2. Access:** The NGFA recommends that FSA make information available on its web site or through e-mail communication to users/customers if the agency is notified by a provider that unforeseen circumstances will cause the central filing system to be inaccessible during required operating hours for more than one hour. It seems to make sense that if FSA is notified of such an “outage,” that it pass the information on to affected parties, rather than retain the information to itself. To accomplish this intent, it is suggested that a new third sentence be added that reads: “In the event that the provider is operationally unable to convey information concerning access problems to its users/customers, FSA will convey such information to persons licensed under this Act that are users/customers of the provider through the agency's web site, media and/or other rapid communication methods.”
- 2. Section III. Fees and Charges:** The NGFA believes it is important that FSA justify the \$9,000 annual fee proposed in Addendum 1 that is to be assessed to providers seeking to be approved to transmit electronic warehouse receipts and other USWA electronic documents.

On its face, the fee appears excessive, particularly given the \$2,000 annual fee currently charged to providers of electronic cotton receipts. The NGFA believes it is imperative that FSA maintain fees as low as possible, consistent with prudent oversight, so that excessive costs are not passed back to users/customers of such services through transaction fees or other service charges, thereby undermining the viability of transmitting such documents electronically. The NGFA also seeks clarification as to the amount of the “non-refundable application fee” that FSA intends to charge for companies seeking to become providers.

In addition, the NGFA seeks an amendment to Section III.B.2. to permit providers to offer differential fee schedules based upon the volume of business being conducted with individual – or groups of – users/customers. The NGFA believes this is particularly appropriate given that this section already would require providers to file their fee schedules with FSA, and require that the fees be made public upon demand. Specifically, the NGFA suggests the following language: “2. *Fees for the use of the CFS shall ~~not be assessed to users in a discriminatory manner~~ **be fair and reasonable.**”*

**3. Section IV. Financial, Insurance and Audit Requirements:** As noted previously, the NGFA has been informed by several providers that the FSA-proposed \$10,000 maximum deductibility for insurance coverage will be difficult if not impossible to obtain, particularly given the fluid nature of the insurance industry following the recent terrorist attack on the United States. The NGFA encourages FSA to reconsider the amount of deductibility required for insurance coverage, and to adopt an achievable level that is consistent with sound business practice.

**4. Section IX. Transferring Receipts or Documents:**

- Consistent with its comments relevant to section IV.R.1.b. of the proposed Licensing Agreement for Grain, the NGFA opposes FSA’s proposal to impose a limit on the number of times a warehouse operator could change providers during a calendar year, and recommends that the last two sentences of Section IX.A. be deleted in their entirety. This is a matter to be decided in the commercial marketplace, not by FSA.
- Consistent with its comments relevant to Section IV.R.1.b. and IV.R.1.g., the NGFA recommends that Section IX.A.2.a. and b. of the provider agreement be modified to require that warehouse operators notify current providers and their licensing authority 30 days – rather than the proposed 60 days – prior to the transfer date for changing providers; and 15 days (rather than the proposed 30 days) for sending notification of a change of providers to holders of open electronic warehouse receipts.

- Consistent with its previous recommendations, the NGFA recommends that Section IX.A.5 be amended to authorize FSA to accept a transfer date for a switch in providers that is no less than 30 days (rather than the proposed 60 days) from the date the agency is notified of such a change.

### **Proposed Provider Agreement to Electronically File and Maintain Other Electronic Documents (Exhibit F)**

In addition to the comments provided pursuant to the proposed regulations applicable to providers as found in Section 735.402, the NGFA offers the following recommendations on FSA's proposed provider agreement (Exhibit F) for computer services seeking FSA approval to electronically transmit other documents under the authority of the USWA:

- **Introduction:** In conversations with prospective providers of electronic documents, concerns were raised over the potential risk of data entry errors that could result if providers utilize the authority proposed by FSA to generate an electronic version of a non-negotiable document in a non-electronic format that is furnished to the provider. To reduce the potential for error and to lessen the potential insurance requirements imposed on providers, the NGFA would not object to the **deletion** of this paragraph, which currently reads as follows: *"If a non-negotiable document in a non-electronic format is presented to the Provider for transmission in their CFS, the Provider may generate an electronic version of such document but must maintain custody of the original non-negotiable document except as is authorized by FSA."*

In addition, providers uniformly cited the intricacies associated with letters of credit – and the potential for errors and omissions by the bank or other party generating the information for such documents – as creating a potential risk. Therefore, the NGFA reluctantly concurs that – at least initially – FSA may wish to exclude letters of credit as a form of electronic document for which a provider is approved by the agency under the USWA. Or, as suggested previously, FSA may wish to consider a higher minimum net worth and/or insurance requirement for providers wishing to transmit letters of credit. Either course of action would not preclude letters of credit from being transmitted electronically through non-FSA approved systems.

- **Section I. Terms and Conditions:** The NGFA recommends the following modifications:
  - Section I.E.: The NGFA urges that this provision be modified to provide an opportunity for providers and users/customers to consult with FSA on the fee schedule before it is finalized for the following year.

-- Section I.F.: Consistent with the recommendations made pursuant to the proposed provider agreement for electronic warehouse receipts and other USWA electronic documents, it is recommended that the third sentence in this section be amended to permit providers to offer differential fee schedules based upon the volume of business being conducted with an individual – or groups of – users/customers. The NGFA believes this is particularly appropriate given that this section already would require providers to file their fee schedules with FSA, and require that the fees be made public upon demand. Specifically, the NGFA suggests the following language: “*I.F. ... Fees assessed to users of the CFS must be levied in a non-discriminatory manner fair and reasonable.*”

-- Section I.G.: Consistent with the recommendations made pursuant to the proposed regulations for providers of other electronic documents, the NGFA recommends that the minimum net worth requirement be reduced to a level approximating \$100,000 or somewhat greater, compared to the \$10 million proposed by FSA.

-- Section I.H.: Consistent with its recommendations pursuant to Section IV of the proposed Provider Agreement for Electronic Warehouse Receipts and other USWA Electronic Documents, the NGFA encourages FSA to reconsider the amount of deductibility required for insurance coverage, and to adopt an achievable level that is consistent with sound business practice.

- **Section III. Suspension or Termination:** The NGFA recommends the following modifications:

-- Section III.A.: Because of the potential disruption to business, particularly during peak times such as harvest or periods of heavy U.S. grain sales, the NGFA urges that the provider or FSA be required to notify the other party in writing at least 90 calendar days (rather than the proposed 60 days) prior to the effective date when such provider services will be terminated. Further, the NGFA urges that immediate written notification also be disseminated to all users/customers of the provider, but in no case less than 75 calendar days prior to termination of service, to allow for a transition to a new provider. In addition, as currently worded, this provision as read literally would **not** require the provider to issue written notification to the user/customer unless the user/customer happened to be issuing an electronic commerce document during this “notification” period.

To rectify these deficiencies, the NGFA suggests the following changes to this section: “A. *The Provider or FSA may terminate this Agreement by providing the other party written notification 60 90 calendar days prior to the effective date of the termination. ~~During this 60-day period, prior to allowing a user to use the CFS, the Provider will notify the user of the date this~~*”

~~Agreement will terminate.~~ **In such an event, the party terminating this Agreement shall provide written notification to all users/customers at least 75 calendar days prior to the effective date of the termination.**

- **Section IV. Amendment to this Agreement:** It is recommended that this provision be amended to provide for an annual consultation between FSA and providers and users/customers. The following language is suggested: “**FSA may amend this Agreement for any reason after providing at least 90 calendar days’ written notice, unless the change is necessitated by an emergency.** If the Agreement is to be amended, the Provider may refuse to accept such amendment and terminate this Agreement in accordance with Section III. **FSA shall provide for an annual consultation between FSA, Providers, users/customers of such providers, and State warehouse control agencies to discuss potential amendments to this Agreement.**”
- **Addendum 1:** Consistent with its comments concerning Section III of the proposed *Provider Agreement for Electronic Warehouse Receipts and other USWA Electronic Documents*, the NGFA questions the legitimacy of the \$9,000 annual fee proposed by FSA for providers of other electronic documents. If cumulative, this would amount to \$18,000 in annual fees for a provider seeking to offer services to transmit electronic warehouse receipts and seeking FSA approval for transmitting other electronic documents – which likely will erect a financial barrier that undercuts participation and/or makes the costs to users associated with engaging in electronic transactions prohibitive.

## Conclusion

The NGFA commends USDA for issuing its proposed rules and provider agreements, and looks forward to working with USDA in implementing the statute in an expeditious manner.

Respectfully Submitted,



John C. Anderson  
Chairman  
Country Elevator Committee



TO: Roger Hinkle, Chief Licensing Authority Branch  
 Warehouse and Inventory Division  
 Farm Service Agency  
 U. S. Department of Agriculture  
 Stop 0553  
 1400 Independence Avenue, SW  
 Washington, DC 20250-0553

FROM: R. Ford Lanterman  
 1500 West Monmouth Drive  
 Richmond, VA 23233

SUBJECT: Proposed rule on Implementation of the United States Warehouse Act

As a retired USDA employee, I submit the following comments on the Proposed Rule.

Page 46312 The applicability of New York State law in resolving disputes may be a departure from the common rule of law.

Page 46312 List of Subjects in 7 CFR Part 735. The word Warehouses appears to be out of place when used after Tobacco.

Page 46313 735.1 If the intent is to license warehouse operators and approve providers, then the language needs to be more specific.

Page 46313 735.2 (b) The phrase programs requirements seems out of place in licensing regulation.

Page 46315 735.10 (a) Delete the word approved from the phrase approved licensee.

Page 46315 735.14 (e) This section reinforces my comment on the applicability of New York State law in the Background section.

Page 46319 Licensing Agreement for Cotton - I The Net Worth section should be moved up to follow Current liabilities.

Page 46328 Licensing Agreement for Grain - I The Net Worth section should be moved up to follow Current liabilities.

Page 46336 Fee table for Grain - Note the word bales in the CCC Agreement column at the bottom of the page.

I can appreciate all of the effort and time from those involved in this undertaking.

*R. Ford Lanterman*

**NATIONAL GRAIN TRADE COUNCIL**  
**and**  
**TRANSPORTATION, ELEVATOR, AND GRAIN MERCHANTS ASSOCIATION**

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1300 L STREET, N.W.                      SUITE 925                      WASHINGTON, D.C. 20005                      202-343-0400

October 3, 2001

Mr. Roger Hinkle  
Chief Licensing Authority Branch  
Warehouse and Inventory Division-  
Commodity Operations – USDA  
Mail Stop –0553 Room 5968 S  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

Fax: 202-690-3123

Re: RIN: 0560-AG 45 Implementation of the United States Warehouse Act

Dear Mr. Hinkle:

This letter is filed in response to the US Department of Agriculture Farm Service Agency's request for comments regarding the proposed regulation to implement the United States Warehouse Act.

We would first like to commend the Farm Service Agency and, specifically, the Department of Agricultural Commodity Operations, for their diligent efforts to deliver a flexible regulation to cover a very diverse agricultural commodity industry. We believe the Agency is very forward thinking, utilizing the format of a general regulation that can be adapted to any commodity by using a more defined addendum. However, we are concerned that the very large net worth requirements and the high minimum levels of insurance coverage recommended for those companies and individuals who wish to provide the electronic platform to transmit documents (providers) could have a chilling effect on participation.

We would recommend the following changes to the proposed regulation:

1. Examination of books and operations should be reasonable and conducted during normal business hours for both the federally licensed warehouse operators and providers of all forms of electronic transmission of documents.
2. The net worth requirement for providers of electronic systems that transfer documents, other than warehouse receipts, should be reduced to a more commercially reasonable level.

FOOZ

3. Alternatively, a third category of providers should be established for those who electronically transmit documents that are not related to title transfer, payment or financing the sale of the agricultural products. The net worth requirements and insurance coverage minimums should be lower for this third category of providers.

The proposed regulations would establish standards for federally licensed warehouse operators and companies or individuals (providers) who choose to provide the electronic platforms to facilitate the transmission of information regarding warehouse receipts and other documents through electronic means. The proposed regulations set forth very high thresholds for these information facilitators.

We recognize it is important for USDA to have access to examine the operations of the federally licensed warehouse operators and the providers, but it should be accomplished in a reasonable manner that is the least disruptive to normal business activities. Proposed Section 735.108, "Inspections and examinations of warehouses" does appear to be reasonable for warehouse operators. This section states in part, that warehouse operators must permit any agent of the Department to enter and examine the books and operations during usual business hours on any business day. However, similar language that applies to providers appears broader in scope. Proposed Section 735.403 (b), states in part, that each provider will grant the Department unlimited free access at any time to all records relating to the provider's activities. We would suggest that all examinations of providers should be conducted in a reasonable manner, during normal business hours similar to that stated in proposed Section 735.108.

The proposed regulation further separates providers into two categories depending on the type of documents that are electronically transmitted: those who transmit warehouse receipts and those who transmit all other documents. Separate regulations are proposed for the two categories of providers. Under Proposed Section 735.401, providers who electronically transmit warehouse receipts would be required to maintain a net worth of at least \$100,000 and maintain two insurance policies: errors and omissions and another for fraud and dishonesty (fidelity coverage), both with minimum coverage of \$4 million. However, it is proposed under Section 735.402, that providers in the second category, who transmit electronic documents other than warehouse receipts, would be required to maintain a net worth of at least \$10 million and maintain the same two insurance policies with minimal insurance coverage of \$25 million for each policy.

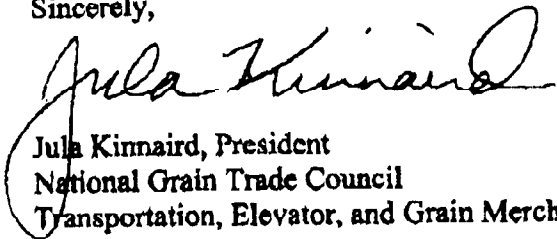
It is understandable that the Department wishes to set a high bar to provide some assurance that the companies involved would be financially sound organizations. However, the proposed net worth and insurance standards for providers of systems that electronically transmit documents, other than warehouse receipts, appears to be excessive. We would propose that the net worth requirement be reduced to \$5 million and the minimum levels for insurance coverage of the two policies be reduced to \$15 million for each policy. These levels would provide an assurance of sufficient financial stability at a commercially reasonable level for providers to participate, in addition this would more correctly reflect the level of risk incurred by these providers.

We understand that at this time it is difficult establish an all-encompassing regulation for these providers when it is not possible to envision the full scope of documents that may be transmitted electronically.

Alternatively, we would suggest that a third category of providers be established for those who transmit documents, other than warehouse receipts, that are not related to transfer of title or financial instruments for the agricultural product. We would suggest that for this third category of providers, the net worth requirements should be \$5 million and minimal insurance coverage for the previously stated two policies should be \$15 million for each policy. The higher standards proposed in section 735.402 could remain for providers of electronic systems that transmit documents that are related to title transfer and financial agreements.

For the above stated reasons, we urge you to incorporate our suggestions into the final implanting regulations.

Sincerely,

A handwritten signature in cursive script that reads "Julia Kimmaid". The signature is written in dark ink and is positioned above the typed name and title.

Julia Kimmaid, President  
National Grain Trade Council  
Transportation, Elevator, and Grain Merchants Association



PLAINS COTTON COOPERATIVE ASSOCIATION □ P. O. BOX 2827 □ LUBBOCK, TEXAS 79408 □ FAX: (806) 762-7335 □ PHONE (806) 763-8011

October 4, 2001

Mr. Roger Hinkle  
Chief, Licensing Authority Branch, Warehouse and Inventory Division  
Farm Service Agency  
United States department of Agriculture  
STOP 0553  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

*Re: Proposed Rule: "Implementation of the United States Warehouse Act," 66 F.R. 46310  
(September 4, 2001)*

*Federal Register Docket #: RINo560-AG45 Implementation of the United States Warehouse Act*

Dear Mr. Hinkle:

Thank you for the opportunity to make the following comments:

Regulations  
735.401 (5)

Conflict of Interest requirements:

What constitutes a conflict of interest? This issue is spelled out more clearly in Exhibit F, section I paragraph c., "The Provider will operate a CFS in a manner that does not favor the interests of any party over those of another party or which creates the appearance of operation in a manner that is biased in favor of any other party." For instance, could this be interpreted to mean that PCCA could not operate a cotton trading system and a cotton title provider system, like it had from 1989 to 2001?

Exhibit C.

V. Liability

The word "strictly" in the first sentence is not appropriate and should be removed. This makes any problem dealing with the provider system the provider's fault, irregardless of whether the provider has any control over such a problem.

F-3

Exhibits C and F

Fees

The FSA fee for an approved provider has been the same since 1995. We understand the need for a rise in fee, however, we feel that a 450% increase (2,000 to 9,000) is a bit steep.

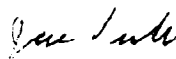
Warehouse Inspections:

Section IV, 10, deals with the inspection/examination of warehouses. Wording needs to be added to the opening paragraph. "The warehouse operator agrees to permit any officer or agent of the United States, authorized by the FSA, to enter and inspect... and will furnish that officer or agent the assistance necessary to enable making any inspection or examination **without disrupting the normal business duties of the warehouse.**" In the past, some warehouse inspectors have been disruptive and disrespectful of warehouse personnel.

Section V, 1,3. (relating to paper receipts) states that nothing contained in this section would keep a warehouse from selling the cotton when charges are greater than the market value of the cotton. This is agreeable, but should also be included in electronic warehouse receipt wording as well.

Once again, thank you for the opportunity to comment. Please feel free to call if we can clarify our concerns.

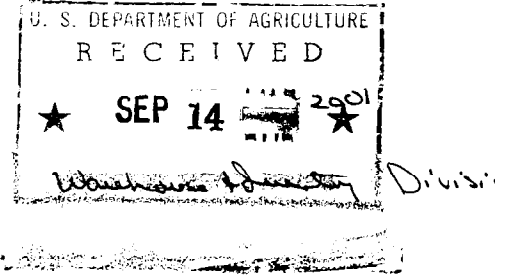
Sincerely



Joe Tubb  
Vice-President Information Systems



Suite 210, 1110 N. Glebe Road, Arlington, VA 22201 USA  
Phone: +1 (703) 516-4346 Fax: +1 (703) 516-4350 www.nfpa.org



September 12, 2001

United States Department of Agriculture,  
STOP 0553,  
1400 Independence Avenue, SW.,  
Washington, DC 20250-0553

Attn.: Roger Hinkle, Chief, Licensing Authority Branch, Warehouse and Inventory  
Division, Farm Service Agency (FSA)  
Subject: Federal Register  
66 FR 46310  
Proposed Rule  
7CFR Chapter 700  
Part 735-Regulations for the United States Warehouse Act

Dear Mr. Hinkle,

Please consider the following comment on Exhibit A Draft:  
IV Duties of the Warehouse Operator

C. Records To Be Kept in a Safe Place

The warehouse operator agrees to:

1. Provide records protection equipment such as a fire rated safe, vault or compartment, in accordance with NFPA 232-2000 "Standard for the Protection of Records" (enclosed) ~~a fireproof safe, a fireproof vault, or a fireproof compartment~~ in which to keep, when not in use, all records, books, and papers pertaining to the licensed warehouse, including a current warehouse receipt book, copies of warehouse receipts issued, and canceled warehouse receipts or microfilm copies of canceled receipts, except that, with the written consent of the Farm Service Agency, upon a showing by the warehouse operator that it is not practicable to provide such records protection equipment ~~fireproof safe, vault, or compartment~~, may keep such records, books, and papers in some other place of safety, in accordance with NFPA 232-2000 "Standard for the Protection of Records" or as approved by the Farm Service Agency.

Reference to this standard provides several protection options to the user, based on the defined importance of the records involved. The standard also provides the flexibility for other protection mechanisms based on the requirements of the Authority Having Jurisdiction or Farm Service Agency in this case.

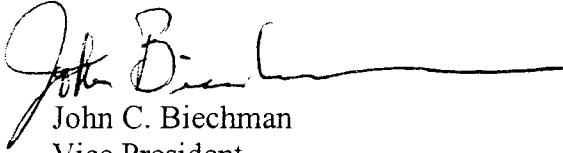
NFPA standards are consensus based, offering the opportunity for input from all sectors of the population. The American National Standards Institute on August 18, 2000 approved this edition of NFPA 232, as an American National Standard.

Washington Office

W-1

On behalf of NFPA International (National Fire Protection Association), I want to thank you for your time and consideration of our comments. If I, or the technical staff at NFPA can provide assistance to you or the Department, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "John Biechman", with a long horizontal flourish extending to the right.

John C. Biechman  
Vice President  
Government Affairs  
NFPA International

enclosure



Mr. Roger Hinkle, Chief  
Licensing Authority Branch  
Warehouse and Inventory Division  
Commodity Operations - USDA  
Mail Stop-0553 - Room 5968-S  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

Dear Roger,


Congratulations on the USWA rewrite and proposed Licensing Agreements. They are well thought out and well written.

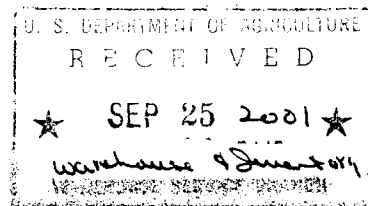
There is one provision in the grain licensing agreement that I would like to comment on. Item IV, H. Excess Storage and Transferring Grain. The proposed requirements on forwarding grain have changed considerably. As you are well aware, the current regulations allow basically unrestricted forwarding of open storage grain. The proposed agreement requires written permission and non negotiable receipts for all forwarded grain, including open storage.

I appreciate the effort to strengthen accountability of forwarding. However, I foresee a number of instances these requirements will put an onerous burden on warehouse operators that routinely forward and on some that store the forwarded grain. I believe accountability can be insured through strengthened examination procedures without additional regulation.

I would personally prefer regulations that mirror those currently in effect. The proposed requirements for forwarded grain that is warehouse receipted, but not for open storage grain.

Sincerely,

  
Robert Brown  
USWA warehouse examiner



W-2

# EWR, Inc.

P. O. Box 3991, 815 Exocet, Suite #111, Cordova, TN 38018 (901) 753-5026 (901) 758-9003 fax

September 21, 2001

Mr. Roger Hinkle, Chief  
Licensing Authority Branch  
Warehouse and Inventory Division  
Farm Service Agency  
U. S. Department of Agriculture  
STOP 0553  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

RCWD SEP 26 '01

Dear Mr. Hinkle:

Thank you for the opportunity to share with USDA my comments regarding the proposed U.S. Warehouse Act rules which were published on September 4, 2001. I will try to divide EWR Inc.'s comments into groups. As a Provider of electronic receipts, EWR Inc. has a direct interest in these proposed rules. The page numbers I refer to are those which appear in the Federal Register.

## Part 735 - Regulations for the U.S. Warehouse Act

p. 46313 - In the definition of "Central Filing System," it would be helpful to know what the words "transparent" and "anonymous" mean in this context. It is very unclear to me.

p. 46313 - In the definition for "Other electronic document" the word "shipment" is used. It should be noted that Providers have been including electronic shipping orders on their systems for many years. It is not appropriate for USDA to begin regulating shipping orders especially since these are non-title documents. Please refer to my comments about 735.400(a).

The current definition of "Other electronic document" is too broad and, therefore, is not meaningful or useful. This definition could easily be interpreted so broadly so as to include invoices, letters of credit, shipping orders, and truck bills of lading, among other things. EWR Inc. recognizes that the USDA staff would prefer not to specify each document in the regulations and we do not recommend that approach. It might improve this definition to include language stating that "other electronic documents" are title documents:

*"...means those electronic title documents..."*

Even the preceding language may not be adequately specific but it is an improvement. This wording does require an "other electronic document" to be some form of title. By narrowing the list to include only title documents (e.g., letter of credit is one but a shipping order is not), this helps to differentiate "other electronic document" from "USWA electronic document."

p. 46313 - In 735.401 reference is made to "USWA electronic document." This term is not defined and it is difficult to differentiate it from the two formally defined terms "electronic document" and "other electronic

document.” Clarification is needed simply to have some idea what this is. Here is a suggested definition which requires USDA to specifically declare a document to be an “USWA electronic document:”

*USWA Electronic Document means those electronic documents, other than an EWR or an 'other electronic document,' which are related to agricultural products and which DACO has specifically declared to be such a document.*

p. 46314, 735.9 - The provision allowing for arbitration is good and should remain as written.

p. 46316, 735.110(d) - No time period (i.e., “...upon the delivery...”) is specified in which the warehouse must cancel a receipt. Even nebulous words such as “in a timely manner” are not included. EWR Inc. currently experiences problems because a warehouse cannot issue a receipt for a bale until the prior warehouse deletes its receipt which represents that same bale (EWR Inc. checks the gin code & tag and will not allow duplicates to exist on the system). Some reasonable time frame (e.g., within seven calendar days of shipment) needs to be included. Also, please review the comments below regarding 735.300(b)(6).

p. 46317, 735.300(b)(5) - The words “...purposely omits information for which a ... field is provided” and “...notate the blank to show such intent” are not appropriate. Providers provide numerous optional fields so that the warehouse can include additional, non-required information if it chooses. The current language would mandate that the warehouse make some entry into all of these optional fields. This will be extra, unnecessary data entry work for the warehouse. This provision will require current warehouse and Provider software to be reprogrammed.

The intent of this statement appears to be to require warehouses to input data into all of the required receipt fields. It should be stated in that manner instead of the way it is stated now. Suggested replacement language would be:

*(5) must input data into all receipt fields required by the Department.*

p. 46317, 735.300(b)(6) - Remember 735.110(d) mentioned above? That section states that a warehouse must cancel a receipt upon delivery of the product. This section (735.300b6) seems to conflict with the other one. This section states that the warehouse cannot deliver the product until the receipt is canceled. It does not appear to be possible for the warehouse to comply with both sections as the language is currently written. Note that the applicable section in the new Warehouse Act appears to be Section 12d (7 USC 251).

**p. 46317, 735.302(a)** - While the new Warehouse Act and the proposed regulations imply in numerous places that each warehouse can only have one Provider at a time, I cannot find language in the regulations stating this. (An example of “implied” is seen in 735.302a2 which uses the singular form of the word “provider.”) This needs to be specifically stated. Whereas this “one warehouse-one provider” doctrine is used currently as common business practice in the cotton industry, many new commodities will soon have electronic receipts. It cannot be assumed that these newcomers will understand or follow an unstated doctrine of common industry practice in cotton. EWR Inc. is not aware of any group at present which is advocating allowing warehouses to have multiple providers for a single commodity.

The problem, of course, with a warehouse having multiple Providers is that the integrity of the receipt cannot be assured. Consciously or inadvertently the warehouse could issue a receipt for the same product on more than one Provider system. At EWR we have observed *many* instances (as recent as last week) in which a warehouse has tried (inadvertently) to issue the same receipt(s) on our system twice (or more). This simply is

not worth the risk of duplication. In addition, I would assume that multiple providers at a single warehouse would make it much more difficult (and expensive) for USDA (FSA or CCC) to audit a warehouse.

Multiple providers would cause the warehouse additional work and expense since the warehouse will have to keep more than one set of electronic records in balance and since the workers will have to become familiar with the operation of more than one system. Merchants will face new problems (and more work) trying to keep track of which receipt belongs to which provider at a single warehouse.

Restricting a warehouse to a single provider has not caused any undue hardship or burden on warehouses, gins, merchants, or producers in the cotton industry since the initiation of EWR's in cotton. EWR Inc. is not aware of any complaints about this current practice.

The new Warehouse Act in Section 11 (7 USC 250) states that two (or more) receipts may not be issued for the same agricultural product. The only practical way to achieve this when dealing with electronic receipts is to restrict each warehouse to having only one electronic receipt Provider (for each commodity) at any one time.

EWR Inc. suggests that a minor change be made to the language in **735.302(a)(1)**:

***Only issue ewr's through one FSA-approved provider for each agricultural commodity.***

The preceding language would allow a warehouse which stores multiple commodities to have a different Provider for each commodity. However, the wording would allow the warehouse to have only one Provider per commodity.

p. 46317, 735.302(a)(6) - It is not common practice currently for the warehouse to give written notice to the Provider when the warehouse wants to modify data on a receipt it issued and holds. Requiring written notice will slow down the correction process (n.b., warehouses typically only modify a receipt in order to correct it), create additional work for the warehouse, create additional filing for the Provider, and add to general chaos. There is nothing to be gained by doing this. This language should be stricken.

p. 46317, 735.302(b)(3) - The words "must be included" certainly sound like the word "required" to me. Why not just call Holder a required field which everyone knows it is (are we trying to fool someone by calling it 'additional information?').

p. 46318, 735.302(b)(7) - In current business practice, the Provider is often authorized by the user to take action on behalf of the user. This might occur, for example, if a user's computer breaks. In any case, the users must be permitted to *continue* doing what they do now, which is to authorize the Provider to act as their agent on their behalf. The language in the proposed regulation does not forbid this but it also does not state that such action is okay. Does omission of this topic imply that it is okay to continue this current, common business practice? If omission implies that the practice is okay then no new wording needs to be added. If omission implies that the current practice is not okay, then the regulatory wording should be changed as follows:

*"...authorize any other user of a provider, or the provider itself, to act on their behalf..."*

p. 46318, 735.400(a) - As was mentioned in earlier comments about the proposed definitions on page 46313 of the regs, currently Providers have electronic shipping orders on their systems. The language here appears

to indicate that USDA will now regulate this non-title document. USDA does not need to regulate non-title documents. The language here probably needs to be changed to add the words:

*(A) Electronic title documents specified by the Secretary relating to the shipment, payment...*

This suggested wording would give the Department flexibility in deciding which specific documents should be “other electronic documents” and which should not. Please refer to my comments regarding the definitions on page 46313.

p. 46318, 735.401(a)(2) - With respect to the new insurance requirements, EWR strongly recommends that these requirements become effective with the start of the next crop year since most Providers, including EWR, already have obtained insurance for the current season which the cotton industry is now well in to. Providers likely did not budget for the higher insurance costs this season and they should be given until next season to make arrangements for the higher limits.

p. 46318, 735.401(b)(5) - USDA obviously feels it is important to let it be known that Providers will act in an impartial manner toward all users because the Department not only makes reference to “conflict of interest” at this point, it also makes reference to a separate “provider integrity statement” in 735.401(b)(8). EWR Inc. agrees that it is helpful to include language which declares to everyone that the Provider will act fairly and with no bias.

That language required by 735.401(b)(5) was *not* included in the proposed Provider Agreement (Exhibit C), although applicable language *does* seem to be in Exhibit F. In any case, the appropriate language would be best included in the regulations where users of Provider systems will have the opportunity to read the words requiring the independence of Provider systems. Inclusion in the regulations would automatically make the language part of the “terms” section of each Provider Agreement (Exhibits C & F).

Basically the language should simply say that a Provider will operate in an honest, impartial, and fair manner. EWR Inc. has no problem with such a statement and we would be surprised if someone suggested that a Provider should *not* operate in an honest, impartial, and fair manner.

Leave the proposed language in 735.401(b)(5) as it is (and add the required conflict of interest wording to the Provider Agreement). In addition, add a new section, 735.401(e). Suggested language for this new section would state:

*Each Provider will operate a system that is independent in action and appearance of bias or influences other than those which serve the best interests of the users.*

The preceding language was written by USDA staff and is taken directly from the preamble of the Provider Agreement (Exhibit C). The language used, “independent in action and appearance” is similar to the language that defines the relationships between CPA’s and their audit clients. By placing the language in the regulations, both the Providers and users will be aware of the exact requirements. It also would seem to be needed as a new section 735.402(f) in order to be included in Other Electronic Documents Provider Agreement (Exhibit F). Please refer to my comments regarding the Provider Agreement (Exhibit C) as to what suggested new language of this type should be added to that document.

p. 46318, 735.401(b)(8) - The proposed Provider Agreement (Exhibit C) does not include any “integrity statement.” The intent of the writers of these proposed rules clearly is to include wording that will assure

readers that Providers will be independent and exhibit the highest integrity. EWR Inc. supports this. All that is needed is actual language in both the regulations and the Provider Agreement(s). The language should require the Provider to be independent of any real or potential conflicts of interest. Please refer to my comments regarding 735.401(b)(5) and my comments regarding the Provider Agreement (Exhibit C).

p. 46318, 735.402(a)(1) & (2) - This states that Providers of “other electronic documents” (an extremely unclear term as currently defined) must have a net worth of \$10 million and insurance of \$25 million. These numbers are too large and will preclude many companies from offering this service (thus restricting competition by establishing artificial barriers to entry). EWR Inc. is aware of *no justification* (research or studies) that supports such large numbers. It appears that these figures have been randomly selected.

Unless USDA has some strong justification (based on research or other factual evidence) for these figures then EWR Inc. favors *removing* them. Instead, the figures should be lowered to the level of the levels shown in 735.401(a). Alternatively, some maximum (not to exceed) amounts (these amounts should still be lower than the \$10 million and \$25 million) could be put in 735.402(a) and then actual (even lower) amounts should be included in the Provider Agreement where the figures can be modified as justified over time.

p. 46318, 735.402(b)(5) & (8) - Please refer to my comments regarding section 735.401(a)(5) & (8). Those comments are applicable here. EWR Inc. has not found any reference to an “integrity statement” in the Provider agreement for “other electronic documents”(Exhibit F). A “conflict of interest” statement does appear to be in Exhibit F under part I section C.

p. 46319, 735.404(b) - Providers need some flexibility to change their tariffs in less than a year if unforeseeable circumstances arise. The current proposed language provides no such flexibility. Since Providers to date have never increased fees, modifying fees tends to benefit users who normally receive reduced costs as a result of a fee change. Change the minimum time period for which the fees must be effective from one year to six months.

#### Exhibit C - Provider Agreement

p. 46337, Opening paragraph - The word “document” is not defined and is confusing. It is hard to differentiate between an “electronic USWA document” and an “other electronic document” (as referenced in the proposed regs 735.401 and 735.402). Some clarification is in order. Please refer to my comments regarding the definitions in the proposed regulations.

p. 46337, item C - This paragraph regarding “independence” is quite appropriate and seems to be in line with the intent of the regulations 735.401(b)(5) & (8). Without such language it could be assumed that some lack of independence is acceptable. The language as written helps and certainly does not cause any harm.

It must be noted that the current placement of the “independence” language is *not* in the “terms” section of the Provider Agreement. If this language is placed into the regulations as suggested then it automatically becomes incorporated into the “terms.” This is the best alternative. If it is *not* placed in the regulations, then the “independence” language needs to be moved to or copied into the “terms” section of the Provider Agreement. Otherwise the language is useless because, in its current location, the statement is not a contractual condition with which the Provider must comply. Leaving it out of the “terms” section of the Agreement is equivalent to leaving it out of the Agreement completely.

p. 46337, II A - The statement "...not less than 12 hours on Saturday and Sunday..." is good because it recognizes that the systems are used sparingly on weekends except during the harvest season. The reduced weekend hours gives the Provider a little more downtime in which to perform system maintenance and upgrades. It would be nice if the 12 hours also applied to futures market-exchange holidays since there is minimal system activity on those days.

As a Provider, EWR will operate its system on weekends for 18 hours/day during busy times. Competition and our users will require this. However, during slow periods of the year it would be nice to have this option of not operating the system as many hours so that we can perform upgrades and maintenance.

p. 46337, II B 2 - The requirement not to report to FSA unless the system is down one hour is definitely an improvement over the current requirement of reporting if the system is down for 5 minutes.

p. 46337, II C - In the last sentence in this paragraph the language "...information from the Provider shall be available in either electronic or printed format..." needs to be changed. As written this could be interpreted to require the Provider to maintain extensive paperwork. This can be clarified by inserting the word "made" so that the revised sentence would state "...should be *made* available..." This requires the Provider to make paper documents for USDA upon demand but could not be interpreted as requiring the Provider to keep such paperwork on hand at all times.

p. 46337, IV - EWR Inc. would like to see the following wording added to this section:

*Guaranty agreements from a parent company submitted on behalf of a subsidiary or from a related party may be accepted by the FSA in determining the net worth requirements of a Provider.*

p. 46337, IV C - This paragraph is not in the current Provider Agreement. Instead, references to audits are in section 735.103 of the current regulations. Does this mean that a Provider has to do anything different from what we do now?

p. 46337, V - The word "strictly" in the first sentence is not appropriate and should be removed. This language is in the current Provider Agreement and the cotton industry argued in 1994 that "strictly" was not appropriate when the current version was developed. The problem with "strictly" is that it makes a system problem the Provider's fault regardless of whether it is the Provider's fault. If a meteor hits the Provider's computer and destroys it, should the Provider be held responsible for that meteor falling? This language ("strictly") says the answer is "yes" when clearly that would be unfair. The word "liable" alone carries adequate strength in this statement.

p. 46338., VI C - This paragraph does not reflect current business practice. Currently a holder may, through written notification, request that the Provider take action on his behalf. As recently as this week EWR delivered receipts for a holder who had circumstances which prevented him from doing this for himself. In this case, EWR received no fees. However, if EWR had not done the work the holder would have suffered major problems including probable financial losses.

The Provider must be allowed to act as the agent for the holder when such a request is in writing and signed. EWR Inc. would suggest that the proposed language be modified so that paragraph C would read in the

following manner:

*“Providers shall not delete or alter any of the FSA required electronic warehouse receipt data fields, electronic USWA document data fields or related data in the CFS including the holder field unless such actions are authorized by this Agreement, by FSA, or by the holder in a written, signed document.”*

The suggested language in no way violates the proposed regulations.

p. 46338, VII A - The words “unauthorized distribution” are open for interpretation since there is no guidance given in any document as to what these words mean. Since no distribution is noted specifically as being “unauthorized” some Providers may choose to interpret this to mean that all distribution is okay until told otherwise. For example, this could become a problem if a Provider decides that some entity other than the receipt Holder is not “unauthorized” to review receipt data. To avoid this type of problem some clarification of “unauthorized distribution” needs to be made.

p. 46338, VII B - The new requirement that backup systems for Providers must be in a location different from the main computer is a good addition to this agreement.

p. 46338, IX A 1 a & b - When a warehouse specifies that it wants to change Providers, the current business practice (as mandated by USDA) is to move all open receipts from the old Provider to the new Provider. Yet this language states that only receipts/documents created within the past year should be moved to the new Provider. This makes no sense. It seems to state that, even though the warehouse has chosen a new Provider, the Provider Agreement will force the warehouse to maintain some receipts on the old Provider system. This would negate the warehouse’s ability to make a choice. The words “...*within the past 1 year...*” need to be removed from both (a) and (b). Please refer to my comments in the paragraph that follows.

p. 46338, IX A 1 c 2 - This paragraph is unclear. If a warehouse is changing Providers then all open receipt records (i.e., every receipt that is not yet canceled) should be transferred to the new Provider. However, this paragraph says that the data to be transferred should *only* include open receipts issued in the past year. This would exclude all open receipts which are more than one year old. It makes no sense to transfer only some of the receipts and leave some on the old Provider system. This paragraph needs to be corrected by dropping the words “*within the past 1 year.*” Please refer to my comments for Exhibit C IX A 2 b.

p. 46338, IX A 1 c 4 - This paragraph needs to be broadened to specify which Provider’s format the data has to be transferred. EWR Inc. has experienced problems in the past when other Providers have refused to accept data in our format or have refused to provide data in our format. Simply add language which states that the new Provider will provide the format for data transmission.

p. 46338, IX A 2 b - Please refer to my comments for IX A 1 c 2. Any open receipt or *open* document must be transferred to the new Provider. The language “...*issued within the past 1 year 30 days prior to the transfer date*” needs to be deleted. Perhaps I am misreading this entire sentence. I do not understand why the language seems to restrict those receipts which will be transferred to the new Provider. (Maybe there is a good reason that I am missing.) Many EWR Inc. warehouse customers hold open receipts which were originally issued several years ago. Refer to my other comments herein for section IX A of this proposed



Provider Agreement.

p. 46338, IX A 2 c - Some time frame needs to be included to indicate the deadline by which this must be done. The best idea would be to state that payment must be received before the transfer can occur.

p. 46339, XIII - The proposed regulations (735.401b5) states that the Provider Agreement will contain a conflict of interest statement. Such a statement is included in the terms in Exhibit F (Provider Agreement - Other Electronic Documents) in section I C. That language states "*(T)he Provider will operate a CFS in a manner that does not favor the interests of any party over those of another party or which creates the appearance of operation in a manner that is biased in favor of any other party.*" That same language needs to be included in the Exhibit C provider agreement to be consistent and to meet the aforementioned regulatory requirements. Section XIII seems to be a "catch-all" section and is probably a good place to put this language unless it would be preferable to create an entirely new section.

p. 46339, Addendum 1: Fees - Since the fee is being raised substantially and we already are in the 2001-2002 crop year, EWR Inc. thinks it is only fair not to make this new amount effective until the next crop year.

Exhibit D - Addendum Cotton Electronic Receipts

p. 46339, I A - The paragraph states that the Provider will ensure that "...all of these fields are completed by all warehouse operators." One of the fields listed is Cancellation Date. It is impossible for the Provider to know when a receipt is going to be canceled since the warehouse makes that decision. This means it is impossible for the Provider to ensure that this field will be completed. Cancellation date needs to be dropped from this list.

A separate list should be created which shows required fields (for which a Provider must make space available in his electronic receipt record) other than those which the Provider must ensure are completed. Cancellation date would be first on this list. Tare weight also should be included along with Storage Paid Through Date and Crop Year.

p. 46340, I A - In the listing of fields:

1. Crop year should be included. The New York Board of Trade in 2003 will require this on certificated receipts. For regular receipts it can be misleading to the buyer if the correct crop year is not included.
2. What is the Bale Tag Number? Is this the number on a tag placed on the bale by the warehouse or the tag placed by the gin or either one? Change the name of this field to "Warehouse Bale Tag Number."

p. 46340, I A - Some statement should be included which allows the warehouse to alter/correct some of the listed fields even if the warehouse is not the holder. Any such change would have to be accompanied by notification of the change to the current holder. If desirable for security, it could be required that the warehouse notify (or request permission from) FSA prior to any change. Also, the eligible fields could be limited to: crop year; bale tag number; issuance date; received from; net weight; and storage paid date.

p. 46340, I B - The language states “FSA may allow a user...to modify the elements...” “May” is a somewhat nebulous term. How does the Provider know when “may” applies? Should we assume it is okay unless told to stop or do we need to obtain formal permission before allowing any change to occur? Will “may” be applied on a case-by-case basis or to everyone equally at the same time? This needs to be made a bit more specific.

p. 46340, I B - In the listing of fields:

1. EWR Inc. assumes the “warehouse code” is the code assigned by CCC. Is this correct?
2. “Rail and truck” may be applicable to some commodity but not to cotton. These should be eliminated from this list. Certainly there is no reason for this to be required information.
3. Not every warehouse uses the “location of the bale” field, although many do. As a Provider it does not bother EWR Inc. to leave this field in the list but we believe that making it required will prove to be a problem for many warehouses, especially the smaller “country” warehouses.
4. Gross weight needs to be eliminated from the list. Since net weight and tare weight are required fields, gross weight can easily be computed if it is needed. Requiring this redundant piece of data serves no useful purpose.
5. It is not necessary to require the collection of information regarding whether the warehouse has an agreement with CCC. This information adds nothing that is helpful in identifying the commodity represented or the negotiability of the receipt. This field should be excluded from the list.

#### Exhibit E - Addendum Grain Warehouse Receipts

EWR Inc.’s preceding comments regarding Exhibit D are all basically applicable also to Exhibit E.

#### Exhibit E-2 - Addendum Inspection & Weight Certificates

p. 46341, I B - The language states that “FSA may allow a user...to modify the elements listed below...” My question is whether it is appropriate for other users to be altering an official certificate at all. Perhaps this sentence should be dropped entirely.

#### Exhibit A - Licensing Agreement for Cotton

p. 46321, IV C 1 - This section is entitled “Records Kept In A Safe Place.” Is it appropriate to use the language requiring the warehouse to maintain “...a current warehouse receipt book, copies of receipts issued, and canceled warehouse receipts...?” For a warehouse issuing an electronic receipt these things may not be necessary since the Provider maintains copies of receipts and an audit log showing all canceled receipts.

p. 46323, IV N 1 d - It is not common practice currently for the warehouse to give written notice to the Provider. Requiring written notice will slow down the correction process, create additional filing, and add to general chaos. There is nothing to be gained by doing this. This language should be stricken. Please refer to

my comments regarding 735.302(a)(6) in the proposed regulations. **Also, please note that this same comment is applicable to Exhibit B (Licensing Agreement for Grain).**

p. 46323, IV N 2 g - This language needs to be modified to reflect current business practice. The new wording would be:

*Allows a 'holder' the option to authorize any other user of a provider system, or the provider itself, to act on their behalf with respect to their activities on the provider system.*

Exhibit F - Provider Agreement Other Electronic Documents (p. 46342)

The opening paragraphs of this agreement attempt to define "electronic documents." Unfortunately, the definition is so broad that it is impossible to tell what documents are covered and which are not. This broad definition is obviously an attempt at flexibility which is laudable. Without an improved definition there is no way to know whether a document falls within the scope of this agreement. This is a major fault which has to be addressed.

As an example, consider a truck bill of lading. As I read Exhibits C and F, it appears to me that a truck bill of lading for 80 bales of cotton would fall under the definition of electronic document stated in Exhibit F. Yet the requirements for a Provider in Exhibit F are far in excess of those necessary for a Provider system maintaining a truck bill of lading. If the intent is for a truck bill of lading to be covered by the Exhibit C Provider Agreement (which is appropriate), that is not immediately clear by reading Exhibit C.

I C - The first sentence in this paragraph is very good and should be kept as is with no alteration.

I G - The \$10 million figure appears to be unreasonable because there is no basis for it. It appears to be an amount that was arbitrarily chosen. Unless economic justification for \$10 million can be made then the figure should be reduced perhaps to \$500,000 (which I chose arbitrarily). In any case, there must be some reasoning to support these numbers and that must be based on sound economic arguments. The current figures are too large and appear to have been chosen randomly based on someone's individual whim.

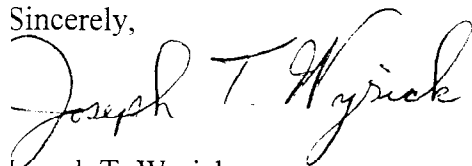
I would like to see the following wording added to this section:

*Guaranty agreements from a parent company submitted on behalf of a subsidiary or from a related party may be accepted by the FSA when determining the net worth requirements of a Provider.*

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I want to compliment the USDA staff on the good job they did in preparing these proposed rules. EWR Inc. appreciates USDA's consideration of its comments. Please call me if I can clarify any for you.

Sincerely,



Joseph T. Wyrick  
President & CEO

C. MILTON JOHNSON  
CHAIRMAN OF THE BOARD

BOARD OF DIRECTORS

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BOARD MEMBER EMERITUS



C. W. NELSON, JR.  
PRESIDENT  
CEO

FAX (334) 872-7373

September 24, 2001

Mr. Roger Hinkle, Chief  
Licensing Authority Branch  
Warehouse and Inventory Division  
Farm Service Agency  
U.S. Department of Agriculture  
Stop 0553  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

ROUND SEP 27 2001

Dear Mr. Hinkle:

I would like to share with you my comments on the proposed rules for the U.S. Warehouse Act. Those rules were published in the "Federal Register" on September 4, 2001. I operate a warehouse in Selma, Alabama, and have served in different positions with the Cotton Warehouse Association of America and with the National Cotton Council.

In various cotton industry association meetings I had heard that the rules might contain a statement which required the electronic warehouse receipt and document Providers to operate without any bias toward any user and in an independent manner. I was disappointed to not find such language in the proposed rules. I believe that each Provider should be impartial and I think it should be stated as part of the regulations. I would like to see the final rules contain wording which reflects this. This language should not be burdensome or pose severe constraints. I do not believe any honest Provider would object to this.

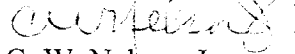
Also, I do not see any restriction in the rules which requires a warehouse to use a single Provider. I do not know whether this omission was an oversight or intentional. As a warehouse operator I do not want the burden of having to deal with multiple Providers for whatever reason. Multiple Providers would likely cause mistakes to occur in warehouse record keeping. I want the rules to say that a warehouse can only have one Provider at any time and that a warehouse can only change Providers once every twelve months.

Finally, I believe that crop year needs to be a required field when creating an electronic cotton warehouse receipt. It is not any burden for me to collect and provide this data. With the New York Board of Trade set to require this information in 2003 I believe that every receipt should have this data associated with it. I would like to see this requirement reflected in the Agreement that the Provider must sign with USDA.

Thank you for considering my comments.

Sincerely,

DALLAS COMPRESS COMPANY



C. W. Nelson, Jr.

# DOERUN GIN COMPANY, INC.

"Serving South Georgia's Finest Cotton Producers"

RCVD OCT 1 101

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P.O. BOX 550  
DOERUN, GA 31744

PHONE: (229) 782-5278  
FAX: (229) 782-7402  
[doegin@southsouth.com](mailto:doegin@southsouth.com)

September 25, 2001

Mr. Roger Hinkle  
Warehouse and Inventory Division  
Farm Service Agency - USDA  
STOP 0553  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

Dear Mr. Hinkle:

The company for which I work is a cotton gin and warehouse in Georgia. We have been using electronic cotton warehouse receipts for several seasons. Proposed rules for the U. S. Warehouse Act were printed in the "Federal Register" last September 4, and there are several comments I wish to share.

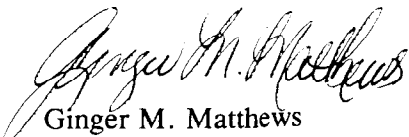
From what I have observed it appears that Providers in the cotton industry have treated most users equally and fairly. However, as electronic receipts expand into additional crops Providers in general may become associated with companies whose primary interest is not in providing fair, equitable treatment to all users. To prevent any problems arising from such a situation I would like to see added to the proposed rules some type of statement which requires the Providers to act independently of any bias, be impartial in treatment of users, and avoid conflicts of interest. I think it is prudent to include this now rather than to have to address a problem that might otherwise result.

It appears that, for some reason, the proposed Provider Agreement for electronic receipts only requires a Provider to move receipts issued in the past year to a new Provider if a warehouse decides to transfer to a new Provider. This makes no sense. Why would only some of the open receipts be moved from an old Provider to the new Provider? Whatever reasoning was behind this idea was flawed. The Provider Agreement has to be altered so that, when a switch to a new Provider occurs, all of the open receipts on the old Provider's system are moved onto the new Provider's system.

Each warehouse must have only one Provider at a time. The proposed rule does not indicate that a warehouse cannot have more than one Provider. If allowed, some warehouses will decide to have multiple Providers and the result (likely unintentional) will be that more than one receipt will be issued for a single bale. This will impair integrity of the receipt as a title document. USDA should do everything it can to prevent multiple receipts being issued for one bale. The rules need to state that a warehouse may only have one Provider at a time.

I would request your thoughtful consideration of my ideas.

Sincerely,

  
Ginger M. Matthews

Oklahoma Texas Panhandle Compress, Inc.

09/26/2001

RCRD OCT 1 '01

Mr. Roger Hinkle, Chief  
Licensing Authority Branch  
Warehouse and Inventory Division, FSA  
USDA, STOP 0553  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

RCRD OCT 1 '01

Dear Roger,

In regard to the proposed rules for the U. S. Warehouse Act, I would like to make the following comments. I am the General Manager for Oklahoma & Texas Panhandle Compress, Inc. We operate six warehouse locations in the West Texas & Northern Rolling Plains of Texas. We are active members of the Cotton Warehouse Association of America, as well as the National Cotton Council of America.

Currently, each warehouse can have only one Provider. The proposed rules do not include this requirement. I strongly oppose allowing a warehouse to have more than one provider at any time. I believe the rules need to be very specific in stating that restriction. If, for whatever reason, one of the six warehouses that I manage had to have two Providers simultaneously, then we would experience a tremendous problem trying to keep proper records of receipts issued for a single bale. Our warehouse system does not allow us the use of multiple providers for the same code, and we would have to re-write software also. All this can be prevented by restricting each warehouse to a single Provider as it is currently.

I also have a concern about Providers who offer other services in the industry and seem to "create" problems for other Electronic Receipt Providers. I think the rules ( not just the agreement ) needs to include a statement of some kind which states that a Provider will operate without conflict of interest which might prevent that Provider from always putting the needs of its customers first. An entity that provides Electronic Receipts should provide the necessary means for any entity using their receipts to operate smoothly. If you would like further comments, please give me a call. Thanks for all the effort you have given the re-write of the U. S. Warehouse Act.

Sincerely,

  
Wendell Tucker

W-6



106 Frisco  
Marked Tree, Arkansas 72365-2298

RCMD OCT 1 '01

September 27, 2001

Mr. Roger Hinkle  
Warehouse and Inventory Division  
FSA-USDA  
STOP 0553  
1400 Independence Avenue, SW  
Washington, DC 20250-0553

Dear Roger:

I need to share with you some of my thoughts regarding the proposed rules pertaining to the U.S. Warehouse Act which were published in the "Federal Register" last September 4. My cotton gin and warehouse are located in the Mid-South.

I find Sections 735.110 and 735.300 to be confusing. Based on the terms of these sections I cannot tell exactly when my warehouse is supposed to cancel a receipt. Can these two sections be reconciled and written so that I know when I must cancel?

I was under the impression that the rule would contain a statement requiring electronic receipt Providers to operate without conflicts of interest so that the best interests of the system users would be the primary goal. While I have found references in the rules to "integrity statement," I have found no such statement in the proposed rules. I applaud the concept and would like to see an integrity statement included in the rules. This statement does not need to cause problems or pose barriers for Providers but it should remind them that the primary reason they are in business is to provide a quality service to all of their users.

Each warehouse should only have one Provider. To guard the integrity of the electronic receipt I suggest that words to that effect be included in the proposed rules.

Please call me if I need to further explain any of these suggestions.

Sincerely,

A handwritten signature in black ink, appearing to read 'wnl'.

Wayne Nichols





# Federal Register

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**Tuesday,  
September 4, 2001**

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**Part II**

## **Department of Agriculture**

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**Farm Service Agency**

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**7 CFR Parts 735, 736, et al.  
Implementation of the United States  
Warehouse Act; Proposed Rule**

**DEPARTMENT OF AGRICULTURE****Farm Service Agency**

**7 CFR Parts 735, 736, 737, 738, 739, 740, 741 and 742**

**RIN 0560-AG45**

**Implementation of the United States Warehouse Act**

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Department of Agriculture (USDA) is proposing a revision of the regulations administering the United States Warehouse Act to implement the provisions of the Grain Standards and Warehouse Improvement Act of 2000 (2000 Act). The 2000 Act, enacted on November 9, 2000, amended the United States Warehouse Act (USWA) in its entirety. The 2000 Act updates Federal warehouse licensing operations, authorizes electronic warehouse receipts for all commodities, and authorizes the Secretary of Agriculture (Secretary) to establish regulations for voluntary systems for other electronic documents related to sales and transfers of agricultural products. Further information about the USWA and copies of the 2000 Act, the official transcript of January 23, 2001's public meeting, and this proposed rule may be found at <http://www.fsa.usda.gov/daco/uswa.htm>.

**DATES:** Comments concerning this rule must be received on or before October 4, 2001 to be assured of consideration. Comments regarding the information collection requirements of the Paperwork Reduction Act must be received October 4, 2001 to be assured of consideration.

*Comments:* For complete consideration and evaluation, commenters are asked to include with each of their comments the specific page, subpart, section, sub-section, etc., of the proposed rule. Comments that suggest alternate or replacement language may be considered. Commenters may submit their comments by mail, fax, e-mail or internet to the applicable address below.

**ADDRESSES:** Comments should be sent to Roger Hinkle, Chief, Licensing Authority Branch, Warehouse and Inventory Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250-0553, telephone (202) 720-2121, FAX (202) 690-3123, e-mail address, [USWA@wdc.fsa.usda.gov](mailto:USWA@wdc.fsa.usda.gov),

or USWA's internet web page at <http://www.fsa.usda.gov/daco/uswa.htm>. Persons with disabilities who require alternative means for communication of regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD).

**FOR FURTHER INFORMATION CONTACT:** Roger Hinkle, (202) 720-7433 or e-mail [USWA@wdc.fsa.usda.gov](mailto:USWA@wdc.fsa.usda.gov).

**SUPPLEMENTARY INFORMATION:****Executive Order 12866**

This proposed rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

A Regulatory Impact Analysis (RIA) was prepared. The USWA does not mandate participation by those it regulates; it simply offers warehouse operators and service providers an alternative means for servicing their depositors and other customers. The fees charged USWA users are intended to offset the administration of the Act. The RIA summarized the cost and benefit impact of the rule as follows:

The rule offers current and potential warehouse operators a voluntary means to license warehouses used to store agricultural products. It also uniformly provides for the issuance of warehouse receipts, including electronic warehouse receipts, for agricultural products stored or handled in licensed warehouses, and for other purposes.

Implementation of the USWA and the establishment of associated standards and protocols will help: (1) Maintain the competitiveness in domestic and world markets; (2) improve the prices that producers receive; and (3) eliminate any disruption in commerce.

Copies of the RIA are available upon request at the address listed above.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Environmental Evaluation**

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

**Unfunded Mandates Reform Act of 1995**

The provisions of Title II of the Unfunded Mandates Reform Act of 1995 are not applicable to this rule because the USDA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Executive Order 12612**

It has been determined that this proposed rule/activity does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

**Background**

The 2000 Act, enacted on November 9, 2000, provides for the revision of the USWA. The 2000 Act amendments provide for licensing and inspection of warehouses used to store agricultural products, issuance of warehouse receipts, including electronic warehouse receipts, for agricultural products, and for other purposes.

The USWA, originally enacted in 1916, authorized the Secretary to license warehouse operators who stored agricultural products and persons to sample, weigh, inspect and grade agricultural products. The USWA licensing program has always been voluntary and regulated licensees in order to protect depositors.

In 1990, the USWA was amended to direct the Secretary to establish EWRs for the cotton industry. Since the first issuance of EWRs in 1995, the number of banks, cooperatives, gins, merchants and warehouse operators participating in USWA's electronic-based program has more than doubled. The percentage of EWRs issued increased from 45 percent of the 15 million bales in 1995-1996 crop year to more than 95 percent of the 17 million bales in 1999-2000 crop year.

The 2000 Act amendments include several provisions that thoroughly modernize the program and reflect the current technology advancements

within the agricultural marketing systems. The new provisions will make U.S. agriculture more competitive in both domestic and foreign markets through efficiencies and cost savings provided by today's computer technology and information management systems. These new provisions include: (1) Extending the USWA's authority to all agricultural products including a processed product of an agricultural commodity; (2) granting the Secretary the power to establish regulations governing one or more electronic systems under which EWRs or other electronic documents related to the shipment, payment and financing of domestic and foreign agricultural products may be issued or transferred; (3) allowing licensees or providers to provide a bond or other financial assurance as the Secretary determines appropriate; (4) allowing warehouse operators to allocate storage space to a depositor; (5) requiring warehouse operators to issue warehouse receipts only when requested by the depositor; and (6) allowing for arbitration.

The proposed rule redesigns the structure of the warehouse licensing regulations by removing the eight commodity-specific regulations and replacing them with one general regulation. The commodity-specific requirements have been moved to the applicable licensing (See Exhibits A and B for cotton and grain, respectively) or provider agreements. The proposed rule updates and modifies the regulatory language, merges all similar language from the specific commodity regulations and at the same time removing redundancies, but does not substantively changing the program operations. Public comments are requested regarding the new regulatory format, including the consolidation of the specific commodity regulations into one broad, generic regulatory package; and the placement of the specific commodity requirements in the licensing agreements or the provider agreements.

As a result of the merger of all the specific-commodity warehouse regulations into one generic regulation, the cotton flow standard previously codified at 7 CFR part 735.201, is not included in these regulations. The cotton flow standard has been included in the cotton-specific licensing and EWR provider agreements.

The operation of the licensing program for warehouse operators, inspectors, samplers, classifiers, and weighers is not substantively changed by the proposed rule. The proposed general licensing program requirements

are furnished in subparts B and C with the more specific requirements stated in the licensing agreements. Public comments are requested on the continuation of the current licensing program, including any licensing requirements that should be changed.

Section 3(h) of the USWA allows the Secretary to issue regulations governing one or more electronic systems under which EWRs may be issued and transferred and other electronic documents relating to the shipment, payment, and financing of the sale of agricultural products. Previously, EWRs were only authorized for cotton. The authority for electronic conveyance of other business documents (such as grade and weight certificates, phytosanitary certificates, bills of lading, export evidence certificates or letters of credit) is a new authority. The proposed regulation in subparts D and E provides for a system where FSA will establish regulatory guidelines for systems for the electronic conveyance of these and other electronic documents that will authorize and standardize electronic documents and allow their transfer from buyer to seller across state and international boundaries. This new paperless flow of agricultural products from farm gate to end-user will provide savings and efficiencies for America's farmers. Public comments are requested on the system for electronic conveyance as provided in the proposed rule, including the use of service providers, and the involvement of FSA in standardizing the electronic document formats.

The structure will mirror that structure established for cotton EWRs consisting of independent providers who have signed an agreement with FSA. Section 735.300 provides the general warehouse requirements applicable to all warehouse receipts whether paper or electronic for any agricultural product. Requirements specific to EWRs are found in section 735.302. FSA has developed two provider agreements. The EWR provider agreement for EWRs and electronic USWA documents will cover all approved agricultural products (See Exhibit C). Separate addenda will be developed to cover the commodity-specific EWRs (See Exhibit D and E for cotton and grain, respectively). FSA has developed a second provider agreement that will cover all other electronic documents (See Exhibit F). Separate addenda may be developed for each specific document. FSA decided to increase both the net worth and the insurance requirement for providers of EWRs. The net worth requirement was increased from \$25,000 to \$100,000 and

the insurance coverage required was increased to \$4 million. These changes are codified at Section 735.401. Public comments are requested on these increases in financial requirements.

Section 11(e)(4) of the USWA provides that "an electronic receipt issued or other electronic document transferred, in accordance with this Act shall not be denied legal effect, validity, or enforceability on the ground that the information is generated, sent, received, or stored by electronic or similar means." Accordingly, this proposed rule in subpart E sets forth the manner in which a private person may be approved to establish a system that accomplishes these functions. Under the provider agreement for these functions, in addition to other activities, a party will be able to take a paper document relating to the shipment, payment, and financing of the sale of an agricultural product to an approved provider and the provider may generate an identical electronic document for electronic transmission. This aspect of the USWA will allow parties to conduct all aspects of these agricultural transactions in an electronic manner whereas currently, in many instances, necessary documents are in a paper format and must be physically delivered to another party.

Entities involved in transactions which are anticipated to be conducted under such a system are anticipated to be primarily those which are involved in international shipments in which the financing of the sale will be through the use of various commercial instruments including letters of credit issued by foreign entities. The value of the commodity and associated cargo costs involved in these transactions will often exceed \$10 million. Unlike those providers which are authorized to administer an electronic system with respect to warehouse receipts, the providers which are approved by the Secretary to operate this broader system which, encompasses all financial and shipping activities, are authorized to "generate" a document for use by parties to a transaction. Accordingly, the liability of these providers is significantly greater and FSA has determined that the financial net worth requirements for these providers should be significantly greater in order to ensure, in the event there are errors committed by the providers, that affected parties have the ability to recoup any losses which they may incur as a result of the provider's conduct. The financial requirements for providers of other electronic documents are found in Section 735.402 and require a provider to have a net worth of \$10 million and maintain 2 insurance

policies for a total coverage of \$50 million. Public comments are sought regarding the net worth and insurance requirements for the provider of other electronic documents including the reasonableness of the requirements, and alternative levels for consideration.

Section 11(e) also provides that in establishing this electronic document system, the Secretary may act "notwithstanding any other provision of Federal or State law. \* \* \*" In order to provide a uniform system in developing documents for inclusion in this system and to provide for a uniform resolution of disputes that arise in the administration of this system, the proposed rule provides that the law of New York State will govern all transactions entered into with the use of the system except for laws relating to the legal doctrines of the choice of law and determination of venue. FSA has determined that, taking into account the large body of commercial law which has developed in the State of New York, especially laws relating to complex financing agreements involving international transactions which utilize letters of credit, such an approach would: (1) Make clear to all users of the system the law that would be applied regardless of the location of the provider, the location of the various parties to the transaction and the location of the actual activity that is the focus of the transaction; (2) assist in the development of uniform documents by more than one approved provider; and (3) reduce transactional costs as a result of the uniformity in documents, especially in the case of international transactions. Public comments are requested on the decision to use the law of the State of New York to govern all transactions under the electronic system.

The Secretary is authorized to assess and collect fees from Federally-licensed warehouse operators, approved providers and other users of the USWA. The fees are intended to offset the cost of operating the revised USWA. The fee schedule is included as an addendum to the licensing and provider agreement and is available from the Deputy Administrator for Commodity Operations, located in Washington, D.C.

Section 202 of the 2000 Act imposes certain deadlines for the regulations and on the effectiveness of the existing USWA. Final regulations are required to be in place no later than 180 days after the date of enactment. The USWA as it previously existed terminates not later than August 1, 2001. This proposed rule has been issued with a 30-day comment period, and FSA intends to issue the final rule as soon as possible after

comments have been received and evaluated.

### Paperwork Reduction Act

*Title:* 7 CFR 735, United States Warehouse Act.

*OMB Control Number:* 0560-0120.

*Expiration Date:* March 31, 2003.

*Type of Request:* Request for approval of a revised information collection.

*Abstract:* USDA will collect information from those individuals who voluntarily apply for warehouse licensing under the USWA and meet the minimum requirements for licensing for the applicable agricultural product. The USWA also provides for the voluntary approval and governing of one or more electronic provider systems under which farmers and merchants transfer electronic receipts or documents relating to the shipment, payment, and financing of the sale of agricultural products. Applicants must voluntarily certify that they will abide by the provisions of the USWA.

Information secured voluntarily from interested warehouse operators forms the basis for the issuance, suspension, reinstatement, or revocation of a license.

Likewise, information secured voluntarily from an interested electronic provider forms the basis for approval under the USWA, which allows for the use of electronic warehouse receipts for all agricultural products and the use of other electronic documents.

The provider agreement entered into by a private person and the FSA sets forth the manner in which this person may be approved to establish a system that accomplishes how information is generated, sent, received, or stored by electronic or similar means.

Approved providers must have a signed agreement with FSA, comply with the terms of that agreement, maintain specific financial and bonding requirements, pay user fees, establish and retain contemporaneous records of each EWR entry and access, be liable to the Secretary for issues associated with system failure or malfunction, furnish annual audit level financial statements, and submit to FSA an electronic data processing audits. This audit encompasses the provider's fiscal year and must evidence current computer operations, security, disaster recovery capabilities of the system, and other related systems. Information maintained to accommodate requirements under the provider agreement are considered to be normal operating practices for those private individuals who become approved providers and adds no additional burden to their day-to-day operations.

*Estimate of Respondent Burden:* The estimated average public reporting burden for the collection of information is 30 minutes per response;

*Respondents:* Warehouse operators and electronic providers;

*Estimated Number of Respondents:* 4,600;

*Estimated Number of Responses per Respondent:* One response per year;

*Estimated Annual Number of Responses:* 25,937 and

*Estimated Total Annual Burden Hours on Respondents:* 14,701 hours.

In addition to commenting on the substance of the regulation, the public is invited to comment on the information collection. Proposed topics include the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information technology; or (d) ways to minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques) or other forms of information technology; e.g., permitting electronic submission response. The information collection package may be obtained from Steve Gill, at the address listed below. Comments regarding the information collections may be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, and to Steve Gill, Director, Warehouse and Inventory Division, FSA, USDA, STOP 0553, 1400 Independence Avenue, SW., Washington, DC 20250-0553.

### List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Agricultural commodities, Beans, Cotton, Cottonseeds, Grain, Nuts, Sugar, Surety Bonds, Tobacco, Warehouses, Wool.

For the reasons stated in the preamble, FSA proposes to amend 7 CFR Chapter 700 as follows:

### PART 735—COTTON WAREHOUSES

1. Part 735 is revised to read as follows:

### PART 735—REGULATIONS FOR THE UNITED STATES WAREHOUSE ACT

#### Subpart A—General Provisions

- Sec.  
 735.1 Applicability.  
 735.2 Administration.  
 735.3 Definitions.  
 735.4 Fees.  
 735.5 Penalties.  
 735.6 Suspension and revocation.  
 735.7 Return of suspended or revoked license or provider agreement.  
 735.8 Appeals.  
 735.9 Dispute resolution and arbitration of private parties.  
 735.10 Posting of license, certificate of approval or other USWA documents.  
 735.11 Lost or destroyed licenses or agreements.  
 735.12 Safe keeping of records.  
 735.13 Information of violations.  
 735.14 Bonding and other financial assurance requirements.

#### Subpart B—Warehouse Licensing

- 735.100 Application.  
 735.101 Financial records and reporting requirements.  
 735.102 Financial assurance requirements.  
 735.103 Amendments to license.  
 735.104 Insurance requirements.  
 735.105 Care of agricultural products.  
 735.106 Excess storage and transferring of agricultural products.  
 735.107 Warehouse charges and tariffs.  
 735.108 Inspections and examinations of warehouses.  
 735.109 Disaster loss to be reported.  
 735.110 Conditions for delivery of agricultural products.  
 735.111 Fair treatment.  
 735.112 Terminal and futures contract markets

#### Subpart C—Inspectors, Samplers, Classifiers, and Weighers

- 735.200 Service licenses.  
 735.201 Inspection certificate; form.  
 735.202 Standards of grades for other agricultural products.

#### Subpart D—Warehouse Receipts

- 735.300 Warehouse receipt requirements.  
 735.301 Notification requirements.  
 735.302 Electronic warehouse receipts.

#### Subpart E—Electronic Providers

- 735.400 Administration.  
 735.401 Electronic warehouse receipt and USWA electronic document providers.  
 735.402 Providers of other electronic documents.  
 735.403 Audits.  
 735.404 Fees.  
 735.405 Choice of law.

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

#### Subpart A—General Provisions

##### § 735.1 Applicability.

(a) The regulations of this part set forth the terms and conditions under which the Farm Service Agency (FSA) will administer the United States Warehouse Act (the Act). These regulations set forth the standards and the terms and conditions a participant or provider must meet to be eligible for licensing or approval under the Act.

(b) Additional terms and conditions may be set forth in applicable licensing agreements, provider agreements and other documents.

##### § 735.2 Administration.

(a) FSA will administer all provisions of the Act under the general direction and supervision of the FSA's Deputy Administrator, Commodity Operations, (DACO), or designee.

(b) DACO may waive or modify program requirements or deadlines in cases where lateness or failure to meet such other requirements does not adversely affect the programs operated under the Act.

##### § 735.3 Definitions.

Words used in this part in the singular form will be deemed to import the plural, and vice versa, as the case may demand. For the purposes of this part, unless the context otherwise requires; and will be applicable to the program authorized by this part and will be used in all aspects of administering this program:

*Access* means the ability when authorized, to read, change, and transfer warehouse receipts or other applicable document information retained in a central filing system.

*Agricultural product* means an agricultural produced product stored or handled for the purposes of interstate or foreign commerce including a processed product of an agricultural product as determined by DACO.

*Approval* means the consent provided by DACO for a person to engage in an activity authorized by the Act.

*Central filing system (CFS)* means an electronic system operated and maintained by a provider approved by DACO where the information relating to warehouse receipts, USWA documents and other electronic documents are recorded and maintained in a transparent, secure, unbiased and anonymous condition.

*Control of the facility* means ultimate responsibility for the operation and integrity of a facility by ownership, lease, or operating agreement.

*Department* means the Department of Agriculture.

*Electronic document* means a document that is generated, sent, received, or stored by electronic, optical, or similar means, including electronic data interchange, electronic mail, telegram, telex, or telecopy.

*Electronic warehouse receipt (EWR)* means a warehouse receipt that is authorized by DACO to be issued or transmitted under the Act in the form of an electronic document.

*Examiner* means an individual designated by DACO for the purpose of examining warehouses.

*Financial assurance* means the surety or other financial obligation approved by DACO that is a condition of receiving a license or approval under the Act.

*Force Majeure* means severe weather conditions, fire, explosion, flood, earthquake, insurrection, riot, strike, labor dispute, act of civil or military, non-availability of transportation facilities, or any other cause beyond the control of the warehouse operator or provider that renders performance impossible.

*Holder* means a person that has possession in fact or by operation of law of a warehouse receipt or any electronic document.

*License* means a license issued under the Act by DACO.

*Licensing agreement* means the document and any amendment to such agreement executed by the warehouse operator and FSA specifying licensing terms and conditions specific to the warehouse operator and the agricultural product licensed to be stored.

*Non-stored agricultural product* means an agricultural product received temporarily into a warehouse for conditioning, transferring, assembling for shipment, or lots of an agricultural product moving through a warehouse for current merchandising or milling use, against which no warehouse receipts are issued and no storage charges assessed.

*Official Standards of the United States* means the standards of the quality or condition for an agricultural product, fixed and established under the United States Cotton Standards Act, the United States Grain Standards Act, the Agricultural Marketing Act of 1946, or other applicable official United States Standards.

*Other electronic documents* means those electronic documents, other than an EWR, related to the shipment, payment or financing of agricultural products that DACO has approved for inclusion in a provider's CFS.

*Person* means a person as set forth in 1 U.S.C. 1.; a State; and a political subdivision of a State.

*Provider* means a person that maintains one or more electronic systems that has been approved by DACO.

*Provider Agreement* means the document and any amendment to such agreement executed by the provider and FSA that sets forth the provider's responsibilities concerning the provider's maintenance of a CFS.

*Receipt* means a warehouse receipt issued in accordance with the Act,

including an electronic warehouse receipt.

*Schedule of fees* means the fees charged for services provided under the Act.

*Service license* means the document and any amendment to such agreement executed by a person licensed under the Act to perform required services such as inspection, sampling, grading, classifying, or weighing services for the licensed warehouse.

*Stored agricultural products* means all agricultural products received into, stored within, or delivered out of the warehouse which is not classified as a non-storage agricultural product under this part.

*User* means a person that uses a provider's CFS.

*Warehouse* means a structure or other approved storage facility, as determined by DACO, in which any agricultural product may be stored or handled.

*Warehouse capacity* means the maximum quantity of an agricultural product that the warehouse will accommodate when stored in a manner customary to the warehouse as determined by DACO.

*Warehouse Operator* means a person lawfully engaged in the business of storing or handling agricultural products.

#### **§ 735.4 Fees.**

(a) Warehouse operators, licensees, applicants or providers must pay:

(1) An annual fee as provided in the applicable licensing or provider agreement.

(2) Fees that FSA assesses for examinations and audits.

(b) The schedule showing the current fees or any annual fee changes will be provided as an addendum to the applicable licensing or provider agreement or is available at:

(1) DACO's USWA website, or  
(2) May be requested at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, D.C. 20250-0550.

(c) At the sole discretion of DACO, these fees may be waived.

#### **§ 735.5 Penalties.**

If a person fails to comply with any requirement of the Act, the regulations set forth in this part or any applicable licensing or provider agreement, DACO may assess after an opportunity for a hearing as provided in § 735.8, a civil penalty:

(a) Of not more than \$25,000 per violation, if an agricultural product is not involved in the violation; or

(b) Of not more than 100 percent of the value of the agricultural product, if an agricultural product is involved in the violation.

#### **§ 735.6 Suspension and revocation.**

(a) DACO may, after an opportunity for a hearing as provided in § 735.8, suspend or revoke any license or agreement issued under the Act, for any violation of or failure to comply with any provision of the Act, regulations or any applicable licensing or provider agreement.

(b) The reasons for a suspension or revocation under this part include, but are not limited to:

(1) Failure to perform licensed or approved services as provided in this part or in the applicable licensing or provider agreement;

(2) Failure to maintain minimum financial requirements as provided in the applicable licensing or provider agreement; and

(3) Failure to submit a proper annual financial statement within the established time period as provided in the applicable licensing or provider agreement.

#### **§ 735.7 Return of suspended or revoked license or provider agreement.**

When a license issued to a warehouse operator or an agreement to a provider ends or is suspended or revoked by DACO, such license and applicable licensing agreement or provider agreement and certificate of approval must be immediately returned to DACO.

#### **§ 735.8 Appeals.**

(a) Any person who is subject to an adverse determination made under the Act may appeal the determination by filing a written request with DACO at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, D.C. 20250-0550.

(b) Any person who believes that they have been adversely affected by a determination under this part must seek review with DACO within twenty-one business days of such determination, unless provided with notice by DACO of a different deadline.

(c) Appeals procedure. The appeal process set forth in this part is applicable to all licensees and providers under any provision of the Act, regulations or any applicable licensing agreement as follows:

(1) DACO will notify the person in writing of the nature of the suspension or revocation action.

(2) The person must notify DACO of any appeal to its action within twenty-one business days.

(3) The appeal and request must state whether:

(i) A hearing is requested;

(ii) The person will appear in person at such hearing; or

(iii) Such hearing will be held by telephone.

(4) DACO will provide the person a written acknowledgment of their request to pursue an appeal.

(5) When a person requests an appeal and does not request a hearing DACO will allow that person:

(i) To submit in writing the reasons why they believe DACO's determination to be in error.

(ii) Twenty-one business days from the receipt of the acknowledgment, to file any statements and documents in support of their appeal.

(iii) An additional fifteen business days to respond to any new issues raised by DACO in response to the person's initial submission.

(6) If the person requests to pursue an appeal and requests a hearing, DACO will:

(i) Notify the person of the date of the hearing.

(ii) Determine the location of the hearing, when such a person requests to appear in person.

(iii) Notify the person of the location of the hearing.

(iv) Afford the person twenty-one business days from the receipt of the notification of the scheduling of the hearing to submit any statements and documents in support of the appeal.

(v) Allow the person an additional fifteen days from the date of the hearing to submit any additional material.

(7) Determinations of DACO will be final and no further appeal within USDA will be available except as may be specified in the final determination of DACO.

(8) A person may not initiate an action in any court of competent jurisdiction prior to the exhaustion of the administrative appeal process set forth in this section.

#### **§ 735.9 Dispute resolution and arbitration of private parties.**

(a) Any claim for noncompliance or unresolved dispute between a warehouse operator or provider and another party with respect to activities authorized under the Act may be resolved by the parties involved through mutually agreed upon arbitration procedures or as may be prescribed in the applicable licensing agreement. The arbitration procedures must be nondiscriminatory and provide each

party equal access and protection relating to the disputed issue. No arbitration determination or award will affect DACO's authority under this part.

(b) In the event a party requests arbitration assistance from DACO the initiating party will be responsible for all costs incurred by DACO.

**§ 735.10 Posting of license, certificate of approval or other USWA documents.**

(a) The warehouse operator must post, in a conspicuous place in the principal place where warehouse receipts are issued, a statement approved by DACO that the warehouse operator is an approved licensee under the Act.

(b) Immediately upon receipt of their service license or any modification or extension thereof under the Act, the licensee and warehouse operator must jointly post the same, and thereafter, except as otherwise provided in the regulations in this part or as prescribed in the applicable licensing agreement, and keep such license conspicuously posted in the office where all or most of the services are done, or in such place as may be designated by FSA.

**§ 735.11 Lost or destroyed licenses or agreements.**

FSA will replace a lost or destroyed license or agreement upon satisfactory proof of loss or destruction. FSA will mark such license or agreement as a duplicate.

**§ 735.12 Safe keeping of records.**

Each warehouse operator or provider must store all records, books, and papers pertaining to the licensed warehouse or provider system in a fireproof safe, vault, compartment or other place approved by FSA in which to keep such documents when not in actual use.

**§ 735.13 Information of violations.**

Every person licensed or approved under the Act must immediately furnish DACO any information which comes to the knowledge of such person that indicates that any provision of the Act or the regulations in this part has been violated.

**§ 735.14 Bonding and other financial assurance requirements.**

(a) As a condition of receiving a license or approval under the Act, the person applying for the license or approval must execute and file with DACO a bond, or provide such other financial assurance as DACO determines appropriate, to secure the person's compliance with the Act.

(b) Such bond or assurance must be for a period of not less than one year

and in such amount as required by DACO.

(c) Failure to provide for, or renew, a bond or a financial assurance instrument will result in the immediate and automatic revocation of the warehouse operator's license or provider's agreement.

(d) If DACO determines that a previously approved bond or other financial assurance is insufficient, DACO may immediately suspend or revoke the license or approval covered by the bond or other financial assurance if the person that filed the bond or other financial assurance does not provide such additional bond or other financial assurance as DACO determines appropriate.

(e) To qualify as a suitable bond or other financial assurance, the entity issuing the bond or other financial assurance must be subject to service of process in suits on the bond or other financial assurance in the State in which the warehouse is located.

**Subpart B—Warehouse Licensing**

**§ 735.100 Application.**

(a) An applicant for a license 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. Such documents must include 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, and for any entity that is not an individual, a current copy of each applicable organization document that establishes proof of the existence of the entity, such as:

For a Partnership .....	Executed partnership agreement.
For a Corporation .....	(1) Articles of incorporation certified by the secretary of state of the applicable state of incorporation; (2) By-laws; and (3) Declaration of Corporate Principal.
For a Limited Partnership.	(1) Executed limited partnership agreement.
For a Limited Liability Company.	(1) Articles of Organization or similar documents; and (2) Operating Agreement or similar agreement.

(b) The warehouse facilities of an operator licensed under the Act must, as determined by DACO, be:

(1) Physically and operationally suitable for proper storage of the applicable agricultural product or

agricultural products specified in the license;

(2) Operated according to generally accepted warehousing practices in the industry for the applicable agricultural product or agricultural products stored in the facility; and

(3) Subject to the control of the warehouse operator including all contiguous storage space with respect to such facilities.

(c) As specified in individual licensing agreements a warehouse operator must:

(1) Meet the basic financial requirements determined by DACO; and

(2) Meet the net worth requirements determined by DACO;

(d) In order to obtain a license, the warehouse operator must correct any exceptions made by the warehouse examiner at the time of the original warehouse examination.

(e) DACO may issue a license for the storage of two or more agricultural products in a single warehouse as provided in the applicable licensing agreements. The amount of the bond or financial assurance, net worth, and inspection and license fees will be determined by DACO in accordance with the licensing agreements applicable to the specific agricultural product, based upon the warehouses' total capacity storing such product, which would require:

- (1) The largest bond or financial assurance;
- (2) The greatest amount of net worth; and
- (3) The greatest amount of fees.

**§ 735.101 Financial records and reporting requirements.**

(a) Warehouse operators must maintain complete, accurate, and current financial records that must be available to DACO for review or audit at DACO's request as may be prescribed in the applicable licensing agreement.

(b) Warehouse operators must, annually, present a financial statement as may be prescribed in the applicable licensing agreement to DACO.

**§ 735.102 Financial assurance requirements.**

(a) Warehouse operators must file with DACO financial assurances approved by DACO consisting of:

- (1) A warehouse operator's bond; or
- (2) Obligations that are unconditionally guaranteed as to both interest and principal by the United States, in a sum equal at their par value to the amount of the bond otherwise required to be furnished, together with an irrevocable power of attorney authorizing DACO to collect, sell, assign

and transfer such obligations in case of any default in the performance of any of the conditions required in the licensing agreement; or

(3) An irrevocable letter of credit issued in the favor of DACO with a term of not less than two years; or

(4) A certificate of participation in, and coverage by, an indemnity or insurance fund as approved by DACO, established and maintained by a State, backed by the full faith and credit of the applicable State, which guarantee's depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouse operator under the terms of the Act. If a warehouse operator files a bond or financial assurance in the form of a certification of participation in an indemnity or insurance fund, the certification may only be used to satisfy any deficiencies in assets above the minimum net worth requirement as prescribed in the applicable licensing agreement. A certificate of participation and coverage in this fund must be furnished to DACO annually; or

(5) Other forms of financial assurance as may be approved by DACO as provided in the applicable licensing agreement.

(b) The warehouse operator may not withdraw obligations required under this section until one year after license termination or until satisfaction of any claims against the obligations whichever is later.

#### **§ 735.103 Amendments to license.**

The FSA will issue an amended license upon:

(a) Receipt of forms prescribed and furnished by DACO outlining the requested changes to the license;

(b) Payment of applicable licensing and examination fees;

(c) Receipt of bonding or other financial assurance if required in the applicable licensing agreement; and

(d) Receipt of a report on the examination of the proposed facilities pending inclusion or exclusion, if determined necessary by DACO.

#### **§ 735.104 Insurance requirements.**

Each warehouse operator must comply fully with the terms of insurance policies or contracts covering their licensed warehouse and all products stored therein, and must not commit any acts, nor permit others to do anything, which might impair or invalidate such insurance.

#### **§ 735.105 Care of agricultural products.**

Each warehouse operator must at all times, including during any period of suspension of their license, exercise

such care in regard to agricultural products in their custody as required in the applicable licensing agreement.

#### **§ 735.106 Excess storage and transferring of agricultural products.**

(a) If at any time a warehouse operator stores an agricultural product in a warehouse subject to a license issued under the Act in excess of the capacity for which it is licensed, such warehouse operator must immediately notify DACO of such excess storage and the reason for the storage.

(b) A warehouse operator who desires to transfer stored agricultural products to another warehouse may do so either by physical movement, or by other methods as may be provided in the applicable licensing agreement.

#### **§ 735.107 Warehouse charges and tariffs.**

(a) A warehouse operator will not make any unreasonable or exorbitant charge for services rendered.

(b) A warehouse operator must follow the terms and conditions for each new or revised warehouse tariff or schedule of charges as prescribed in the applicable licensing agreement.

#### **§ 735.108 Inspections and examinations of warehouses.**

Warehouse operators must permit any agent of the Department, to enter and inspect or examine, on any business day during the usual hours of business, any licensed warehouse, the offices of the warehouse operator, the books, records, papers, and accounts.

#### **§ 735.109 Disaster loss to be reported.**

If at any time a disaster or loss occurs at or within any licensed warehouse, the warehouse operator must report immediately the occurrence of the disaster or loss and the extent of damage, to DACO.

#### **§ 735.110 Conditions for delivery of agricultural products.**

(a) In the absence of a lawful excuse, a warehouse operator will, without unnecessary delay, deliver the agricultural product stored or handled in the warehouse on a demand made by:

(1) The holder of the warehouse receipt for the agricultural product; or

(2) The person that deposited the product, if no warehouse receipt has been issued.

(b) Prior to delivery of the agricultural product, payment of the accrued charges associated with the storage of the agricultural product, including satisfaction of the warehouse operator's lien, if owed, must be made if requested by the warehouse operator.

(c) When the holder of a warehouse receipt requests delivery of an

agricultural product covered by the warehouse receipt, the holder must surrender the warehouse receipt to the warehouse operator, in the manner prescribed by DACO, to obtain the agricultural product.

(d) A warehouse operator must cancel each warehouse receipt returned to the warehouse operator upon the delivery of the agricultural product for which the warehouse receipt was issued.

(e) For the purpose of this part, unless prevented from doing so by force majeure, a warehouse operator will deliver or ship such agricultural products stored or handled in their warehouse as prescribed in the applicable licensing or provider agreement.

#### **§ 735.111 Fair treatment.**

(a) Contingent upon the capacity of a warehouse, a warehouse operator will deal, in a fair and reasonable manner, with persons storing, or seeking to store, an agricultural product in the warehouse if the agricultural product—

(1) Is of the kind, type, and quality customarily stored or handled in the area in which the warehouse is located;

(2) Is tendered to the warehouse operator in a suitable condition for warehousing; and

(3) Is tendered in a manner that is consistent with the ordinary and usual course of business.

(b) Nothing in this section will prohibit a warehouse operator from entering into an agreement with a depositor of an agricultural product to allocate available storage space.

#### **§ 735.112 Terminal and futures contract markets.**

(a) DACO may issue service licenses to weigh masters or their deputies to perform services relating to warehouse receipts which are deliverable in satisfaction of futures contracts in such contract markets or as may be prescribed in any applicable licensing agreement.

(b) DACO may approve, as registrar of warehouse receipts issued for an agricultural product in a warehouse licensed under the Act which operates in any terminal market or in any futures contract market, the official designated by officials of the State in which such market is located if such individual is not:

(1) An owner or employee of licensed warehouse;

(2) The owner of, or an employee of the owner of, such agricultural product deposited in any such licensed warehouse; or

(3) As may be prescribed in any applicable licensing or provider agreement.



**Subpart C—Inspectors, Samplers, Classifiers, and Weighers****§ 735.200 Service licenses.**

(a) FSA may issue to a person a license for:—

- (1) Inspection of any agricultural product stored or handled in a warehouse subject to the Act;
- (2) Sampling of such an agricultural product;
- (3) Classification of such an agricultural product according to condition, grade, or other class and certify the condition, grade, or other class of the agricultural product;
- (4) Weighing of such an agricultural product and certify the weight of the agricultural product; or
- (5) Performing two or more services specified in paragraphs (a)(1), (2), (3) or (4) of this section.

(b) Each person seeking a license to perform activities described in this section must submit an application on forms furnished by DACO which contain, at a minimum, the following information:

- (1) The name, location and license number of the warehouses where the applicant would perform such activities;
- (2) A statement from the warehouse operator that the applicant is authorized to perform such activities at these locations; and
- (3) Evidence that the applicant is competent to inspect, sample, classify, according to grade or weigh the agricultural product;

**§ 735.201 Inspection certificate; form.**

Each inspection certificate issued under the Act by a licensee to perform such services must be on a form prescribed by DACO.

**§ 735.202 Standards of grades for other agricultural products.**

Official standards of the United States for any kind, class or grade of an agricultural product to be inspected must be used if such standards exist. Until official standards of the United States are fixed and established for the kind of agricultural product to be inspected, the kind, class and grade of the agricultural product must be stated, subject to the approval of DACO. If such standards do not exist for such an agricultural product, the following will be used:

- (a) State standards established in the State in which the warehouse is located,
- (b) In the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, chamber of commerce, or by the agricultural product trade generally in the locality in which the warehouse is located, or

(c) In the absence of the standards set forth in paragraphs (a) and (b) of this section, in accordance with any standards approved for the purpose by DACO.

**Subpart D—Warehouse Receipts****§ 735.300 Warehouse receipt requirements.**

- (a) Warehouse receipts may be:
- (1) Negotiable or non-negotiable; and
  - (2) In a paper or electronic format, which besides complying with the requirements of the Act, must be in a format approved by DACO.
- (b) At the request of a depositor of an agricultural product stored or handled in a warehouse licensed under the Act, the warehouse operator:
- (1) Will issue a warehouse receipt to the depositor;
  - (2) May not issue a warehouse receipt for an agricultural product unless the agricultural product is actually stored in their warehouse at the time of issuance;
  - (3) May not issue a warehouse receipt until the quality, condition and weight of such an agricultural product is ascertained by a licensed inspector and weigher;
  - (4) May not directly or indirectly compel or attempt to compel the depositor to request the issuance of a warehouse receipt omitting the statement of quality or condition;
  - (5) Must, when issuing a warehouse receipt and purposely omits any information for which a blank or field is provided in the form, notate the blank to show such intent;
  - (6) May not deliver any portion of an agricultural product for which they have issued a negotiable warehouse receipt until the warehouse receipt has been returned to them and canceled;
  - (7) May not deliver an agricultural product for which they have issued a non-negotiable warehouse receipt until such warehouse receipt has been returned or the depositor or the depositor's agent has provided a written order for the agricultural product and the warehouse receipt upon final delivery; and
  - (8) Must deliver, upon proper presentation of a warehouse receipt for any agricultural product, and payment or tender of all advances and charges, to the depositor or lawful holder of such warehouse receipt the agricultural product of such identity, quantity, quality and condition as set forth in such warehouse receipt.

(c) In the case of a lost or destroyed warehouse receipt, a new warehouse receipt upon the same terms, subject to the same conditions, and bearing on its face the number and the date of the

original warehouse receipt may be issued.

**§ 735.301 Notification requirements.**

Warehouse operators must file with DACO the name and genuine signature of each person authorized to sign warehouse receipts for the licensed warehouse operator, and will promptly notify DACO of any changes with respect to persons authorized to sign.

**§ 735.302 Electronic warehouse receipts.**

(a) Warehouse operators licensed under the Act have the option of issuing Electronic Warehouse Receipts (EWRs) instead of paper warehouse receipts for the agricultural product stored in their warehouse. Warehouse operators licensed under the Act must:

- (1) Only issue EWRs through a provider whom FSA has approved;
  - (2) Inform DACO of the identity of their provider, when they are a first time user of EWRs, 60 calendar days in advance of issuing an EWR through that provider. DACO may waive or modify this 60-day requirement as set forth in § 735.2(b);
  - (3) Before issuing an EWR, request and receive from FSA a range of consecutive warehouse receipt numbers which the warehouse will use consecutively for issuing their EWRs;
  - (4) When using an approved provider, issue all warehouse receipts initially as EWRs;
  - (5) Cancel an EWR only when they are the holder of the warehouse receipt;
  - (6) Correct information on the EWR only with written notification to the provider;
  - (7) Receive written approval from FSA at least 30 calendar days before changing providers. Upon approval they may request their current provider to transfer their EWR data from its Central Filing System (CFS) to the CFS of the approved provider whom they select. Warehouse operators may only change providers once a year; and
  - (8) Notify all holders of EWRs by inclusion in the CFS at least 30 calendar days before changing providers, unless otherwise required or allowed by FSA.
- (b) An EWR establishes the same rights and obligations with respect to an agricultural product as a paper warehouse receipt, and possesses the following attributes:
- (1) The person identified as the 'holder' of an EWR will be entitled to the same rights and privileges as the holder of a paper warehouse receipt;
  - (2) Only the current holder of the EWR may transfer the EWR to a new holder;
  - (3) The identity of the holder must be included as additional information for every EWR;

(4) An EWR may only designate one entity as a holder at any one time;

(5) An EWR may not be issued for a specific identity-preserved or commingled agricultural product lot if another warehouse receipt representing the same specific identity-preserved or commingled lot of the agricultural product is outstanding. No two warehouse receipts issued by a warehouse operator may have the same warehouse receipt number or represent the same agricultural product lot;

(6) An EWR may only be issued to replace a paper warehouse receipt if requested by the current holder of the paper warehouse receipt;

(7) Holders and warehouse operators may authorize any other user of their provider to act on their behalf with respect to their activities with this provider. This authorization must be in writing, and acknowledged and retained by the provider; and

(8) A depositor or current EWR holder may request a paper warehouse receipt in lieu of an EWR.

(c) A warehouse operator not licensed under the Act may, at the option of the warehouse operator, issue EWRs in accordance with this subpart, except this option does not apply to a warehouse operator that is licensed under State law to store agricultural products in a warehouse if the warehouse operator elects to issue an EWR under State law.

### Subpart E—Electronic Providers

#### § 735.400 Administration

This subpart sets forth the regulations under which DACO may approve 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) Application for a provider agreement to establish a system to issue and transfer EWR's and USWA electronic documents may be made to FSA upon forms prescribed and furnished by DACO. Each provider operating pursuant to this section must meet the following requirements:

(1) Have and maintain a net worth of at least \$100,000;

(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Maximum deductible amounts will be prescribed in the applicable provider agreement. Each policy must have a

minimum coverage of \$4 million. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation;

(3) Meet any additional financial requirements as set forth in the applicable provider agreement.

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

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

(1) Minimum document and warehouse receipt requirements;

(2) Liability;

(3) Transfer of records;

(4) Records;

(5) Conflict of interest requirements;

(6) USDA common electronic information requirements;

(7) Terms of insurance policies or assurances;

(8) Provider's integrity statement;

(9) Security audits; and

(10) Submission, 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 USWA documents or EWRs 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 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) Application for a provider agreement to establish a system to issue and transfer other electronic documents may be made to FSA upon forms prescribed and furnished by DACO. Each provider operating pursuant to this section must meet the following requirements:

(1) Have and maintain a net worth of at least \$10 million;

(2) Maintain two insurance policies; one for 'errors and omissions' and another for 'fraud and dishonesty'. Maximum deductible amounts will be

prescribed in the applicable provider agreement. Each policy must have a minimum coverage of \$25 million. Each policy must contain a clause requiring written notification to FSA 30 days prior to cancellation;

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

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

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

(1) Minimum document requirements;

(2) Liability;

(3) Transfer of records;

(4) Records;

(5) Conflict of interest requirements;

(6) USDA common electronic information requirements;

(7) Terms of insurance policies or assurances;

(8) Provider's integrity statement;

(9) Security audits; and

(10) 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 any electronic document 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 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 governmental 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.

#### § 735.403 Audits.

(a) No later than 120 days following the end of the provider's fiscal year, the provider approved under §§ 735.401

and 735.402 must submit to FSA an annual audit level financial statement and an electronic data processing audit that meets the minimum requirements as provided in the applicable provider agreement. The electronic data processing audit will be used by DACO to evaluate current computer operations, security, disaster recovery capabilities of the system, and compatibility with other systems approved by DACO.

(b) Each provider will grant the Department unlimited, free access at any time to all records under the provider's control relating to activities conducted under this part and as specified in the applicable provider agreement.

#### § 735.404 Fees.

(a) A provider approved under §§ 735.401 or 735.402 must furnish FSA with copies of its current schedule of fees for all services and charges as they become effective.

(b) Fees charged any user by the provider must be in effect for a minimum period of one year.

(c) Providers must furnish the FSA and all users a 60-calendar day advance notice of their intent to change any fee.

#### § 735.405 Choice of law.

All disputes arising under any transaction conducted through the use of a provider approved under § 735.402 shall be determined by the application of the laws of New York State except that the laws of New York relating to the legal doctrines of the choice of law and determination of venue shall not be applicable.

2. Parts 736 through 742 are removed and reserved.

**Note:** The following exhibits A through F are being published for informational purposes and they will not become part of the codified regulations.

Signed at Washington, D.C., on August 24, 2001.

**Carolyn B. Cooksie,**

*Acting Administrator, Farm Service Agency.*

#### Exhibit A—Draft

License Number \_\_\_\_\_

Effective \_\_\_\_\_

#### Licensing Agreement for Cotton

##### Contents

- I. Definitions
- II. Financials
  - A. Financial Requirements
  - B. Financial Reporting
  - C. Accepting Other Financial Statements
  - D. Special Cases: Assets and Liabilities
  - E. Financial Special Conditions—Public Debt Obligations
- III. Financial Assurance

- A. Financial Assurance Requirements
  - Computation
  - B. Financial Assurance Acceptable Forms
- IV. Duties of Warehouse Operator
  - A. General
  - B. Insurance
  - C. Records to be kept in a Safe Place
  - D. Scales and Weighing
  - E. Warehouse Charges
  - F. Business Hours
  - G. System of Accounts
  - H. Excess Storage and Transferring Cotton
  - I. Reports Required
  - J. Inspections, Examinations of Warehouse
  - K. Arrangement of Stored Cotton
  - L. Removal of Cotton from Storage
  - M. Drawing of Samples
  - N. Warehouse Receipts
- V. Paper Warehouse Receipts
  - A. Issuance
  - B. Form
  - C. Persons Authorized to Sign Warehouse Receipts
  - D. Copies of Warehouse Receipts
  - E. Printing of Warehouse Receipts
  - F. Return of Warehouse Receipts Prior to Delivery
  - G. Balance Warehouse Receipts
  - H. Lost or Destroyed Warehouse Receipts
- VI. Service Licenses
  - A. The Applicant
  - B. Examination of Application
  - C. Classification Certificates
  - D. Weight Certificates
  - E. Classification and Weight Certificates
  - F. Duties of Sampler, Classifier and Weigher
- VII. Cotton Classification
  - A. Official Cotton Standards of the United States
  - B. Access to the Cotton Standards
- VIII. Fees

#### Licensing Agreement for Cotton

As a condition of licensing under the United States Warehouse Act (the Act), the warehouse operator agrees to the conditions set forth in this agreement and the regulations found at 7 CFR 735:

##### I. Definitions

**Current assets.** Assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

**Current liabilities.** Those financial obligations which are expected to be satisfied during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

**Licensed sampler, classifier and weigher.** A person licensed under the Act to sample, classify and/or weigh and certificate the grade or other class and weight of cotton stored at a cotton warehouse licensed under the Act.

**Net Worth.** When liabilities are subtracted from allowable assets, it is the balance amount. In determining allowable assets, credit may be given for

appraisal of real property less improvements and for the appraisal of 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, lightning, and other risk. Such insurance must be in the form of lawful insurance policies issued by insurance companies authorized to do such business and subject to service of process in the State in which the warehouse is located. The Farm Service Agency will determine what assets are allowable and under what conditions appraisals may be used.

##### II. Financials

###### A. Financial Requirements

1. The warehouse operator agrees to have and maintain:

- a. Total net worth of at least the amount obtained by multiplying \$10.00 by the maximum number of bales that the warehouse accommodates when stored in the manner customary to the warehouse as determined by the Farm Service Agency; however, no person may be licensed or remain licensed as a warehouse operator unless that person has allowable net worth of at least \$25,000.00 (Any deficiency in net worth above the \$25,000.00 minimum may be supplied by an increase in the amount of the financial assurance). The maximum total allowable net worth required need not exceed \$250,000.00.
- b. Total allowable current assets equal to or exceeding total current liabilities or evidence acceptable to the Farm Service Agency that funds will be and remain available to meet current obligations.

2. If a warehouse operator is licensed or is applying for licenses to operate two or more warehouses, the maximum capacity of all licensed warehouses, as determined by the Farm Service Agency, will be the capacity considered in determining whether the warehouse operator meets the net worth requirements.

2. If a warehouse operator is licensed or is applying for licenses to operate two or more warehouses, the maximum capacity of all licensed warehouses, as determined by the Farm Service Agency, will be the capacity considered in determining whether the warehouse operator meets the net worth requirements.

###### B. Financial Reporting

1. The warehouse operator agrees to provide annually, within 90 days of the fiscal year end, or more frequently if required, to the Farm Service Agency, financial statements from the warehouse operators records prepared according to generally accepted accounting principles. The Farm Service Agency may grant one 30 day extension to provide a financial statement.

- 2. These financial statements must include but not be limited to:
  - a. Balance sheet,

- b. Statement of income (profit and loss),
- c. Statement of retained earnings, and
- d. Statement of cash flows.

3. An authorized representative for the warehouse operator must certify under penalty of perjury that the statements, as prepared, accurately reflect the financial condition of the warehouse operator as of the date designated and fairly represent the results of operations for the period designated.

4. The warehouse operator must have the financial statements required audited or reviewed by a certified public accountant or an independent public accountant. Audits and reviews by independent certified public accountants and independent public accountants must be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on this statement, must be furnished along with the financial statements. The Farm Service Agency may also require an on-site examination and an audit by an authorized officer or agent of the United States Department of Agriculture and request other pertinent information.

#### C. Accepting Other Financial Statements

1. Financial statements of a parent company which separately identify the financial position of the warehouse operator as a wholly owned subsidiary and which meet the basic requirements of financial statements, may be accepted by the Farm Service Agency in lieu of the warehouse operator meeting such requirements.

2. Guaranty agreements from a parent company submitted on behalf of a wholly owned subsidiary may be accepted by the Farm Service Agency as meeting the basic requirements of financial statements if the parent company submits a financial statement which meets the financial requirements and financial reporting requirements.

#### D. Special Cases: Assets and Liabilities

Subject to such terms and conditions as the Farm Service Agency may prescribe and for the purposes of determining allowable assets and liabilities, appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by a warehouse operator to conform with the requirements may be allowed if:

1. Prepared by independent appraisers acceptable to the Farm Service Agency, and

2. The assets are fully insured against casualty loss.

#### E. Financial Special Conditions—Public Debt Obligations

The warehouse operator agrees that if they file a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are unconditionally guaranteed as to both interest and principal by the United States:

1. The obligation deposited will *not* be considered a part of the warehouse operator's asset.

2. A deficiency in total allowable net worth as computed may be offset by the licensed warehouse operator furnishing acceptable financial assurance for the difference;

3. The deposit may be replaced or continued in the required amount from year to year; and

4. The deposit will not be released until one year after cancellation or revocation of the license that it supports or until satisfaction of any claim against the deposit, whichever is later.

#### III. Financial Assurance

##### A. Financial Assurance Requirements Computation

The warehouse operator agrees:

1. To furnish financial assurance computed at the rate of ten dollars (\$10.00) per bale for the maximum number of bales that the warehouse accommodates when stored in the manner customary to the warehouse as determined by the Farm Service, but not less than twenty-five thousand dollars (\$25,000.00) nor more than two hundred fifty thousand dollars (\$250,000.00).

2. When applying for licenses to operate two or more warehouses in the same State, or multiple states, and at the warehouse operator's election, they may provide financial assurance meeting the requirements of the Act and the regulations to cover all these warehouses within the multiple states and the maximum of two hundred fifty thousand dollars (\$250,000.00) of financial assurance will apply for each State covered.

3. In case of a deficiency in net worth above the twenty-five thousand dollars (\$25,000.00) minimum required, to add to the amount of financial assurance determined in accordance with paragraph (1) of this section an amount equal to that deficiency. If a letter of credit is used for the amount of the deficiency, it must be issued for a period of not less than two years to coincide with the period of any deposit of obligations. Any letter of credit must be clean, irrevocable, issued by a

commercial bank payable to the Farm Service Agency by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation. The deposit will not be considered an asset of the company.

4. If the Farm Service Agency finds that conditions exist which warrant requiring additional financial assurance, to add to the amount of financial assurance a further amount to meet such conditions.

##### B. Financial Assurance—Acceptable Forms

The warehouse operator may offer as financial assurance any of the following:

1. A warehouse operators bond, or

2. In the form of a deposit with the Farm Service Agency, United States bonds, United States Treasury notes, or other public debt obligations of the United States or obligations that are unconditionally guaranteed as to both interest and principal by the United States, or

3. In the form of a letter of credit issued to the Agency for a period of not less than two years to coincide with the period of any deposit of obligations, or

4. In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Farm Service Agency, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouse operator under the terms of the Act and regulations, or

5. Other forms of financial assurance as may be prescribed in the applicable licensing agreement and related addenda deemed acceptable by the Farm Service Agency.

#### IV. Duties of Warehouse Operator

##### A. General

The warehouse operator agrees to:

1. At all times exercise such care in regard to cotton in custody as a reasonably careful owner would exercise under the same circumstances and conditions and not handle or store it in a manner that would damage or degrade it.

2. To not differentiate among depositors regarding use of and access to services, except that available storage space may be allocated.

3. If handling non-licensed cotton, to keep it separate in storage from the licensed cotton.

4. Upon acceptance of baled cotton for storage, immediately attach (if not already present) an identification tag of

a quality approved by Farm Service Agency. These tags will contain a number, be attached in an orderly manner and clearly distinguishable from one another.

5. Not accept for storage any bale of cotton that is excessively wet. Fire damaged cotton is not to be stored in contact with cotton that has not been so damaged.

6. Keep the warehouse reasonably clean at all times and free of loose cotton, except in containers separate and apart from other cotton and provide a safe environment in and around the warehouse and provide all necessary assistance in the execution of inspections and examinations by representatives of the Farm Service Agency.

7. Unless prevented from doing so by force majeure, to deliver stored cotton without unnecessary delay. A warehouse operator will be considered to have delivered cotton without unnecessary delay, if for the week in question, the warehouse operator has delivered or staged for scheduled delivery at least 4.5 percent of either their licensed storage capacity or Commodity Credit Corporation-approved storage capacity or other storage capacity as determined by the Farm Service Agency to be in effect during the relevant week of shipment.

8. To resolve any claim for noncompliance with the cotton shipping standard through established industry, professional, or mutually agreed upon arbitration procedures. The arbitration procedures will be nondiscriminatory and provide each person equal access and protection relating to the cotton shipping standard.

9. License all facilities controlled by them at a specific location, unless those facilities are specifically exempted by the Farm Service Agency.

#### B. Insurance

1. *Requirements.* The warehouse operator agrees to:

a. Secure, in their own name, insurance on stored cotton against loss or damage by fire, lightning, and other risk under forms of policies which automatically attach for the full replacement value of stored cotton, as soon as such cotton is placed in their legal custody, and continue such insurance in effect so long as the cotton remains in their legal custody. The warehouse operator also agrees to keep a general insurance account showing the policy number, issuing company, amount binding, and expiration dates of all insurance policies and in each instance show the property covered by such policies. This insurance will be

lawful policies issued by one or more insurance companies. The warehouse operator must submit such reports to underwriters as may be required under the terms of such policies, and submit copies of such reports to the Farm Service Agency as required.

b. Show, in the tariff to be posted at all delivery points, the conditions under which the cotton will be insured against loss or damage by fire, lightning, and other risk.

c. Require that the warehouse operator's insurance company give 30 days advance notice to the Farm Service Agency of intent to cancel the stock (inventory) coverage.

#### C. Records To Be Kept in a Safe Place

The warehouse operator agrees to:

1. Provide a fireproof safe, a fireproof vault, or a fireproof compartment in which to keep, when not in use, all records, books, and papers pertaining to the licensed warehouse, including a current warehouse receipt book, copies of warehouse receipts issued, and canceled warehouse receipts or microfilm copies of canceled receipts, except that, with the written consent of the Farm Service Agency, upon a showing by the warehouse operator that it is not practicable to provide such fireproof safe, vault, or compartment, may keep such records, books, and papers in some other place of safety, approved by the Farm Service Agency.

2. Retain each canceled receipt for a period of six years after December 31 of the year in which the warehouse receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouse operator knows to be pending, or as may be required by the Farm Service Agency in particular cases to carry out the purposes of the Act.

3. Arrange canceled warehouse receipts in numerical order and otherwise in such manner as may be directed, for purposes of audit, by authorized officers or agents of the United States Department of Agriculture and the Farm Service Agency.

#### D. Scales and Weighing

The warehouse operator agrees to:

1. Be equipped with suitable scales in good order, and so arranged that all cotton can be weighed in and out, if required, of the warehouse. The scales in any warehouse must be subject to examination by authorized officers or agents of the United States Department of Agriculture and to disapproval by the Farm Service Agency. If disapproved, any weighing apparatus must not thereafter be used in ascertaining the weight of cotton for the purposes of this

Act, until such disapproval is withdrawn.

2. Weigh, by a weigher licensed under the authority of the United States Warehouse Act, the cotton that comes into the warehouse unless warehouse weights are established at the gin. These weights must be certified by the licensed weigher.

3. Assume full responsibility for the weights established at the gin for warehouse receipt purposes. In order to use these weights, the licensed warehouse must maintain control of the scales used to weigh cotton. They must be inspected and certified as accurate by a State agency or a qualified scale company and a copy of the inspection report must be maintained at the warehouse office for the warehouse examiner's review. The scale must be checked by the warehouse operator for accuracy on a routine basis. Point of origin weights may be used for single bale or lot stored cotton by agreement with the depositor. Any point of origin weights shown on a warehouse receipt will be the official warehouse bale or lot weight. Lot cotton tendered for storage on which a multiple bale warehouse receipt is issued must be maintained so as to preserve its individual and collective identity during storage and shipment, provided that if such lot is broken at the warehouse, for the issuance of new receipts, each bale will be weighed at the warehouse by a licensed weigher before single bale warehouse receipts are issued.

#### E. Warehouse Charges

The warehouse operator:

1. Must not make any unreasonable or exorbitant charge for services rendered.

2. Must, before a license to conduct a warehouse is granted under the Act, file, with the Farm Service Agency, a copy of their rules and a schedule of charges to be assessed depositors.

3. Must, at or before the beginning of each season, file an amended schedule of charges with Farm Service Agency along with the rules, if any, and of our schedule of charges for the ensuing season. The cotton season will commence not later than September 1 of each year, as the operator of the warehouse will select, and will notify Farm Service Agency in writing not less than 5 days preceding the date selected.

4. Must file an amended schedule, if making changes other than the beginning of the season, showing the contemplated changes will be filed with Farm Service Agency. No increase in the storage rate shown in such an amended schedule will apply to cotton in storage at the time the changes become effective.

5. May demand payment of all accrued charges at the close of each cotton season. If, upon demand, the owner of the cotton refuses to pay such charges at the end of a season, action may be taken to enforce collection of its charges as is permitted by the laws of the State in which the warehouse is located.

#### F. Business Hours

The warehouse operator agrees to:

1. Be open for the purpose of receiving cotton for storage and delivering cotton out of storage and for settlement purposes every normal business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m. The warehouse operator must post their business hours at the public entrance to the office and to their licensed warehouse.

2. In case the warehouse is not to be kept open as required, state, in the posted notice, the period during which the warehouse is to be closed and the name, the address, and telephone number of the person who will be authorized to receive and deliver cotton stored in the warehouse.

#### G. System of Accounts

The warehouse operator agrees to:

1. Have and maintain a system of accounts approved for the purpose by the Farm Service Agency. These records must include:

- a. Bale tag numbers,
- b. Distinguishing mark or identifier,
- c. Weight,
- d. Class when required and/or ascertained,
- e. Location in the warehouse,
- f. Date received for storage,
- g. Date delivered out of storage, and
- h. Receipts issued and canceled.

2. Maintain a detailed set of records of money received and disbursed and, if applicable, all insurance policies taken out and canceled on request of each depositor. These records will be maintained accurately and concisely as activity occurs. The warehouse operator must retain these records for a period of six years after December 31 of the year in which they were created, and for such longer period as may be necessary for the purposes of any litigation which the warehouse operator knows to be pending, or as may be required by the Farm Service Agency in particular cases to carry out the purposes of the Act.

#### H. Excess Storage and Transferring Cotton

The warehouse operator agrees that:

1. If at any time cotton stored in the warehouse exceeds the capacity for which the warehouse is licensed, the

warehouse operator will immediately notify the Farm Service Agency of the fact and the location of excess storage.

2. If they desire to transfer, at their own expense, depositor cotton to another warehouse (receiving), the warehouse operator may do so.

a. The transferring (shipping) warehouse operator's accepted rules or schedule of charges must contain notice that the warehouse operator may transfer cotton according to conditions prescribed by the Farm Service Agency.

b. The warehouse operator must request permission in writing to the Farm Service Agency.

3. For purposes of transferring cotton, a receiving warehouse means a warehouse operated by a warehouse operator who holds an un-suspended, un-revoked cotton license under the Act, or a warehouse operated by a warehouse operator who holds an effective warehouse license for the public storage of cotton issued by a State that has financial, bonding and examination requirements for the benefit of all depositors or, in the case of warehouses operating in a State without licensing authorities, warehouses with an approved Cotton Storage Agreement with the Commodity Credit Corporation.

4. The shipping warehouse operator must transfer all identity-preserved cotton in lots and must list on a Bill of Lading all forwarded bales by receipt number and weight. The receiving warehouse operator will promptly issue a non-negotiable warehouse receipt for each lot of cotton stored and will attach a copy of the corresponding bill of lading to each receipt and return the receipt promptly to the shipping warehouse operator. The receiving warehouse operator will store each such lot intact, and will attach a header card to the lot showing the receipt number, number of bales, and a copy of the Bill of Lading with the individual tag numbers, marks, or identifiers to the stored lot. Such non-negotiable warehouse receipts issued for forwarded cotton will have printed or stamped diagonally in large bold outline letters across the face of the receipt the words: "NOT NEGOTIABLE."

5. The shipping warehouse operator's financial assurance will be increased to consider the addition of the transferred cotton to the licensed capacity of the warehouse with the net asset requirements based on the total of the licensed capacity and the forwarded cotton. The amount of financial assurance need not exceed \$250,000.00 unless necessary to cover a deficiency in net worth. The receiving warehouse operator must not incur storage

obligations that exceed the licensed or approved capacity of the receiving warehouse;

6. The shipping warehouse operator continues to retain storage obligations to the owners of all cotton deposited in the warehouse for storage whether forwarded or retained and is, except as otherwise agreed upon under paragraph (g) of this section.

7. The owner of cotton deposited for storage at the warehouse must make settlement and take delivery at the warehouse where the cotton was first deposited for storage, unless the owner of the cotton, with the consent of both the shipping warehouse operator and the receiving warehouse operator, elects to take delivery at the warehouse to which cotton was transferred under this section.

8. Nothing in this section diminishes the right of the owner of the cotton to receive or the obligation of the warehouse operator of a licensed warehouse from which the product is transferred, to deliver to the owner the same cotton, identity preserved, called for by the warehouse receipt or other evidence of storage;

9. Recording and retention of non-negotiable warehouse receipts received as a result of forwarding cotton under this section will be subject to the requirements for warehouse receipts specified elsewhere in these regulations; and

10. If it is the shipping warehouse operator's obligation by terms of the warehouse receipt or otherwise to insure the cotton subject to the transfer, they must keep such cotton insured in their own name or transfer the cotton only to a warehouse where the cotton is fully insured

11. A receiving warehouse operator must not transfer or offset to another warehouse, in any manner, their obligation to the shipping warehouse operator.

#### I. Reports Required

The warehouse operator agrees to:

1. When requested by the Farm Service Agency, make such reports, on forms prescribed and furnished for the purpose by the Farm Service Agency, concerning the condition, contents, operation, and business of the warehouse.

2. Keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted.

#### J. Inspections, Examinations of Warehouse

The warehouse operator agrees to permit any officer or agent of the United States Department of Agriculture, authorized by the Farm Service Agency, to enter and inspect or examine on any business day during the usual hours of business, any warehouse for which they hold a license, the office, the books, records, papers, and accounts relating, and the contents thereof and will furnish that officer or agent the assistance necessary to enable making any inspection or examination.

#### K. Arrangement of Stored Cotton

The warehouse operator agrees to:

1. Store each bale of cotton for which a receipt under the Act has been issued in a manner acceptable to Farm Service Agency.

2. For cotton tendered for storage, by any one depositor, of the same grade and staple in such quantity that efficiency of operation dictates that such cotton should be stored in a lot or lots without regard to visibility of all tags on all bales within any lot, may store such cotton in lots if each lot originally contained two or more bales. If a negotiable multiple bale receipt is issued each bale entering into a lot must bear an individual bale identification, and must be stored so that the number of bales within the lot may be accurately determined.

3. For lot cotton, an individual lot identification tag showing the lot number and the number of bales in the lot to each lot of cotton will be affixed. An office record showing the bale or tag number, mark, or identifier of each bale in the lot and the location of the lot in the warehouse will be maintained. Each lot will be so arranged as to be readily distinguishable from each and every other lot. When requested by a proper representative of Farm Service Agency engaged in making an examination of the warehouse, stacks or lots of cotton, as the examiner deems necessary to a proper examination, will be torn or broken down at the warehouse operator's expense.

4. Block piling of cotton for which single bale receipts have been or are to be issued is permitted, with the written permission of DACO, provided the warehouse operator is willing to tear or break down the blocks at the request of a representative of the Farm Service Agency when making an examination of the warehouse.

5. Notify the insurance underwriter of block piling and they must have consented to insuring it.

6. To arrange the cotton so as not to obstruct free access and the proper

operation of the sprinkler or other fire protection equipment.

#### L. Removal of Cotton from Storage

Except as may be permitted by law or the regulations in this part, the warehouse operator must not remove any cotton, from storage, from the licensed warehouse or a part thereof designated in the receipt for such cotton, if by such removal the insurance thereon will be impaired, without first obtaining the consent in writing of the holder of the receipt, and indorsing on such receipt the fact of such removal. Under no other circumstances, unless it becomes absolutely necessary to protect the interests of holders of receipts, will cotton be removed from the warehouse, and immediately upon any such removal the warehouse operator will notify the Farm Service Agency of such removal and the necessity therefor.

#### M. Drawing of Samples

The warehouse operator agrees:

1. That persons will be licensed to draw samples from any cotton stored or to be stored in the licensed warehouse if the owner of such cotton or any person having a legal right to have such cotton sampled requests that samples be drawn.

2. When directed by Farm Service Agency, such requests will be in writing.

3. Samplers will perform their duties under its supervision and the samples will be drawn in accordance with Agricultural Marketing Service or other procedures recognized by Farm Service Agency.

4. Each sample will be appropriately marked to show the tag number, mark, or identifier of the bale of cotton from which it was drawn.

#### N. Warehouse Receipts

1. The warehouse operator when choosing the option to issue Electronic Warehouse Receipts (EWRs) instead of paper warehouse receipts for the agricultural product(s) stored in their warehouse agrees to:

a. Only issue EWRs through a provider whom the Farm Service Agency has approved.

b. Receive written approval from the Farm Service Agency at least 30 calendar days before changing providers. Upon approval a warehouse operator may request their current provider to transfer their EWR data from its Central Filing System (CFS) to the CFS of the approved provider whom they select. Warehouse operators must notify all holders of EWRs by inclusion in the CFS at least 30 calendar days before changing providers, unless

otherwise required or allowed by the Agency. Warehouse operators may only change providers once a year.

c. Cancel EWRs only when they are the holder of the receipt(s).

d. Correct information on the EWR only with written notification to the provider.

e. Before issuing EWRs, request and receive from the Farm Service Agency a range of consecutive warehouse receipt numbers which the warehouse operator will use consecutively for issuing their EWRs.

f. Issue warehouse receipts initially as EWRs.

g. Inform the Farm Service Agency of the identity of their provider 60 calendar days in advance of issuing EWRs through that provider. The Farm Service Agency may waive or modify this 60-day requirement as set forth under 7 CFR 735.2(b).

2. The warehouse operator will ensure that an issued EWR establishes the same rights and obligations with respect to an agricultural product as a paper warehouse receipt, and possess the following attributes that:

a. The person identified as the 'holder' of a EWR will be entitled to the same rights and privileges as the holder of a paper warehouse receipt.

b. Only the current holder of the EWR may transfer the EWR to a new holder.

c. The identity of the holder must be included as additional information for every EWR.

d. An EWR will only designate one entity as a holder at any one time.

e. An EWR will not be issued for a specific identity preserved or a commingled agricultural product lot if another receipt, whether paper or electronic, representing the same specific identity preserved or commingled lot of agricultural product is outstanding. No two warehouse receipts issued by a warehouse operator may have the same receipt number or represent the same agricultural product lot.

f. An EWR may only be issued to replace a paper receipt if requested by the current holder of the paper warehouse receipt.

g. Allows a 'holder' the option to authorize any other user of a provider to act on their behalf with respect to their activities with their provider. This authorization must be in writing, acknowledged, and retained by the provider.

h. Provisions of 7 CFR 735.300(c) will be applicable to lost or destroyed EWRs.

i. Only the current EWR holder may request a paper warehouse receipt in lieu of a EWR with respect to an agricultural product.

## V. Paper Warehouse Receipts

### A. Issuance

The warehouse operator agrees to:

1. Issue warehouse receipts for any cotton stored in a warehouse at the request of a depositor.

2. Except when an expiration date authorized by Farm Service Agency is shown on the face of the receipt, every negotiable receipt issued for cotton stored in a licensed warehouse will be effective until surrendered for delivery of the cotton, and every non-negotiable receipt will be effective until surrendered for delivery of the cotton or until all cotton covered by the receipt has been delivered in response to proper delivery orders of the person rightfully entitled to the cotton:

3. Nothing contained in this section will prohibit the warehouse operator from legally selling the cotton when the accrued storage and other charges equals or exceeds the current market value of the cotton.

4. Every negotiable receipt issued for cotton stored in a licensed warehouse will embody within its written or printed terms a statement that the cotton covered by such receipt was classified by a licensed classifier or a board of cotton examiners when such cotton is so classified.

5. Whenever the grade or other class of the cotton is stated in a receipt issued for cotton stored in a licensed warehouse, such grade or other class will be determined by a licensed classifier or a board of cotton examiners upon the basis of a sample drawn, and will be stated in the receipt.

### B. Form

1. Every warehouse receipt, whether negotiable or non-negotiable, issued for cotton stored in a licensed warehouse must, in addition to complying with the requirements of section 11 of the Act, embody within its written or printed terms the following:

a. The name of the warehouse operator and the designation, if any, of the warehouse,

b. The warehouse operator's license number,

c. The Commodity Credit Corporation contract code number, if applicable,

d. A statement whether the warehouse operator is incorporated or unincorporated, and if incorporated, under what laws,

e. In the event the relationship existing between the warehouse operator and any depositor is not that of a strictly disinterested custodianship, a statement setting forth the actual relationship,

f. The tag identifier given to each bale of cotton,

g. A statement conspicuously placed, whether or not the cotton is insured, and, if insured, to what extent, by the warehouse operator against loss by fire, lightning, or other risk,

h. A blank space designated for the grade and/or other classification may be stated,

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

j. A statement indicating that the weight was determined by a weigher licensed under the Act, except that if at the request of the depositor, the weight is not so determined or if the point of origin weight was determined as permitted, the receipt will contain a statement to that effect.

k. Licensed receipts issued to cover linters will be clearly and conspicuously marked "Linters"

l. If the warehouse operator 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 will be drawn through such space to show that such omission has been made by the warehouse operator.

m. A warehouse receipt may contain additional information, provided that this information does not interfere with the information required.

2. If the warehouse operator issues a warehouse receipt omitting the statement of grade on request of the depositor, such receipt will have clearly and conspicuously stamped or written in the space provided for the statement of grade the words "Not graded on request of depositor"

3. If the warehouse operator issues a warehouse 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 will be drawn through such space to show that such omission has been made purposely.

### C. Persons Authorized to Sign Warehouse Receipts

The warehouse operator must file with the Farm Service Agency, the name and genuine signature of each person authorized to sign warehouse receipts for the warehouse operator, promptly notify Farm Service Agency of any changes as to persons authorized to sign, file the signatures of such persons, and will be bound by such signatures the same as if the warehouse operator, had personally signed the receipt.

### D. Copies of Warehouse Receipts

The warehouse operator agrees that at least one copy of all warehouse receipts

must be made and, except skeleton and microfilm copies, have clearly and conspicuously printed or stamped on the face the words "Copy  Not Negotiable".

### E. Printing of Warehouse Receipts

The warehouse operator agrees to issue only warehouse receipts that:

1. Are in a form prescribed by the Farm Service Agency.

2. Are on distinctive paper or card stock specified by the Farm Service Agency;

3. Printed by a printer with whom the United States has an agreement and bond for such printing; and

4. On paper and/or card stock tinted with ink in the manner prescribed by the agreement.

### F. Return of Warehouse Receipts Prior to Delivery

The warehouse operator agrees to:

1. Not deliver any cotton for which they have issued a negotiable receipt until the receipt has been returned to the warehouse operator and canceled; and

2. Not deliver cotton for which they have issued a non-negotiable receipt until such receipt has been returned, or they have obtained from the holder or agent, a written order and a receipt upon delivery of 90% (ninety percent) of the quantity.

### G. Balance Warehouse Receipts

The warehouse operator, upon request of the holder, may issue a warehouse receipt for previously warehouse receipted cotton, the receipt for which has been canceled. The balance warehouse receipt must show the number and issuance date of the original warehouse receipt.

### H. Lost or Destroyed Warehouse Receipts

1. The warehouse operator may issue a new warehouse receipt subject to the same terms and conditions, and bearing on its face the number and the date of the original receipt when presented with the case of a lost or destroyed warehouse receipt.

2. Before issuing a replacement warehouse receipt, the warehouse operator must require the holder or other person applying therefore to make and file with the warehouse operator:

a. An affidavit showing that the holder is lawfully entitled to the possession of the original warehouse receipt; that the holder 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 warehouse receipt without success.



b. A bond in an amount double the value, at the time the bond is given, of the agricultural product represented by the lost or destroyed warehouse receipt. This bond will be in a form approved for the purpose by the Farm Service Agency, and will be conditioned to indemnify the warehouse operator against any loss sustained by reason of the issuance of this warehouse receipt. The bond will have as surety a surety company which is authorized to do business, and is subject to administration of process in a suit on the bond, in the State in which the warehouse is located, unless a variance is granted by the Farm Service Agency.

3. Auditing Canceled Warehouse Receipts. The warehouse operator agrees to forward canceled receipts for auditing, as requested, to the Farm Service Agency.

#### VI. Service Licenses

##### A. The Applicant

1. The applicant must make application for license to sample, classify and weigh cotton to the Farm Service Agency on forms furnished by the Farm Service Agency. Each application must:

- a. Be signed by the applicant.
- b. Contain or be accompanied by a statement from the warehouse that the applicant is acceptable to such warehouse operator.
- c. If seeking sampling, classification licensing, certification that the applicant can correctly sample, classify cotton in accordance with the Official Standards of the United States.
- d. If seeking weighing licensing, certification that the applicant can correctly weigh cotton.
- e. Furnish such additional information as requested by the Farm Service Agency.

##### B. Examination of Applicant

As a service license applicant, submit to an examination or test to show ability to properly sample, classify and/or weigh cotton, as the case may be, and also make available for inspection copies of the standards of classification or the weighing apparatus as the case may be, used or to be used.

##### C. Classification Certificates

1. Each class certificate issued under the Act by a licensed classifier must be in a form approved by the Farm Service Agency, and include the following information within its terms:

- a. The caption "United States Warehouse Act Cotton Class 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 cotton is or is to be stored,

d. The date of the certificate,

e. The consecutive number of the certificate,

f. The location of the cotton at the time of classification,

g. The identification of each bale of cotton by the tag number given to the bale in accordance with this agreement or if there is no such tag number by other marks or numbers,

h. The grade or other class, except length of staple, of each bale covered by the certificate in accordance with the regulations or this agreement, as far as applicable, and the standard or description in accordance with which the classification is made,

i. A blank space designated for the purpose in which the length of staple may be stated,

j. A statement that the certificate is issued by a licensed classifier under the Act, and

k. The signature of the licensed classifier.

2. In addition to the provisions of paragraph 1, the class certificate may include any other matter not inconsistent with the Act or the regulations in this part, provided the approval of the Farm Service Agency is first secured.

3. In lieu of a class certificate in the form prescribed in paragraph 1, Form A memorandums and Form C certificates issued by a board of cotton examiners and class certificates issued by licensed classifiers under the United States Cotton Standards Act shall be deemed sufficient for the purposes of the Act and the regulations in this part, if the samples on which they are based were approximately six ounces in weight, not less than three ounces of which are to be drawn from each side of the bale. Each sample must be representative of the bale from which drawn.

##### D. Weight Certificates

1. Each weight certificate issued under the Act by a licensed weigher must be in a form approved for the purpose by the Farm Service Agency, and include the following information within its terms:

a. The caption "United States Warehouse Act, Cotton 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 cotton is or is to be stored,

e. The date of the certificate,

f. The consecutive number of the certificate,

g. The location of the cotton at the time of weighing,

h. The identification of each bale of cotton by the tag number given to the bale in accordance with this agreement or if there is no such tag number by other marks or numbers,

i. The gross, or net and tare, weight of the cotton and, if the cotton be excessively wet or otherwise of a condition materially affecting its weight, a statement of such fact to which may be added the weigher's estimate of the number of pounds which should be allowed for such condition,

j. A statement that the certificate is issued by a weigher licensed under the Act, and

k. The signature of the licensed weigher.

2. In addition to the provisions of paragraph 1, the weight certificate may include any other matter not consistent with the Act or the regulations in this part provided the approval of the Farm Service Agency is first secured.

##### E. Classification and Weight Certificate

The class and weight of any cotton, ascertained by a classifier and a weigher, may be stated on a certificate meeting the combined requirements of subsections C and D: provided the form of the certificate is approved for the purpose by the Farm Service Agency.

##### F. Duties of Sampler, Classifier and Weigher

Each sampler, classifier and weigher whose license remains in effect must:

1. Without discrimination, as soon as practicable, upon reasonable terms, classify or weigh and certificate the class or weight, respectively, of cotton stored or to be stored in the licensed warehouse to which the license applies, if such cotton is offered under such conditions as permit the proper performance of such functions; except that no class or weight certificate need to be issued when the class or weight so determined is entered on a receipt by the licensed classifier or weigher making the determination.

2. Sample cotton stored or to be stored in a licensed warehouse for which holding a license, in accordance with the standards. No class or weight certificate will be issued under the Act, for cotton not in the custody of a licensed warehouse operator for purposes of storage. Cotton not in the custody of such a warehouse operator for such purpose be sampled by a licensed sampler.

3. Keep their license conspicuously posted where all or most of the classifying is done, and each licensed sampler and/or weigher will keep their license conspicuously posted in the warehouse office or in such place as may be designated for the purpose by a representative of the Farm Service Agency.

4. From time to time, when requested by the Farm Service Agency, make reports, on forms furnished for the purpose by the Farm Service Agency, bearing upon activities as a licensed sampler, classifier and/or weigher.

5. Permit any authorized officer or agent of the United States Department of Agriculture or the Farm Service Agency or their designee to inspect or examine, on any business day during the usual hours of business, their books, papers, records, and accounts relating to the performance of their duties under the Act and, with the consent of the warehouse operator concerned, assist any such officer or agent in the inspection or examination as far as it relates to the performance of the duties of such sampler, classifier or weigher under the Act.

6. Keep for a period of one year, in a place accessible to interested parties, a copy of each certificate issued and file the certificate with the warehouse in which the cotton covered by the certificates is stored.

7. No person will in any way represent themselves to be a sampler, classifier, and/or weigher licensed under the Act unless holding an un-suspended and un-revoked license issued under the Act.

VII. Cotton Classification

A. Official Cotton Standards of the United States

The official cotton standards, established and promulgated under the United States Cotton Standards Act of March 4, 1923, within their scope, are hereby adopted as the official cotton standards for the purposes of the Act and the regulations.

B. Access to the Cotton Standards

The warehouse operator and each licensed classifier will keep themselves provided with, or have access to, a set of practical forms of the official cotton standards of the United States, or such

parts thereof as the Farm Service Agency may deem necessary for use in the locality in which the licensed warehouse is located.

VIII. Fees

The Farm Service Agency is authorized, by the enabling legislation, to assess and collect fees to cover the administration of the program. A schedule showing the current fees or any annual fee changes will be provided as an addendum to the licensing agreement.

The fees for cotton warehouses are detailed in the attached Addendum No.

1. This agreement forms a part of the (License Number) \_\_\_\_\_ for (Warehouse Operator) \_\_\_\_\_ at (Licensed Location) \_\_\_\_\_ and is effective (Date) \_\_\_\_\_.

\_\_\_\_\_  
Warehouse Operator

\_\_\_\_\_  
By

\_\_\_\_\_  
Date

\_\_\_\_\_  
For the Farm Service Agency.

BILLING CODE 3410-05-P

## ***ADDENDUM No. 1: FEES***

***Fee Table***  
***Schedule of fees charged for services rendered.***

United States Warehouse Act \*(effective October 1, 2001)

**Fee Table**

<b>Cotton</b>	<i>License Action Fee</i>	<i>Service License Fee</i>	<i>Inspection Fee</i>	<b>Annual User Fees</b>		
				Capacities - Range By Functional Unit	CCC Agreement	W/o CCC Agreement
	<b>\$80</b>	<b>\$35</b>	\$80/ 1,000 Bales or Fractional Part  Min \$160  Max \$1,600	1 to 20,000 Bales	\$560	\$1,115
20,001 to 40,000 Bales				730	1,460	
40,001 to 60,000 Bales				895	1,790	
60,001 to 80,000 Bales				1,125	2,245	
80,001 to 100,000 Bales				1,400	2,800	
100,000 to 120,000 Bales				1,680	3,355	
120,001 to 140,000 Bales				1,955	3,915	
140,000 to 160,000 Bales				2,240	4,475	
160,000 + Bales				*2,240	**4,475	
				*Plus \$60 per 5,000 bales capacity above 160,000 bales or fraction	**plus \$110 per 5,000 bales capacity above 160,000 bales or fraction	

**Exhibit B—Draft**

License Number \_\_\_\_\_

Effective \_\_\_\_\_

**Licensing Agreement for Grain***Contents*

- I. Definitions
- II. Financials
  - A. Financial Requirements
  - B. Financial Reporting
  - C. Accepting Other Financial Statement
  - D. Special Cases: Assets and Liabilities
  - E. Financial Special Conditions—Public Debt Obligations
- III. Financial Assurance
  - A. Financial Assurance Requirements—Computation
  - B. Financial Assurance—Acceptable Forms
- IV. Duties of Warehouse Operator
  - A. General
  - B. Insurance
  - C. Records to be kept in a Safe Place
  - D. Scales and Bin Numbers
  - E. Warehouse Charges
  - F. Business Hours
  - G. System of Accounts
  - H. Excess Storage and Transferring Grain
  - I. Reports Required
  - J. Inspections, Examinations of Warehouse
  - K. Loading Out Without Weighing
  - L. Storage of Identity Preserved Grain
  - M. Containerized Grain Storage
  - N. Delivery of Fungible Grain
  - O. Storage Obligations
  - P. Out of Condition and Damaged Grain
  - Q. Reconditioning Grain
  - R. Warehouse Receipts
- I. Paper Warehouse Receipts
  - A. Issuance
  - B. Form
  - C. Persons Authorized to Sign Warehouse Receipts
  - D. Copies of Warehouse Receipts
  - E. Printing of Warehouse Receipts
  - F. Return of Warehouse Receipts Prior to Delivery
  - G. Balance Warehouse Receipts
  - H. Lost or Destroyed Warehouse Receipts
- VI. Service Licenses
  - A. Applicant
  - B. Examination of Applicant
  - C. Inspection Certificate
  - D. Weight Certificates
  - E. Grade and Weight Certificate
  - F. Duties of Inspector and Weigher
- VII. Grain Grading
  - A. Official Grain Standards of the United States
  - B. Standards of Grade for Other Grain
- VIII. Grain Appeals
  - A. Appeal Procedure
  - B. Request for Appeal
  - C. Appeal Sampling, Preservation, Delivery and Examination
  - D. Freedom of Appeal
  - E. Owner Not Compelled to Store Grain
- IX Fees

**Licensing Agreement for Grain**

As a condition of licensing under the United States Warehouse Act (the Act), the warehouse operator agrees to the conditions set forth in this agreement and the regulations found at 7 CFR 735:

*I. Definitions*

*Bin.* A bin, tank, interstice, or other container in a warehouse in which bulk grain may be stored.

*Current assets.* Assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

*Current liabilities.* Those financial obligations which are expected to be satisfied during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

*Dockage.* Dockage in grain as defined by the official grain standards of the United States.

*Grain.* All products commonly classed as grain such as wheat, corn, oats, barley, rye, flaxseed, rough, brown, and milled rice, sunflower seeds, field peas, soybeans, emmer, sorghum, safflower seed, triticale, millet and such other products as are ordinarily stored in grain warehouses, subject to the disapproval of the Farm Service Agency.

*Licensed inspector and/or weigher.* A person licensed under the Act to sample, inspect and/or weigh grain and certificate the grade and/or weight of grain stored at a grain warehouse licensed under the Act.

*Net Worth.* When liabilities are subtracted from allowable assets, it is the balance amount. In determining allowable assets, credit may be given for appraisal of real property less improvements and for the appraisal of 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, lightning, and other risk. Such insurance must be in the form of lawful insurance policies issued by insurance companies authorized to do such business and subject to service of process in the State in which the warehouse is located. The Farm Service Agency will determine what assets are allowable and under what conditions appraisals may be used.

*Non-storage grain.* Grain received temporarily into a warehouse for conditioning, transferring, assembling for shipment, or lots of grain moving through a warehouse for current merchandising or milling use, against which no warehouse receipts are issued and no storage charges assessed. The merchandising or milling stocks held in storage as reserve stocks, or stored for use at an indefinite future date, may not be treated as non-storage grain.

*Storage grain.* All grain received into, stored in, or delivered out of the

warehouse which is not classified as non-storage.

*II. Financials***A. Financial Requirements**

1. The warehouse operator agrees to have and maintain:

a. Total net worth of at least the amount obtained by multiplying \$0.25 by the warehouse capacity in bushels; however, no person may be licensed or remain licensed as a warehouse operator unless that person has allowable net worth of at least \$50,000.00 (Any deficiency in net worth above the \$50,000.00 minimum may be supplied by an increase in the amount of the financial assurance).

b. Total allowable current assets equal to or exceeding total current liabilities or evidence acceptable to the Farm Service Agency that funds will be and remain available to meet current obligations.

2. If a warehouse operator is licensed or is applying for licenses to operate two or more warehouses, the maximum capacity of all licensed warehouses, as determined by the Farm Service Agency, will be the capacity considered in determining whether the warehouse operator meets the net worth requirements.

**B. Financial Reporting**

1. The warehouse operator agrees to provide annually, within 90 days of the fiscal year end, or more frequently if required, to the Farm Service Agency, financial statements from the warehouse operator's records prepared according to generally accepted accounting principles. The Farm Service Agency may grant one 30 day extension to provide a financial statement.

2. These financial statements must include but not be limited to:

- a. Balance sheet,
- b. Statement of income (profit and loss),
- c. Statement of retained earnings, and
- d. Statement of cash flows.

3. An authorized representative for the warehouse operator must certify under penalty of perjury that the statements, as prepared, accurately reflect the financial condition of the warehouse operator as of the date designated and fairly represent the results of operations for the period designated.

4. The warehouse operator must have the financial statements required audited or reviewed by a certified public accountant or an independent public accountant. Audits and reviews by independent certified public accountants and independent public

accountants must be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on this statement, must be furnished along with the financial statements. The Farm Service Agency may also require an on-site examination and an audit by an authorized officer or agent of the United States Department of Agriculture and request other pertinent information.

#### C. Accepting Other Financial Statements

1. Financial statements of a parent company which separately identify the financial position of the warehouse operator as a wholly owned subsidiary and which meet the basic requirements of financial statements, may be accepted by the Farm Service Agency in lieu of the warehouse operator meeting such requirements.

2. Guaranty agreements from a parent company submitted on behalf of a wholly owned subsidiary may be accepted by the Farm Service Agency as meeting the basic requirements of financial statements if the parent company submits a financial statement which meets the financial requirements and financial reporting requirements.

#### D. Special Cases: Assets and Liabilities

1. Subject to such terms and conditions as the Farm Service Agency may prescribe and for the purposes of determining allowable assets and liabilities, appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by a warehouse operator to conform with the requirements may be allowed if

a. prepared by independent appraisers acceptable to the Farm Service Agency and

b. the assets are fully insured against casualty loss.

2. All grain purchased from and remaining in-store at another warehouse must be fully paid for and a warehouse receipt issued in the name of the purchasing warehouse operator for such quantity and quality as the warehouse operator's records or assets may state.

#### E. Financial Special Conditions—Public Debt Obligations

The warehouse operator agrees that if they file a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are unconditionally guaranteed as to both interest and principal by the United States:

1. The obligation deposited will *not* be considered a part of the warehouse operator's assets.

2. A deficiency in total allowable net worth as computed may be offset by the licensed warehouse operator furnishing acceptable financial assurance for the difference.

3. The deposit may be replaced or continued in the required amount from year to year; and

4. The deposit will not be released until one year after cancellation or revocation of the license that it supports or until satisfaction of any claim against the deposit, whichever is later.

### III. Financial Assurance

#### A. Financial Assurance Requirements—Computation

The warehouse operator agrees:

1. To furnish financial assurance computed at the rate of twenty cents (\$0.20) per bushel for the first million bushels of storage space, fifteen cents (\$0.15) for the second million bushels of storage space, and ten cents (\$0.10) for the balance of storage space that the warehouse accommodates when stored in the manner customary to the warehouse as determined by the Farm Service Agency, but not less than fifty thousand dollars (\$50,000.00) nor more than five hundred thousand dollars (\$500,000.00).

2. When applying for licenses to operate two or more warehouses in the same State, or multiple states, and at the warehouse operator's election, they may provide financial assurance meeting the requirements of the Act and the regulations to cover all these warehouses within the multiple states and the maximum of five hundred thousand dollars (\$500,000.00) of financial assurance will apply for each State covered.

3. In case of a deficiency in net worth above the fifty thousand dollars (\$50,000.00) minimum required, to add to the amount of financial assurance determined in accordance with paragraph (1) of this section an amount equal to that deficiency. If a letter of credit is used for the amount of the deficiency, it must be issued for a period of not less than two years to coincide with the period of any deposit of obligations. Any letter of credit must be clean, irrevocable, issued by a commercial bank payable to the Farm Service Agency by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation. The deposit will not be considered an asset of the company.

4. If the Farm Service Agency finds that conditions exist which warrant

requiring additional financial assurance, to add to the amount of financial assurance a further amount to meet such conditions.

#### B. Financial Assurance—Acceptable Forms

The warehouse operator may offer as financial assurance any of the following:

1. A warehouse operator's bond, or

2. In the form of a deposit with the Farm Service Agency, United States bonds, United States Treasury notes, or other public debt obligations of the United States or obligations that are unconditionally guaranteed as to both interest and principal by the United States, or

3. In the form of a letter of credit issued to the Agency for a period of not less than two years to coincide with the period of any deposit of obligations, or

4. In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Farm Service Agency, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouse operator under the terms of the Act and regulations, or

5. Other forms of financial assurance as may be prescribed in the applicable licensing agreement and related addenda deemed acceptable by the Farm Service Agency.

### IV. Duties of Warehouse Operator

#### A. General

The warehouse operator agrees to:

1. At all times exercise such care in regard to grain in custody as a reasonably careful owner would exercise under the same circumstances and conditions.

2. To not differentiate among depositors regarding use of and access to services, except that available storage space may be allocated.

3. Accept all storage and non-storage grain and, at the request of the depositor, deliver out all storage and non-storage grain, other than specially-binned grain, in accordance with the grades of that grain as determined by a person duly licensed to inspect that grain and to certificate the grade and the weight of that grain under the Act and the regulations; or

4. If an appeal from the determination of an inspector has been taken, that grain will be accepted for and delivered out of storage in accordance with the grades as finally determined in the appeal.

5. Keep the warehouse reasonably clean at all times and free from straw, detritus, rubbish, or accumulations of materials that will create a hazard or interfere with the handling of grain and provide a safe environment in and around the warehouse and will provide all necessary assistance in the execution of inspections and examinations by representatives of the Farm Service Agency.

6. Maintain sufficient inventory of grain in licensed storage with respect to quality and quantity as evidenced by the outstanding storage obligations (warehouse receipted and not warehouse receipted) and, in case the grades of stored grain should get out of balance with grades represented by outstanding storage obligations, to effect the necessary corrective actions to regain the quality and quantity equity.

#### B. Insurance

1. *Requirements.* The warehouse operator agrees to:

a. Secure, in their own name, insurance on stored grain against loss or damage by fire, lightning, and other risk under forms of policies which automatically attach for the full replacement value of stored grain, as soon as such grain is placed in their legal custody, and continue such insurance in effect so long as the grain remains in their legal custody. The warehouse operator also agrees to keep a general insurance account showing the policy number, issuing company, amount binding, and expiration dates of all insurance policies and in each instance show the property covered by such policies. This insurance will be lawful policies issued by one or more insurance companies. The warehouse operator must submit such reports to underwriters as may be required under the terms of such policies, and submit copies of such reports to the Farm Service Agency as required.

b. Show, in the tariff to be posted at all delivery points, the conditions under which the grain will be insured against loss or damage by fire, lightning, and other risk.

c. Require that the warehouse operator's insurance company give 30 days advance notice to the Farm Service Agency of intent to cancel the stock (inventory) coverage.

#### C. Records To Be Kept in a Safe Place

The warehouse operator agrees to:

1. Provide a fireproof safe, a fireproof vault, or a fireproof compartment in which to keep, when not in use, all records, books, and papers pertaining to the licensed warehouse, including a current warehouse receipt book, copies

of warehouse receipts issued, and canceled warehouse receipts or microfilm copies of canceled receipts, except that, with the written consent of the Farm Service Agency, upon a showing by the warehouse operator that it is not practicable to provide such fireproof safe, vault, or compartment, may keep such records, books, and papers in some other place of safety, approved by the Farm Service Agency.

2. Retain each canceled receipt for a period of six years after December 31 of the year in which the warehouse receipt is canceled and for such longer period as may be necessary for the purposes of any litigation which the warehouse operator knows to be pending, or as may be required by the Farm Service Agency in particular cases to carry out the purposes of the Act.

3. Arrange canceled warehouse receipts in numerical order and otherwise in such manner as may be directed, for purposes of audit, by authorized officers or agents of the United States Department of Agriculture and the Farm Service Agency.

#### D. Scales and Bin Numbers

The warehouse operator agrees to:

1. Be equipped with suitable scales in good order, and so arranged that all grain, whether for storage or for non-storage purposes, can be weighed in and out of the warehouse. The scales in any warehouse must be subject to examination by authorized officers or agents of the United States Department of Agriculture and to disapproval by the Farm Service Agency. If disapproved, any weighing apparatus must not thereafter be used in ascertaining the weight of grain for the purposes of this Act, until such disapproval is withdrawn.

2. Cause both bulk grain bins and compartments for sacked grain of all warehouses licensed under the Act to be identified by means of clearly discernible numbers securely affixed. The series of numbers to be used must be approved by the Farm Service Agency. Bulk grain bins must be numbered so as to be easily identified at the openings on top and also on or near the outlet valves underneath. Compartments must be numbered in such a manner as clearly showing the space covered by each number.

3. Apply for licensing at all facilities controlled by them at a specific location, among which grain may be transferred without weighing, unless those facilities are specifically exempted by the Farm Service Agency. The warehouse operator must not select, randomly, the bins to be licensed unless

specifically exempted by the Farm Service Agency.

#### E. Warehouse Charges

The warehouse operator must:

1. not make any unreasonable or exorbitant charge for services rendered.

2. before a license to conduct a warehouse is granted under the Act, file, with the Farm Service Agency, a copy of their rules and a schedule of charges to be assessed depositors.

3. before making any change in such rules or schedule of charges, file with the Farm Service Agency a new rule statement or schedule of charges.

4. post conspicuously where the depositor may access it at all delivery points, a copy of the current rules and schedule of charges.

#### F. Business Hours

The warehouse operator agrees to:

1. be open for the purpose of receiving grain for storage and delivering grain out of storage and for settlement purposes every normal business day for a period of not less than six hours between the hours of 8 a.m. and 6 p.m. The warehouse operator must post their business hours at the public entrance to the office and to their licensed warehouse.

2. in case the warehouse is not to be kept open as required, state, in the posted notice, the period during which the warehouse is to be closed and the name, the address, and telephone number of the person who will be authorized to receive and deliver grain stored in the warehouse.

#### G. System of Accounts

The warehouse operator agrees to:

1. Have and maintain a system of accounts approved for the purpose by the Farm Service Agency. This system of accounts must include an accurate and concise daily position record showing, as activity occurs, the total quantity of each kind and class (and the subclass white club wheat) of grain in licensed space:

a. Total grain unloaded into the warehouse,

b. Total grain loaded out of the warehouse,

c. Total grain adjustments,

d. Total grain remaining in the warehouse at the close of each business day,

e. Total obligations transferred to another warehouse,

f. Total negotiable and non-negotiable warehouse receipts issued, canceled, and balance outstanding,

g. Total increase, decrease, and outstanding un-receipted obligations belonging to others including grain bank,

h. Total grain owned by the warehouse operator for which warehouse receipts have not been issued, and

i. Total grain obligations.

2. Maintain a separate set of records for each depositor showing the kind, class (and the subclass white club wheat), grade, and quantity of grain deposited or redelivered which must include a detailed record of all money received and disbursed and, if applicable, all insurance policies taken out and canceled on request of each depositor. These records will be maintained accurately and concisely as activity occurs. The warehouse operator must retain these records for a period of six years after December 31 of the year in which they were created, and for such longer period as may be necessary for the purposes of any litigation which the warehouse operator knows to be pending, or as may be required by the Farm Service Agency in particular cases to carry out the purposes of the Act.

3. Maintain similar records and information for any non-storage grain handled through the warehouse. Records required with respect to non-storage grain must be retained, as a part of the records of the warehouse, for a period of one year after December 31 of the year in which the lot of non-storage grain is delivered from the warehouse.

#### H. Excess Storage and Transferring Grain

The warehouse operator agrees that:

1. If at any time grain stored in the warehouse exceeds the capacity for which the warehouse is licensed, the warehouse operator will immediately notify the Farm Service Agency of the fact and the location of excess storage.

2. If they desire to transfer stored grain to another warehouse (receiving), the warehouse operator may do so either by physical movement of the stored grain or by other methods accepted as standard industry practice subject to the following terms and conditions:

a. The transferring (shipping) warehouse operator's accepted rules or schedule of charges must contain notice that the warehouse operator may transfer grain according to conditions prescribed by the Farm Service Agency.

b. The warehouse operator must request permission in writing to the Farm Service Agency.

c. For purposes of transferring grain, a receiving warehouse means a warehouse operated by a warehouse operator who holds an un-suspended, un-revoked grain license under the United States Warehouse Act, or a warehouse operated by a warehouse operator who holds an effective

warehouse license for the public storage of grain issued by a State that has financial, bonding and examination requirements for the benefit of all depositors or, in the case of warehouses operating in a State without licensing authorities, warehouses with approved Uniform Grain and Rice Storage Agreements with the Commodity Credit Corporation.

d. Non-negotiable warehouse receipts must be obtained promptly by the shipping warehouse operator from the receiving warehouse operator for all warehouse receipted or open storage transferred grain. Such warehouse receipts must have printed or stamped in large bold or outline letters diagonally across the face and covering the face from corner to corner the words "NOT NEGOTIABLE". In the case of grain shipped to a warehouse in a State that doesn't allow issuance of non-negotiable warehouse receipts, the receiving warehouse operator will issue an affidavit specifying the kind, class (and the subclass white club wheat), grade and quantity of the grain received from the shipping warehouse operator. These receipts and affidavits are not valid for collateral purposes. They must be retained by the shipping warehouse operator to be presented to and used by authorized officers and agents of the United States Department of Agriculture, and the Farm Service Agency in lieu of an on-site inventory. The grain covered by these warehouse receipts and affidavits is not the property of either the receiving or shipping warehouse operator but held in trust by both solely for the benefit of the depositors whose bailed grain was transferred individually or collectively and which the depositor or the depositor's transferee retains title.

e. The shipping warehouse operator's financial assurance amount must be increased to consider the addition of the transferred grain to the licensed capacity of the warehouse with the net worth requirements based on the total of the licensed capacity and the transferred grain. The receiving warehouse operator must not incur storage obligations that exceed the licensed or approved capacity of their warehouse.

f. The shipping warehouse operator retains storage obligation to the owners of all grain deposited in the warehouse for storage, whether transferred or retained, and is, except as otherwise agreed upon under paragraph (g), required to redeliver the grain upon demand to the depositor or the depositor's transferee at the warehouse where the grain was first deposited for storage.

g. The owner of grain deposited for storage at the warehouse must make settlement and take delivery at the warehouse where the grain was first deposited for storage, unless the owner of the grain, with the consent of both the shipping warehouse operator and the receiving warehouse operator, elects to take delivery at the warehouse to which grain was transferred.

h. Nothing in this agreement will in any way diminish the right of the owner of the grain to receive on delivery, or the obligation of the warehouse operator of a licensed warehouse from which the product is transferred, to deliver to the owner, grain in the quantity, and of the kind, quality, class (and the subclass white club wheat) and grade, called for by the warehouse receipts or other evidence of storage.

i. Recording and retention of non-negotiable warehouse receipts received as a result of transferring grain under this section will be subject to the requirements for warehouse receipts.

j. A receiving warehouse operator must not transfer or offset to another warehouse, in any manner, their obligation to the shipping warehouse operator.

#### I. Reports Required

The warehouse operator agrees to:

1. When requested by the Farm Service Agency, make such reports, on forms prescribed and furnished for the purpose by the Farm Service Agency, concerning the condition, contents, operation, and business of the warehouse.

2. Keep on file, as a part of the records of the warehouse, for a period of three years after December 31 of the year in which submitted, an exact copy of each report submitted.

#### J. Inspections, Examinations of Warehouse

The warehouse operator agrees to permit any officer or agent of the United States Department of Agriculture, authorized by the Farm Service Agency, to enter and inspect or examine on any business day during the usual hours of business, any warehouse for which they hold a license, the office, the books, records, papers, and accounts relating, and the contents thereof and will furnish that officer or agent the assistance necessary to enable making any inspection or examination.

#### K. Loading Out Without Weighing

The warehouse operator may:

1. Load out identity-preserved grain without weighing for which the owner has agreed to assume all shortages, provided that the warehouse receipts

covering this grain have been surrendered to the warehouse operator.

2. At the request of the owner, load out fungible grain without weighing. Destination weights are to be obtained and posted as soon as possible. Any interim weight certificate issued by the shipping warehouse operator must clearly show the weight as an estimate.

#### L. Storage of Identity Preserved Grain

1. The warehouse operator may elect *not* to accept and store identity preserved grain.

2. If electing to accept and store bulk identity-preserved grain, the warehouse operator agrees to:

a. Clearly mark with identification each bag or container.

b. Maintain records that clearly show the location of all identity-preserved grain stored in the warehouse.

#### M. Containerized Grain Storage

The warehouse operator agrees to keep containerized grain stored in an orderly manner so as to permit easy access to all lots and to facilitate inspecting, sampling, counting and identification of each lot.

#### N. Delivery of Fungible Grain

The warehouse operator must:

1. Upon proper presentation of a warehouse receipt for any grain, other than identity-preserved grain, and, if requested by the warehouse operator, payment of all accrued charges associated with the storage of the grain, deliver to the depositor or lawful holder of the warehouse receipt, grain in the quantity, and of the kind, quality, class (and the subclass white club wheat) and grade, called for by the warehouse receipts or other evidence of storage; or

2. Upon proper presentation of a warehouse receipt for any identity-preserved grain and, if requested by the warehouse operator, payment of all accrued charges associated with the storage of the grain, deliver to the person lawfully entitled thereto, the identical grain stored in the warehouse.

#### O. Storage Obligations

The warehouse operator, while authorized to commingle grain in store, is liable to each depositor for the care and delivery of grain stored as if the grain were separately stored. The warehouse operator is free to store in any manner that results in their ability to produce grain, as a bailee for hire, that meets or exceeds the quantity and quality specifications of the warehouse receipt or the original delivery receipt (scale ticket).

#### P. Out of Condition and Damaged Grain

The warehouse operator may refuse to accept grain offered for storage if its condition is such that it will affect the condition of existing grain in the warehouse unless the warehouse operator chooses to separately bin and condition the grain.

#### Q. Reconditioning Grain

The warehouse operator agrees to:

1. Immediately notify the owners and the Farm Service Agency when grain is going out of condition and where the warehouse operator is unable to condition the grain and stop the deterioration, and

2. Follow instructions received.

#### R. Warehouse Receipts

1. The warehouse operator when choosing the option to issue Electronic Warehouse Receipts (EWRs) instead of paper warehouse receipts for the agricultural product(s) stored in their warehouse agrees to:

a. Only issue EWRs through a provider whom the Farm Service Agency has approved.

b. Receive written approval from the Farm Service Agency at least 30 calendar days before changing providers. Upon approval a warehouse operator may request their current provider to transfer their EWR data from its Central Filing System (CFS) to the CFS of the approved provider whom they select. Warehouse operators must notify all holders of EWRs by inclusion in the CFS at least 30 calendar days before changing providers, unless otherwise required or allowed by the Agency. Warehouse operators may only change providers once a year.

c. Cancel EWRs only when they are the holder of the receipt(s)

d. Correct information on the EWR only with written notification to the provider.

e. Before issuing EWRs, request and receive from the Farm Service Agency a range of consecutive warehouse receipt numbers which the warehouse operator will use consecutively for issuing their EWRs.

f. Issue warehouse receipts initially as EWRs.

g. Inform the Farm Service Agency of the identity of their provider 60 calendar days in advance of issuing EWRs through that provider. The Farm Service Agency may waive or modify this 60-day requirement as set forth under 7 CFR 735.2(b).

2. The warehouse operator will ensure that an issued EWR establishes the same rights and obligations with respect to an agricultural product as a paper

warehouse receipt, and possess the following attributes that:

a. The person identified as the 'holder' of a EWR will be entitled to the same rights and privileges as the holder of a paper warehouse receipt.

b. Only the current holder of the EWR may transfer the EWR to a new holder.

c. The identity of the holder must be included as additional information for every EWR.

d. An EWR will only designate one entity as a holder at any one time.

e. An EWR will not be issued for a specific identity preserved or a commingled agricultural product lot if another receipt, whether paper or electronic, representing the same specific identity preserved or commingled lot of agricultural product is outstanding. No two warehouse receipts issued by a warehouse operator may have the same receipt number or represent the same agricultural product lot.

f. An EWR may only be issued to replace a paper receipt if requested by the current holder of the paper warehouse receipt.

g. An EWR allows a "holder" the option to authorize any other user of a provider to act on their behalf with respect to their activities with their provider. This authorization must be in writing, acknowledged, and retained by the provider.

h. Provisions of 7 CFR 735.301(c) will be applicable to lost or destroyed EWRs.

i. Only the current EWR holder may request a paper warehouse receipt in lieu of a EWR with respect to an agricultural product.

#### V. Paper Warehouse Receipts

##### A. Issuance

The warehouse operator agrees to:

1. Issue warehouse receipts for any grain stored in a warehouse at the request of a depositor.

2. Prior to issuing any warehouse receipt under the Act, obtain a copy of the original weight certificate, original inspection certificate or original inspection and weight certificate representing the grain. The warehouse operator's records must identify the certificate (s) used as the basis for issuing the receipt and retained for a period of three years after December 31 of the year in which issued. Certificates filed in the office of an independent inspection or weighing agency or with a U. S. Registrar meet this requirement.

##### B. Form

1. Every warehouse receipt, whether negotiable or non-negotiable, issued for grain stored in a licensed warehouse must, in addition to complying with the



requirements of section 11 of the Act, embody within its written or printed terms the following:

- a. The name of the warehouse operator and the designation, if any, of the warehouse,
  - b. The warehouse operator's license number,
  - c. The Commodity Credit Corporation contract code number, if applicable,
  - d. A statement whether the warehouse operator is incorporated or unincorporated, and if incorporated, under what laws,
  - e. In the event the relationship existing between the warehouse operator and any depositor is not that of a strictly disinterested custodianship, a statement setting forth the actual relationship,
  - f. A statement conspicuously placed, whether or not the grain is insured, and, if insured, to what extent, by the warehouse operator against loss by fire, lightning, or other risk,
  - g. The net weight, including dockage, if any, of the grain.
  - h. In the case of grain the identity of which is to be preserved, its identification or location in accordance with the regulations.
  - i. The words "Not Negotiable," or "Negotiable," according to the nature of the receipt, clearly and conspicuously printed or stamped thereon.
2. Every negotiable warehouse receipt issued must, in addition to conforming with the requirements of paragraph (a), embody within its written or printed terms, a form of endorsement which may be used by the depositor, or their authorized agent, for showing the ownership of, and liens, mortgages, or other encumbrances on the grain covered by the receipt.
3. The grade stated in a warehouse receipt must be stated as determined by the inspector who last inspected and graded the grain or, if an appeal has been taken, the grade will be stated on such receipt in accordance with the grade as finally determined in such appeal.
4. If the warehouse operator issues a warehouse receipt omitting the statement of grade on request of the depositor, such receipt will have clearly and conspicuously stamped or written in the space provided for the statement of grade the words "Not graded on request of depositor".
5. If the warehouse operator issues a warehouse 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 will be drawn through such space to show that such omission has been made purposely.

#### C. Persons Authorized to Sign Warehouse Receipts

The warehouse operator must file with the Farm Service Agency, the name and genuine signature of each person authorized to sign warehouse receipts for the warehouse operator, promptly notify Farm Service Agency of any changes as to persons authorized to sign, file the signatures of such persons, and will be bound by such signatures the same as if the warehouse operator, had personally signed the receipt.

#### D. Copies of Warehouse Receipts

The warehouse operator agrees that at least one copy of all warehouse receipts must be made and, except skeleton and microfilm copies, have clearly and conspicuously printed or stamped on the face the words "Copy—Not Negotiable".

#### E. Printing of Warehouse Receipts

The warehouse operator agrees to issue only warehouse receipts that:

1. Are in a form prescribed by the Farm Service Agency.
2. Are on distinctive paper or card stock specified by the Farm Service Agency;
3. Printed by a printer with whom the United States has an agreement and bond for such printing; and
4. On paper and/or card stock tinted with ink in the manner prescribed by the agreement.

#### F. Return of Warehouse Receipts Prior to Delivery

The warehouse operator agrees to:

1. Not deliver any grain for which they have issued a negotiable receipt until the receipt has been returned to the warehouse operator and canceled; and
2. Not deliver grain for which they have issued a non-negotiable receipt until such receipt has been returned, or they have obtained from the holder or agent, a written order and a receipt upon delivery of 90% (ninety percent) of the quantity.

#### G. Balance Warehouse Receipts

The warehouse operator, upon request of the holder, may issue a warehouse receipt for previously warehouse receipted grain, the receipt for which has been canceled. The balance warehouse receipt must show the number and issuance date of the original warehouse receipt.

#### H. Lost or Destroyed Warehouse Receipts

1. The warehouse operator may issue a new warehouse receipt subject to the same terms and conditions, and bearing

on its face the number and the date of the original receipt when presented with the case of a lost or destroyed warehouse receipt.

2. Before issuing a replacement warehouse receipt, the warehouse operator must require the holder or other person applying therefore to make and file with the warehouse operator

a. An affidavit showing that the holder is lawfully entitled to the possession of the original warehouse receipt; that the holder 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 warehouse receipt without success.

b. A bond in an amount double the value, at the time the bond is given, of the agricultural product represented by the lost or destroyed warehouse receipt. This bond will be in a form approved for the purpose by the Farm Service Agency, and will be conditioned to indemnify the warehouse operator against any loss sustained by reason of the issuance of this warehouse receipt. The bond will have as surety a surety company which is authorized to do business, and is subject to administration of process in a suit on the bond, in the State in which the warehouse is located, unless a variance is granted by the Farm Service Agency.

3. Auditing Canceled Warehouse Receipts. The warehouse operator agrees to forward canceled receipts for auditing, as requested, to the Farm Service Agency.

#### VI. Service Licenses

##### A. The Applicant

The applicant for service licensing under the Act:

1. Must make application for license to inspect and/or weigh grain to the Farm Service Agency on forms furnished by the Agency. Each application must:

a. Be signed by the applicant.

b. Contain or be accompanied by a statement from the warehouse that the applicant is acceptable to such warehouse operator.

c. If seeking inspection licensing, certification that the applicant can correctly inspect grain 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 Farm Service Agency.

d. If seeking weighing licensing, certification that the applicant can correctly weigh grain.

e. Furnish such additional information as requested by the Farm Service Agency.

## B. Examination of Applicant

As a service license applicant, submit to an examination or test to show ability to properly inspect, grade and/or weigh grain, as the case may be, and also make available for inspection copies of the standards of inspection and grading and the weighing apparatus as the case may be, used or to be used.

## C. Inspection Certificate

1. Each inspection certificate issued under the Act by an inspector must be in a form approved by the Farm Service Agency, and include the following information within its terms:

- a. The caption "United States Warehouse Act, Grain Inspection 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 grain is or is to be stored,
- d. A statement showing whether the inspection covers grain moving into or out of the warehouse,
- e. The date of the certificate,
- f. The consecutive number of the certificate,
- g. The approximate quantity of grain covered by the certificate,
- h. The kind of grain covered by the certificate,
- i. The grade of the grain, as determined by such duly licensed inspector, in accordance with official standards and, in the case of grain for which no official standards of the United States are in effect, the standards or description in accordance with which such grain is graded.
- j. A statement that the certificate is issued by an inspector licensed under the U.S. Warehouse Act and the regulations thereunder,
- k. A statement conspicuously placed to the effect that the certificate is not valid for the purposes of the United States Grain Standards Act, and

1. The signature of the inspector who inspected and graded the grain.

2. In addition to the provisions of paragraph 1, the inspection certificate may include any other matter consistent with the Act or the regulations, provided the approval of the Farm Service Agency is first secured.

3. In lieu of an inspection certificate in the form prescribed in paragraph one, an official inspection certificate issued pursuant to the provisions of the United States Grain Standards Act, or the Agricultural Marketing Act of 1946 on grain which is stored or to be stored in a warehouse licensed under the Act will be acceptable for purposes of the Act and the regulations.

## D. Weight Certificates

1. Each weight certificate issued under the Act by an inspector must be in a form approved for the purpose by the Farm Service Agency, and include the following information within its terms:

- a. The caption "United States Warehouse Act, Grain 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 grain is or is to be stored,
- d. Whether the grain is weighed into or out of the warehouse,
- e. The date of the certificate,
- f. The consecutive number of the certificate,
- g. The net weight, including dockage, if any, of the grain.
- h. A statement that the certificate is issued by a weigher licensed under the U.S. Warehouse Act and the regulations thereunder, and
- i. The signature of the weigher.

2. In addition to the provisions of paragraph 1, the weight certificate may include any other matter consistent with the Act or the regulations in this part provided the approval of the Farm Service Agency is first secured.

3. In lieu of a weight certificate in the form prescribed in paragraph 1 of this section, an official weight certificate issued pursuant to the provisions of the United States Grain Standards Act, or an official weight certificate issued pursuant to the Agricultural Marketing Act of 1946 on grain which is stored or to be stored in a warehouse licensed under the Act is acceptable for purposes of the Act.

## E. Grade and Weight Certificate

The grade and weight of any grain, ascertained by an inspector and a weigher, may be stated on a certificate meeting the combined requirements of subsections C and D provided the form of the certificate is approved for the purpose by the Farm Service Agency.

## F. Duties of Inspector and Weigher

Each inspector and weigher whose license remains in effect must:

1. When given grain to inspect, grade and/or weigh under conditions which permit proper inspection and weighing, without discrimination, as soon as practicable and upon reasonable terms, perform the requested services for which licensed.

2. Issue a certificate of grade for any grain only if the inspection and grading thereof is based upon a correct and representative sample of the grain.

3. As soon as possible after grading any grain 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 grain is involved at the location of the license, a copy of the inspection certificate issued by the licensed inspector.

4. Keep the license to inspect, grade and/or weigh conspicuously posted at the place where those duties are performed or as directed by the Farm Service Agency.

5. Permit any authorized officer or agent of the United States Department of Agriculture or the Farm Service Agency or their designee to inspect or examine, on any business day during the usual hours of business, their books, papers, records, and accounts relating to the performance of their duties under the Act and, with the consent of the warehouse operator concerned, assist any such officer or agent in the inspection or examination as far as it relates to the performance of the duties of such inspector or weigher under the Act.

6. Keep for a period of one year, in a place accessible to interested parties, a copy of each certificate issued and file the certificate with the warehouse in which the grain covered by the certificates is stored.

## VII. Grain Grading

### A. Official Grain Standards of the United States

The Official Grain Standards of the United States are hereby adopted as the official grain standards for the purposes of the Act and the regulations.

### B. Standards of Grade for Other Grain

Until Official Standards of the United States are fixed and established for the kind of grain to be inspected, the grade of the grain will be stated, subject to the approval of the Farm Service Agency:

1. In accordance with the State standards, if any, established in the State in which the warehouse is located,

2. In the absence of any State standards, in accordance with the standards, if any, adopted by the local board of trade, Chamber of Commerce, or by the grain trade generally in the locality in which the warehouse is located, or

3. In the absence of the standards mentioned in paragraphs 1 and 2 of this section, in accordance with any standards approved for the purpose by the Farm Service Agency.

### VIII. Grain Appeals

#### A. Appeal Procedure

The depositor, holder of the warehouse receipt or the warehouse operator may make an appeal as to the grade of a lot of grain stored or to be stored in a warehouse. If the original grade certificate was issued by an inspector licensed under, or authorized by, the United States Grain Standards Act or the Agricultural Marketing Act, the appeal, including the amount of fees, will be governed by the regulations issued under those Acts respectively; otherwise, the appeal, including fees will be governed by paragraphs B and C of this section.

#### B. Request for Appeal

1. The warehouse operator agrees to accept a request for an appeal inspection by a depositor or holder of the warehouse receipt made by written notice to the warehouse operator before the identity of the lot of grain has been lost and not later than the close of business on the first business day following furnishing of the statement of original grade.

2. If the appeal is requested by the warehouse operator, notice must be given promptly to the owner of the grain. Oral notice may be made if followed by written notice.

3. Where it is not practical for the warehouse operator to maintain the identity of all grain being received for storage until depositors receive a statement of grade and consequently opportunity for appeal, any depositor or agent before or at the time of delivery of grain may request that the warehouse operator retain the identity of such lot until depositor has been furnished with a statement of grade for the lot and has waived or requested and received an appeal inspection grade.

4. The warehouse operator need not preserve the identity of the lot in the original conveyance; but with the knowledge and consent of the depositor or agent may use other means to preserve such identity. Further, if compliance with such request would adversely affect receiving, storing or delivering the grain of other depositors, the warehouse operator may defer unloading the grain until such time as would not disrupt service to other depositors but without unnecessary delay to the party making such request.

#### C. Appeal Sampling, Preservation, Delivery and Examination

1. The lot of grain for which an appeal is requested must be re-sampled in such manner and quantity as the depositor or holder of the warehouse receipt and the warehouse operator agree results in a representative sample of the lot acceptable to each for appeal purposes. If the parties are unable to agree on such a sample, a sample drawn by a duly licensed inspector in the presence of the interested parties must be deemed binding. In no case will the sample be of less than 2000 grams by weight.

2. The sample must be packaged, to the satisfaction of the interested parties, so as to preserve its original condition.

#### 3. Delivery.

a. For grains for which there are official U.S. Standards, the sample will be secured and delivered to the nearest office charged with providing official inspection service under the United States Grain Standards Act or the Agricultural Marketing Act of 1946. At this point, procedures to determine the grade of the grain will be as set forth in regulations issued under the United States Grain Standards Act or under the Agricultural Marketing Act of 1946, as is applicable.

b. For grain for which there are no official U.S. Standards, the party requesting the appeal will apply directly to the Farm Service Agency for relief. The Farm Service Agency will determine the appeal based on approved standards and set the required fees. Such determination will be binding on all interested parties.

4. The sample must be accompanied by:

a. A copy of the written request for appeal,

b. The grain inspection certificate originally issued, and

c. An agreement to pay the costs of such inspection as prescribed by the United States Grain Standards Act, the Agricultural Marketing Act or the Farm Service Agency.

5. The sample of the grain involved in the appeal must be examined as soon as possible. Such tests must be applied as are necessary. Unless the appeal is dismissed, a grade certificate must be issued by the person determining the grade, showing the grade assigned by them to such grain. The certificate will supersede the inspection certificate

originally issued for the grain involved. The original or a copy of the new grade certificate will be sent to the depositor or holder of the warehouse receipt, the warehouse operator and the licensed inspector making the original determination of grade.

#### D. Ability To Appeal

1. No person licensed under the Act, will, directly or indirectly by any means whatsoever, deter or prevent or attempt to deter or prevent any party from taking an appeal.

2. No rule, regulation, bylaw, or custom of any market, board of trade, Chamber of Commerce, exchange, inspection department or similar organization nor any contract, agreement or understanding, will be grounds for refusing to determine any appeal.

#### E. Owner Not Compelled To Store Grain

Nothing in this agreement will require the owner or agent to store such grain with the warehouse operator after the appeal inspection, but if the grain is stored it will be accepted for and delivered out of storage in accordance with the grade as finally determined in such appeal.

### IX. Fees

The Farm Service Agency is authorized, by the enabling legislation, to assess and collect fees to cover the administration of the program. A schedule showing the current fees or any annual fee changes will be provided as an addendum to the licensing agreement.

The fees for grain warehouses are detailed in the attached Addendum No. 1.

This agreement forms a part of the (License Number \_\_\_\_\_ for (Warehouse Operator) \_\_\_\_\_ (Licensed Location) \_\_\_\_\_ and is effective (Date) \_\_\_\_\_.

Warehouse Operator

By \_\_\_\_\_

Date \_\_\_\_\_

For the Farm Service Agency.

**BILLING CODE 3410-05-P**

## ***ADDENDUM No. 1: FEES***

### *Fee Table* *Schedule of fees charged for services rendered*

United States Warehouse Act *(effective October 1, 2001) Fee Table
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Grain	License Action Fee	Service License Fee	Inspection Fee	Annual User Fees		
				Capacities - Range By Functional Unit	CCC Agreement	W/o CCC Agreement
	<b>\$80</b>	<b>\$35</b>	\$16/ 10,000 Bushels or Fractional Part	1 to 150,000 Bushels	\$145	\$290
			Min \$160	150,001 to 250,000 Bushels	295	585
			Max \$1,600	250,001 to 500,000 Bushels	435	865
				500,001 to 750,000 Bushels	590	1,175
				750,001 to 1,000,000 Bushels	730	1,460
				100,000,001 to 1,200,000 Bushels	875	1,750
				120,000,001 to 1,500,000 Bushels	1,120	2,035
				1,500,001 to 2,000,000 Bushels	1,165	2,325
				2,000,001 to 2,500,000 Bushels	1,310	2,620
				2,500,001 to 5,000,000 Bushels	1,450	2,900
				5,000,001 to 7,500,000 Bushels	1,605	3,205
				7,501,001 to 10,000,000 Bushels	1750	3,500
				10,000,000 + Bushels	*1,750	**3,500
					*Plus \$50 per million bushels capacity above 10,000,000 bales or fraction	**plus \$90 per million bushels capacity above 10,000,000 bushels or fractio

**Exhibit C—Draft****Farm Service Agency****Provider Agreement to Electronically File and Maintain Electronic Warehouse Receipts and United States Warehouse Act Documents**

[WA-141; 0560-0120]

This Provider Agreement (hereafter "Agreement") between \_\_\_\_\_ (hereafter "Provider") and the Farm Service Agency (hereafter "FSA") authorizes the Provider to establish and maintain a database and system for the purpose of electronically filing warehouse receipts and documents issued under the United States Warehouse Act (hereafter "USWA") in a central data filing system (hereafter "central filing system" or "CFS") and permits the Provider to accept the filing of warehouse receipts from other than USWA licensed warehouse operators in such electronic data filing system. Such electronically filed warehouse receipts and electronically filed USWA documents are hereafter referred to herein as "electronic warehouse receipts" and "electronic USWA documents" respectively.

The purpose of this Agreement is to ensure that:

A. Electronic warehouse receipts and electronic USWA documents issued and filed in accordance with this Agreement meet the requirements of the USWA and 7 CFR Part 735,

B. Providers meet the applicable requirements of the USWA and 7 CFR Part 735,

C. The Provider as a U. S. Department of Agriculture representative, operates a system that is independent in action and appearance of bias or influences other than those which serve the best interest of the users, and

D. Data kept in the Provider's CFS is secured, not changed inappropriately and only released to authorized parties. Only the issuer may change, cancel or void the USWA documents.

The terms of the Agreement are:

**I. Incorporation of Regulations**

The regulations promulgated by FSA and published in the **Federal Register** and annually codified at 7 CFR Part 735 relating to the issuance of electronic warehouse receipts and electronic USWA documents are incorporated herein and made a part hereof by reference, including regulations published after execution of this agreement.

**II. Access**

A. Provider shall make the CFS operative and accessible to users and

FSA for a period of not less than 18 hours per day Monday through Friday and not less than 12 hours per day on Saturday and Sunday. Provider shall offer a continuous period of access to the CFS during the hours of 7:00 AM to 6:00 PM for the local time zone where the CFS is located. Routine maintenance shall be performed without disruption of services.

B. If, for extraordinary maintenance or for reasons beyond the Provider's control, the Provider cannot furnish access to the CFS as described in paragraph A of this section, the Provider shall furnish notice to FSA as follows:

1. For extraordinary maintenance, an advance notice of at least 5 calendar days setting out the reasons and expected duration of the maintenance; and

2. If unforeseen circumstances cause the CFS to be inaccessible during operating hours for more than a 1 hour period, Provider shall immediately notify the FSA contact person of the access problems.

If a Provider's shutdowns interfere with FSA activities under this Agreement, FSA may immediately suspend this Agreement pending completion of the activities or may immediately terminate this Agreement.

C. Provider shall give FSA unrestricted access to the CFS and all related and backup files, at no charge, for purposes of administering this Agreement. The Provider shall also give FSA unrestricted access to the physical site where the CFS and off-site records are retained. All FSA requested information from the Provider shall be available in either electronic or printed format or both at FSA discretion.

**III. Fees and Charges**

A. Fees charged to Providers by FSA.

1. Providers shall pay fees to FSA as shown in Addendum No. 1. This fee schedule may be changed by FSA annually. Such changes will be announced by April 1st and will become effective as of the following May 1st.

2. Each applicant requesting approval shall submit the current non-refundable application fee. Upon approval applicant shall pay the current non-refundable annual fee.

3. Each year the Agreement is in effect the Providers shall pay FSA the annual fee for that year. Providers will be invoiced by FSA for each annual payment. Providers shall pay FSA the annual fee for that year by May 30.

B. Provider's Schedule of fees for Users.

1. Any fee charged a user by the Provider shall be filed with FSA.

Provider shall make its fees available to the public, upon demand.

2. Fees for the use of the CFS shall not be assessed to users in a discriminatory manner.

3. Providers may, after notification to FSA, restrict a user's access to the CFS when fee payments are more than 60 days overdue.

**IV. Financial, Insurance and Audit Requirements**

A. Each Provider shall maintain complete, accurate, and current financial records. The Provider must submit to FSA an annual audit level financial statement. This audit shall encompass the Provider's fiscal year and shall be submitted to FSA no later than four calendar months following the end of the Providers fiscal year.

B. Provider shall furnish insurance coverage payable to system users and FSA as required by 7 CFR Part 735. Deductible provisions for each policy shall not exceed \$10,000. Each policy shall contain a clause requiring written notification to FSA 30 days prior to cancellation.

C. The Provider must submit to FSA an electronic data processing audit that encompasses the Provider's fiscal year and must be submitted to the FSA no later than four calendar months following the end of the Providers fiscal year. The audit must evidence current computer operations, security, disaster recovery capabilities of the system, and other related systems.

**V. Liability**

Providers shall be strictly liable to FSA under this agreement for any losses and costs incurred by FSA associated with system failure or lost, damaged, or improperly destroyed electronic warehouse receipts or electronic USWA documents.

**VI. Records**

A. Provider shall maintain a continuous log capable of producing an audit trail of all electronic warehouse receipts and all electronic USWA documents activities as follows:

1. Each Provider shall establish a contemporaneous log and accompanying set of records that shall allow for a reconstruction of the files, activities, and events pertaining to each electronic warehouse receipt and each electronic USWA document issued, canceled, converted to paper, converted from paper, or changed in anyway. The log and records maintained for this reconstruction shall be kept in secure storage for a period of 6 years after December 31 of the year in which the electronic warehouse receipt was

canceled and 6 years after the electronic USWA document was issued, unless FSA requires that the data be retained for a longer period. The log at a minimum shall capture a before and after field, the date of change, the time of the change, and the identity of the user making the change.

2. The log shall include details of any attempts to make unauthorized changes or access to electronic warehouse receipt or electronic USWA document data.

3. Provider shall furnish reports as requested by FSA to ensure compliance with this Agreement and the USWA.

B. Each Provider shall create, daily, two complete sets of disaster recovery records. These records shall be kept in a fireproof chamber and retained until a new set of disaster recovery records are created and stored. One set of the disaster recovery records shall be kept off-site.

C. Providers shall not delete or alter any of the FSA required electronic warehouse receipts, electronic USWA documents or related data in the CFS, including the holder unless such actions are authorized by this Agreement or by FSA.

D. Provider shall notify FSA immediately if any data related to an electronic warehouse receipt or electronic USWA document has been lost due to a system malfunction. Provider shall furnish a written explanation of the events which occurred and any other documentation as requested by FSA.

#### VII. Security

A. Provider shall ensure on-site security of the computer hardware, software, and data. Security shall be designed to prevent the destruction, accidental or intentional, of facilities and data along with preventing the unauthorized distribution of electronic warehouse receipt or electronic USWA document information. Unless authorized by FSA, the data may only be given to a party who has the right to access it.

B. Provider shall have a comprehensive disaster recovery procedure approved by FSA of all computerized and non-computerized functions and data. Provider shall perform a comprehensive test of the disaster recovery plan twice a year and report the results of those tests to FSA. The comprehensive test is to be performed at a different location using hardware not used in the normal production program. A complete backup of production data is to be restored.

C. FSA may require alternative or additional security requirements if FSA

determines that the security procedures submitted by the Provider or actually implemented by the Provider are insufficient.

#### VIII. System Termination

If the Provider intends to terminate its operations under this Agreement, the Provider must give FSA and users thirty days advance notice of such termination. FSA will perform a closeout audit or advise the Provider in writing that such an audit is waived prior to termination. Any termination of operations under this Agreement by the Provider or by anyone operating in the place or instead of the operator will render the Provider or the Provider's insurance company, or both liable to FSA and the users for any damages resulting from such termination.

#### IX. Transferring Receipts or Documents

A. A Provider may transfer electronic warehouse receipts or electronic USWA documents from its CFS to the CFS of another FSA approved Provider, when the Provider has received a request from the warehouse operator or other authorized party, defined in the applicable Addendum, and approval from FSA. These warehouse operators and other authorized parties may only change Providers once a year. FSA may waive or modify this limitation of allowing the changing of Providers only once a year.

1. The current Provider must:

a. Provide the new Provider and the warehouse operator, a list of current holders of all open electronic warehouse receipts and electronic USWA documents that were issued within the past 1 year for that warehouse 45 days prior to the transfer date. The list should contain the following information about each holder: holder ID, name, complete mailing address, phone number, fax number, and contact person.

b. Invoice the warehouse operator fourteen days prior to the transfer date for the transfer charges. The invoice amount will be determined according to the current Provider's tariff and the number of open electronic warehouse receipts and electronic USWA documents that were issued within the past 1 year for the warehouse or holder on the date of invoice.

c. Before 12:00 noon on the day of transfer:

1. Terminate access by all holders to the electronic warehouse receipts and electronic USWA documents records of the subject warehouse.

2. Produce a file of all data in each of the electronic warehouse receipts and electronic USWA documents records for the subject warehouse. This file is to

include only open electronic warehouse receipts and electronic USWA documents issued within the past 1 year.

3. Provide the new Provider a list of current holders of open electronic warehouse receipts and electronic USWA documents issued within the past 1 year for that warehouse (new holders could have shown up since the notification date). The list should contain the same information about each holder as required in subparagraph A.1.a.

4. Initiate the connection to the new Provider's system and transmit the files of electronic warehouse receipts and electronic USWA documents records. Each Provider agrees to maintain a designated transfer site for purpose of transferring these files.

5. Notify FSA/Kansas City Commodity Office/Licensing Branch (FSA/KCCO/LB) of the transfer.

2. The warehouse operator must:

a. Notify FSA/KCCO/LB, current Provider, and their Licensing Authority, if applicable, 60 days prior to the transfer date. Notification must include an exact date for the transfer.

b. Send notification of the change to the holders of open electronic warehouse receipts and electronic USWA documents issued within the past 1 year 30 days prior to the transfer date. The notification must inform the holders that access to their electronic warehouse receipts and electronic USWA documents will not be available on the transfer date. The notification should also clearly state the last day the current Provider will be utilized, and the first day the new Provider will be effective.

c. Pay all charges due the current Provider prior to the transfer of electronic warehouse receipts and electronic USWA documents to the new Provider. This includes the transfer charges. Failure to pay could delay the transfer of data files to the new Provider.

3. The new Provider must:

a. Perform necessary data conversions and make the electronic warehouse receipts and electronic USWA documents records available on their system and open access to all holders and authorized users not later than 7:00 a.m., the day after the transfer date.

b. Notify the warehouse operator that the conversion is complete.

c. Notify FSA/KCCO/LB that the conversion is complete.

4. FSA/KCCO/LB will:

a. Contact the current Provider and new Provider to determine if the requested transfer date is acceptable. If the requested transfer date is not

acceptable to both Providers, negotiate an acceptable transfer date with both Providers and the warehouse operator.

b. Determine the notification date (at least 30 days prior to the transfer date).

5. FSA/KCCO/LB may accept a transfer date that is less than 60 days from the date of notification of change, if agreed to by FSA/KCCO/LB, both Providers and the warehouse operator. The 60 day requirement is to allow for proper notification to all holders of the electronic warehouse receipts and electronic USWA documents.

B. A Provider may transfer electronic warehouse receipts and electronic USWA documents from its CFS to the CFS of another FSA approved Provider when the Provider has received written permission from FSA and has notified all users of the electronic warehouse receipts and electronic USWA documents being transferred, at least 30 days prior to the transfer.

#### X. System Requirements

A. Transmission procedures for FSA used by the Provider shall be approved by FSA.

B. FSA may deny or withdraw approval of this Agreement if it determines that the prospective Provider's software or hardware are not capable of fulfilling the requirements of this Agreement.

C. Upon request by FSA all transmissions of data shall be secured and transmitted via telecommunications hardware and software according to the requirements described in the applicable Addendum for the electronic warehouse receipts and electronic USWA documents the Provider is authorized to maintain in the CFS.

#### XI. Record Data Requirements

The Provider shall adhere to the requirements as described in the applicable Addendum for the electronic warehouse receipts and electronic USWA documents that they are authorized to maintain in the CFS.

#### XII. Suspension or Termination

A. FSA may immediately suspend or terminate this Agreement for cause at any time if FSA determines the Provider is in default.

B. Once suspended and before the Provider is reinstated, FSA may conduct an on-site examination and may assess a reinstatement fee. The reinstatement fee shall equal the annual fee provided for in Addendum No. 1. This reinstatement fee may be waived if it is determined that the Provider was not in default of the terms of this Agreement.

C. Once this Agreement is terminated, all related electronic files and paper

records shall be immediately surrendered to FSA.

#### XIII. Effective Date, Renewal, Amendments, and Correspondence

A. This Agreement shall become effective upon the date signed by FSA.

B. Unless terminated, this Agreement shall automatically renew for a period of one year, effective April 30, if the provisions of this Agreement, the applicable provisions of 7 CFR Part 735 and the applicable provisions of the USWA are complied with. The Agreement will automatically renew each April 30 thereafter under the same terms and conditions, unless amended.

C. The Provider shall designate a contact person or alternate person as the person to be contacted by FSA regarding this Agreement. Notice required by this Agreement delivered to the address of the contact person or the person's alternate shall be notice to the Provider hereunder.

D. FSA may amend this Agreement for any reason. If the Agreement is so amended, the Provider may refuse to accept such amendment and terminate this Agreement in accordance with paragraph E of this section. During the 60 day notice period the Provider will continue to operate under the terms of the Agreement in effect prior to the amendment.

E. Either FSA or the Provider may terminate this Agreement without cause, provided the terminating party gives the other party written notice at least 60 days in advance.

F. Unless otherwise notified, the Provider shall direct all contacts in connection with this Agreement to the FSA contact person: Chief, Licensing Branch, Warehouse Licensing and Examination Division, Kansas City Commodity Office, P.O. Box 419205; Kansas City, Missouri; 64141-6205; Phone: 816-926-6474; Fax: 816-926-1774.

Provider: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Director, Kansas City Commodity Office,  
FSA:  
Date: \_\_\_\_\_

#### Addendum No. 1: Fees

Schedule of fees charged Electronic Warehouse Receipt Providers for services rendered.

#### United States Warehouse Act—Provider Schedule of Fees

The fees shown below shall remain effective from:

May 1, \_\_\_ through April 30, \_\_\_.  
Application Fee: \$9,000.00.  
Annual Renewal Fee: \$9,000.00.

#### Exhibit D—Draft

#### Farm Service Agency

#### Addendum to the Provider Agreement to Electronically File and Maintain Cotton Warehouse Receipts

[WA-141-1; 0560-120]

This Addendum between \_\_\_\_\_ (hereafter "Provider") and the Farm Service Agency (hereafter "FSA") authorizes the Provider to establish and maintain a database and system for the purpose of electronically filing cotton electronic warehouse receipts issued under the United States Warehouse Act (hereafter "USWA") in a central data filing system (hereafter "central filing system" or "CFS") and permits the Provider to accept the filing of electronic warehouse receipts from other than USWA licensed warehouse operators in such electronic data filing system. Such electronically filed warehouse receipts for cotton are hereafter referred to herein as "electronic warehouse receipts (EWRs)."

This Addendum sets forth the Provider's minimum requirements for EWR record formatting, reporting requirements and the protocols to be used in the transmission of such information.

#### I. Receipt Record Data Requirements

FSA, in administration of the USWA, the regulations found at 7 CFR Part 735, the Provider Agreement To Electronically File And Maintain Electronic Warehouse Receipts, and this Addendum, may at any time require the Provider to furnish information beyond the minimum requirements shown in this Addendum.

#### A. Required Information

The Provider shall, at a minimum make the elements listed below available to every USWA and non-USWA licensed warehouse operator issuing EWRs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operators. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This Addendum does not restrict the number of fields that may be made available to warehouse operators.

USWA license number, if applicable <sup>1</sup>  
Receipt number  
Bale Tag number  
Issuance date  
Receipt status

<sup>1</sup> Enter Federal license number, if not licensed, zero fill field.

The words "Not Negotiable", or "Negotiable" according to the nature of the receipt  
 Cancellation date  
 Name of warehouse  
 Location of warehouse (City)  
 Location of warehouse (State)  
 Warehouse operator  
 Location receipt issued (City)  
 Location receipt issued (State)  
 Received from  
 Lot identification tag (multiple bale receipts)  
 Cotton graded statement  
 State—"Not graded at request of the depositor" or—Color grade = "C-25" (4 character), fiber length = "F-45" (4 character), micronaire = "M-3.5" (5 character), strength = "S-38.1" (6 character), leaf grade = "L-4" (3 character), and extraneous matter = "E-47" (4 character).  
 Net weight  
 Number of bales (multiple bale receipts)  
 Terms and conditions (These terms and conditions that apply to each EWR must be furnished by the individual warehouse operators issuing the EWRs. Refer to Exhibit I, for USWA licensed warehouse operators)  
 Name of person authorized to sign warehouse receipt.

#### B. Additional Information

The Provider shall, at a minimum make the elements listed below available to every USWA and non-USWA licensed warehouse operator issuing EWRs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operators. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This addendum does not restrict the number of fields that may be made available to warehouse operators. FSA may allow a user of the Provider's system to modify the elements listed below without being the holder of the EWR. The Provider shall notify the current holder of the EWR of any changes.

Holder  
 Warehouse Code  
 Receipt Type (single bale or multiple bale)  
 Paper receipt number (if applicable)  
 Compression status  
 Compression Paid or Unpaid  
 Receiving Charges Paid or Due<sup>2</sup>  
 Rail or Truck  
 Gin Code<sup>3</sup>  
 Gin Tag<sup>3</sup>

<sup>2</sup> These fields may be modified by the warehouse operator without being the holder.

<sup>3</sup> **Note:** In case of reconcentrated cotton the gin code and gin tag can be the previous storing warehouse code and receipt number.

License Type, US if Federally Licensed, NL if not licensed or the two letter Postal abbreviation if State Licensed, will precede or follow the warehouse receipt number  
 Commodity Credit Corporation (CCC) Agreement (Y or N)  
 Location of bale<sup>2</sup>  
 Gross and Tare weight

#### C. Converting Electronic to Paper

When converting from an electronic to a paper warehouse receipt, the Provider shall advise the warehouse operator to print on the face of the paper warehouse receipt the EWR number.

#### II. Transmission of Data

Upon request by FSA all transmissions of data shall be secured and transmitted via telecommunications hardware and software according to the requirements described in Attachment I Provider Specifications for interfacing with Warehouse Examiners' Communications Software (WECS) for cotton.

Provider: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Director, Kansas City Commodity Office,  
 FSA: \_\_\_\_\_  
 Date: \_\_\_\_\_

#### Exhibit D-1

##### Terms and Conditions For USWA Licensed Warehouse Operators

The following information must be recorded on all EWR's.

The statements:  
 Incorporated or Unincorporated and if incorporated, under what laws.  
 Insured or Not Insured and if insured, to what extent, by the warehouse operator against loss by fire, lighting and other risks.  
 Weight was determined by a weigher licensed under the USWA or not weighed at the request of the depositor.  
 In the event the relationship existing between the warehouse operator and any depositor is not that of strictly disinterested custodianship, a statement setting forth the actual relationship.

#### Exhibit E—Draft

##### Farm Service Agency

##### Addendum to the Provider Agreement to Electronically File and Maintain Grain Warehouse Receipts

[WA-141-2; 0560-0120]

This Addendum between \_\_\_\_\_ (hereafter "Provider") and the Farm Service Agency (hereafter "FSA") authorizes the Provider to establish and

maintain a database and system for the purpose of electronically filing grain warehouse receipts issued under the United States Warehouse Act (hereafter "USWA") in a central data filing system (hereafter "central filing system" or "CFS") and permits the Provider to accept the filing of electronic warehouse receipts from other than USWA licensed warehouse operators in such electronic data filing system. Such electronically filed warehouse receipts for grain are hereafter referred to herein as "electronic warehouse receipts (EWRs)."

Grain is defined as all products commonly classed as grain such as wheat, corn, oats, barley, rye, flaxseed, rough, brown, and milled rice, sunflower seeds, field peas, soybeans, emmer, sorghum, safflower seed, triticale, millet and such other products as are ordinarily stored in grain warehouses, subject to the disapproval of the FSA.

This Addendum sets forth the Provider's minimum requirements for EWR record formatting, reporting requirements and the protocols to be used in the transmission of such information.

#### I. Receipt Record Data Requirements

FSA, in administration of the USWA, the regulations found at 7 CFR Part 735, the Provider Agreement To Electronically File and Maintain Warehouse Receipts and this Addendum, may at any time require the Provider to furnish information beyond the minimum requirements shown in this Addendum.

#### A. Required Information

The Provider shall, at a minimum, make the elements listed below available to every USWA and non-USWA licensed warehouse operator issuing EWRs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operators. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This Addendum does not restrict the number of fields that may be made available to warehouse operators.

USWA license number, if applicable<sup>1</sup>  
 Receipt number  
 Issuance date  
 Receipt status

The words "Not Negotiable" or "Negotiable" according to the nature of the receipt

Cancellation date  
 Name of warehouse  
 Location of warehouse (City)

<sup>1</sup> Enter Federal license number, if not licensed, zero fill field.



Location of warehouse (State)  
 Warehouse operator  
 Location receipt issued (City)  
 Location receipt issued (State)  
 Received from  
 Net weight  
 Dockage (if any)  
 Grade  
 Commodity  
 Name of person authorized to sign  
 warehouse receipt  
 Terms and conditions (These terms and conditions that apply to each EWR must be furnished by the individual warehouse operators issuing the EWRs. Refer to Exhibit I for USWA licensed warehouse operators).

#### B. Additional Information

The Provider shall, at a minimum, make the elements listed below available to every USWA and non-USWA licensed warehouse operator issuing EWRs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operators. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This Addendum does not restrict the number of fields that may be made available to warehouse operators. FSA may allow a user of the Provider's system to modify the elements listed below without being the holder of the EWR. The Provider shall notify the current holder of the EWR of any changes.

Holder  
 Warehouse Code  
 Paper receipt number (if applicable)  
 License Type, US if Federally Licensed, NL if not licensed or the two letter Postal abbreviation if State Licensed, will precede or follow the warehouse receipt number  
 Date to which storage has been paid or storage start date<sup>2</sup>  
 Received by Truck, Rail or Barge  
 Amount per unit of measure of prepaid in or out charges  
 Commodity Credit Corporation (CCC) Agreement (Y or N)

#### C. Converting Electronic To Paper

When converting from an electronic to a paper warehouse receipt, the Provider shall advise the warehouse operator to print on the face of the paper warehouse receipt the EWR number.

#### II. Transmission of Data

Upon request by FSA, all transmissions of data shall be secured and transmitted via telecommunications hardware and software according to the requirements described in Attachment I

<sup>2</sup> This field may be modified by the warehouse operator without being the holder.

Provider Specifications for interfacing with Warehouse Examiners' Communications Software (WECS) for grain.  
 Provider: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Director, Kansas City Commodity Office,  
 FSA: \_\_\_\_\_  
 Date: \_\_\_\_\_

#### Exhibit E-1

##### Terms and Conditions For USWA Licensed Warehouse Operators

The following information must be recorded on all EWR's.

The statements:  
 Incorporated or Unincorporated and if incorporated, under what laws.  
 Insured or Not Insured and if insured, to what extent, by the warehouse operator against loss by fire, lighting and other risks.  
 Weight was determined by a weigher licensed under the USWA or not weighed at the request of the depositor.  
 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.

#### Exhibit E-2 Draft

##### Farm Service Agency

##### Addendum to the Provider Agreement to Electronically File and Maintain United States Warehouse Act Grain Inspection and/or Weight Certificates

[WA-141-3; 0560-0120]

This Addendum between \_\_\_\_\_ (hereafter "Provider") and the Farm Service Agency (hereafter "FSA") authorizes the Provider to establish and maintain a database and system for the purpose of electronically filing inspection and weight certificates issued under the United States Warehouse Act (hereafter "USWA") in a central data filing system (hereafter "central filing system" or "CFS"). Such electronically filed certificates are hereafter referred to herein as "electronic inspection and/or weight certificates (EIWCs)."

This Addendum sets forth the Provider's minimum requirements for EIWC record formatting, reporting requirements, and the protocols to be used in the transmission of such information.

#### I. Document Record Data Requirements

FSA, in administration of the USWA, the regulations found at 7 CFR part 735, the Provider Agreement To

Electronically File And Maintain United States Department of Agriculture Documents and this Addendum, may at any time require the Provider to furnish information beyond the minimum requirements shown in this Addendum.

#### A. Required Information

The Provider shall, at a minimum make the elements listed below available to every USWA warehouse operator issuing EIWCs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operator's. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This Addendum does not restrict the number of fields that may be made available to warehouse operators.

License number  
 Certificate number  
 Issuance date  
 Name of warehouse  
 Location of warehouse (City)  
 Location of warehouse (State)  
 Type of certificate (Inspection, Weight or Both)  
 In or Out of warehouse certificate  
 Kind of grain  
 Grade  
 Net weight, including dockage, (Weight or combination certificate)  
 Approximate quantity of commodity (if not a weight or combination certificate)  
 Name of person authorized to sign certificate  
 Terms and conditions (These terms and conditions that apply to each EIWC must be furnished by the individual warehouse operator issuing the EIWCs. Refer to Exhibit I for required statements).

#### B. Additional Information

The Provider shall, at a minimum make the elements listed below available to every USWA warehouse operator issuing EIWCs in the CFS. The Provider shall ensure that all of these fields are completed by all warehouse operator's. It is each individual warehouse operator's responsibility to supply the necessary data to complete each element. This Addendum does not restrict the number of fields that may be made available to warehouse operators. FSA may allow a user of the Providers system to modify the elements listed below without being the holder of the certificate. The Provider shall notify the current holder of the certificate of any changes.

Holder  
 Warehouse Code  
 Paper certificate number (if applicable)  
 License Type, U.S. if Federally Licensed, NL if not licensed or the

two letter Postal abbreviation if State Licensed, will precede or follow the certificate number.

### C. Converting Electronic to Paper

When converting from an electronic to a paper certificate, the Provider shall advise the warehouse operator to print on the face of the paper certificate the EIWC number.

### II. Transmission of Data

Upon request by FSA, all transmissions of data shall be secured and transmitted via telecommunications hardware and software according to the requirements described in Attachment I Provider Specifications for interfacing with Warehouse Examiners' Communications Software (WECS) for inspection and/or weight certificates.

Provider: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Director, Kansas City Commodity Office,  
 FSA: \_\_\_\_\_  
 Date: \_\_\_\_\_

### Exhibit E-3

#### Exhibit I

#### Terms and Conditions for USWA Licensed Warehouse Operators

The following information must be shown on all EIWCs.

The statements:

- "United States Warehouse Act, Grain Inspection and/or Weight Certificate"
- "Certificate issued by an inspector/weigher licensed under the United States Warehouse Act"
- "Not valid for the purpose of the United States Grain Standards Act"

#### Exhibit F—Draft

#### Farm Service Agency

#### Provider Agreement To Electronically File And Maintain Other Electronic Documents

[WA-142; 0560-0120]

This Provider Agreement (Agreement) between \_\_\_\_\_ (Provider) and the Farm Service Agency (FSA) authorizes the Provider to establish and maintain a database and system for the purpose of electronically utilizing documents related to the shipment, payment, and financing of the sale of agricultural products in a central filing system (central filing system or CFS) as authorized by the United States Warehouse Act (USWA). This Agreement will become effective upon execution by FSA and shall remain in effect until terminated as provided for in section III of the Agreement.

For the purposes of this Agreement:

Electronic documents are documents which are generated, sent, received, or stored by electronic, optical, or similar means, including electronic data exchange, electronic mail, telegram, telex or telecopy. Such documents include but are not limited to: sales contracts; bills of lading; insurance certificates; grading and classing documents; and letters of credit. Once a negotiable electronic document is issued under this Agreement, no duplicate document in any other form may be transferred by any person with respect to the same agricultural product (or any portion of the same agricultural product).

If a non-negotiable document in a non-electronic format is presented to the Provider for transmission in their CFS, the Provider may generate an electronic version of such document but must maintain custody of the original non-negotiable document except as is authorized by FSA.

Agricultural products are those commodities and products of such commodities listed in Appendix I. Items that consist of an agricultural product and a non-agricultural product will be considered to be an agricultural product if the non-agricultural component is less than 50 percent of the weight or volume of the item (excluding added water)

#### I. Terms and Conditions

A. The regulations at 7 CFR Part 735 are incorporated by reference including any amendments to such regulations which are made after execution of the Agreement.

B. The CFS shall be designed in a manner that allows parties to transfer and, if necessary to complete a transaction, generate a document for use by another party with respect to the shipment, payment or financing of a sale with respect to an agricultural commodity.

C. The Provider will operate a CFS in a manner that does not favor the interests of any party over those of another party or which creates the appearance of operation in a manner that is biased in favor of any other party. The Provider will make the CFS operative and accessible to users and FSA for a period of not less than 18 hours per day Monday through Friday and not less than 12 hours per day on Saturday and Sunday. The Provider will offer a continuous period of access to the CFS during the hours of 7:00 AM to 6:00 PM for the local time zone where the CFS is located. Routine maintenance shall be performed without disruption of services. If, for extraordinary maintenance or for reasons beyond the Provider's control, the Provider cannot

furnish such access to the CFS the Provider shall furnish notice to FSA as follows:

1. For extraordinary maintenance, advance written notice setting forth the reasons and expected duration of the maintenance shall be provided 5 calendar days before the beginning of such maintenance; and

2. If unforeseen circumstances cause the CFS to be inaccessible during operating hours for more than a 1 hour period, the Provider will immediately notify FSA of the access problems.

D. The Provider will give FSA unrestricted access, without cost to FSA, to: the CFS; all related and backup files; and off-site records. Such access includes access to the location where such systems, records and data are maintained. The Provider will provide to FSA information which FSA has requested in the form, either printed or electronic or both, as requested by FSA.

E. The Provider will pay to FSA fees as set forth in Appendix II by the dates specified in such Appendix. These fees may be changed annually and any changes will be provided as an amendment to Appendix II by April 1st of each year and will become effective May 1st of each year.

F. Any fee charged a user by the Provider must be filed with FSA and must be approved by FSA. The Provider will make available at no charge a schedule of its fees to potential users. Fees assessed to users of the CFS must be levied in a non-discriminatory manner. The Provider may deny a user access to the CFS if the user has not made payment to the Provider for fees which are more than 60 days overdue.

G. The Provider will maintain a financial net worth of at least \$10 million and will maintain financial records for review by FSA for the purposes of verifying net worth of the Provider.

H. The Provider will furnish insurance coverage payable to users of the CFS as provided in 7 CFR Part 735. Deductible provisions for each policy may not exceed \$10,000. Each policy must provide that coverage under the policy remains in effect until 30 days after written notification is made by FSA to the insurer that the Provider is terminating the policy.

I. The Provider will be strictly liable for costs incurred by FSA as a result of action taken by FSA in the event of a failure of the CFS or in the event of lost, damaged, or improperly destroyed electronic documents.

J. The Provider will maintain a log of all activity undertaken in the CFS that is capable of producing an audit trail of transactions. The log and accompanying

set of records must be sufficient to allow for a reconstruction of the files, activities, and events pertaining to each electronic document that is: issued; canceled; converted to paper; converted from paper; transferred; or changed in anyway. The log and records maintained for this reconstruction shall be kept in secure storage for a period of 6 years after the electronic document was issued. The log must contain: a "before" and "after" field; the date of change; the time of the change; the identity of the user making the change; and details of attempts to make unauthorized changes or access to electronic document data. Daily, the Provider will create two complete sets of disaster recovery records. These records shall be kept in a fireproof chamber and retained until a new set of disaster recovery records are created and stored. One set of the disaster recovery records shall be kept off-site. The Provider will notify FSA immediately if any data related to an electronic document has been lost due to a CFS malfunction and will furnish a written explanation of the events which occurred and any other documentation as requested by FSA.

K. The Provider shall ensure on-site security of the computer hardware, software, and data. Security shall be designed to prevent the destruction of facilities and data and the unauthorized distribution of electronic document information. Unless authorized by FSA, the data may only be given to a party who has the right to access it. The Provider will maintain a comprehensive disaster recovery procedure approved by FSA of all computerized and non-computerized functions and data. At a location that is not related to the CFS, the Provider will perform a comprehensive test of the disaster recovery plan twice a year and report the results of those tests to FSA. After reviewing the results of such a test, FSA may require alternative or additional security requirements if FSA determines that the security procedures of the Provider are insufficient to protect users of the system.

L. The Provider will furnish reports as requested by FSA to ensure compliance with this Agreement and the USWA.

M. Each Provider shall maintain complete, accurate, and current financial records. The Provider must submit to FSA an annual audit level financial statement. This audit shall encompass the Provider's fiscal year and shall be submitted to FSA no later than

four calendar months following the end of the Provider's fiscal year.

N. The Provider must submit to FSA an electronic data processing audit that encompasses the Provider's fiscal year and must be submitted to the FSA no later than four calendar months following the end of the Provider's fiscal year. The audit must evidence current computer operations, security, disaster recovery capabilities of the system, and other related systems.

## II. System Requirements

A. Before the Provider allows a user access to its CFS, FSA must have approved a written submission received from the Provider that sets forth in detail the manner in which the CFS will operate. The CFS must be operated in a manner that allows inter-action with FSA data bases and the CFS of another entity approved by FSA as a provider under 7 CFR Part 735.

B. Upon request by FSA, all transmissions of data shall be secured and transmitted by using hardware and software approved by FSA.

## III. Suspension or Termination

A. The Provider or FSA may terminate this Agreement by providing the other party written notification 60 days prior to the effective date of the termination. During this 60 day period, prior to allowing a user to use the CFS, the Provider will notify the user of the date this Agreement will terminate.

B. FSA may immediately suspend or terminate this Agreement for cause at any time if FSA determines the Provider has failed to comply with any provision of the USWA, the regulations at 7 CFR Part 735 or this Agreement. If this Agreement is suspended, FSA will provide the Provider a written statement of the basis of the suspension. Upon completion of the action necessary to conform to the provisions of the USWA, the regulations at 7 CFR Part 735 or this Agreement, the Provider may request reinstatement of the Agreement. As a condition of reinstatement, FSA may conduct an on-site examination and may assess a reinstatement fee. The reinstatement fee shall not exceed the annual fee provided for in Appendix II and may be waived if it is determined that the Provider was not in material violation of such provisions.

C. Once this Agreement is terminated, all related electronic files and paper records shall be immediately surrendered to FSA.

D. If the Agreement is to be terminated by the Provider, FSA will

perform a final audit of the CFS or advise the Provider in writing that such an audit is waived.

## IV. Amendment to this Agreement

FSA may amend this Agreement for any reason. If the Agreement is to be amended, the Provider may refuse to accept such amendment and terminate this Agreement in accordance with section III.

## V. Contact Persons

A. The Provider shall designate a contact person or alternate person as the person to be contacted by FSA regarding performance of this Agreement. Notice required by this Agreement delivered to the address of the contact person or the person's alternate shall be notice to the Provider.

B. Unless specified in writing by FSA, the Provider shall direct all inquiries regarding performance of this Agreement to: Chief, Licensing Branch, Warehouse Licensing and Examination Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, MO 64141-6205; Phone: 816-926-6474; Fax: 816-926-1774.

Provider: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
On behalf of FSA: \_\_\_\_\_  
Date: \_\_\_\_\_

## Appendix I

Agricultural Products covered under this agreement include but are not limited to:

Beans, Berry's, Coffee, Cotton, Dairy Products, Fish/Shellfish, Flowers, Fruits, Grain, Grass, Greens, Gourds, Herbs, Hides/Skins, Horticulture, Livestock, Meat, Melons, Nuts, Oilseeds, Poultry, Sweeteners, Vegetables, Wool, Wood Products.

## Addendum No. 1: Fees

Schedule of fees charged Providers of Other Electronic Documents for services rendered.

### United States Warehouse Act—Provider Schedule of Fees

The fees shown below shall remain effective from:

May 1, \_\_\_ through April 30, \_\_\_.

Application Fee: \$9,000.00.

Annual Renewal Fee: \$9,000.00.

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