

their behalf with respect to their activities with this provider. This authorization must be in writing, and acknowledged and retained by the warehouse operator and provider.

(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 authorize one or more electronic systems under which:

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

§ 735.401 Electronic warehouse receipt and USWA electronic document providers.

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

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

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

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

- (i) For a partnership, an executed partnership agreement; and
- (ii) For a corporation:
 - (A) Articles of incorporation certified by the Secretary of State of the applicable State of incorporation;
 - (B) Bylaws; and
 - (C) Permits to do business; and
- (iii) For a limited partnership, an executed limited partnership agreement; and

(iv) For a limited liability company:

- (A) Articles of organization or similar documents; and
- (B) Operating agreement or similar agreement.

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

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

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

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

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

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