

NATIONAL GRAIN TRADE COUNCIL
and
TRANSPORTATION, ELEVATOR, AND GRAIN MERCHANTS ASSOCIATION

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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.

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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.

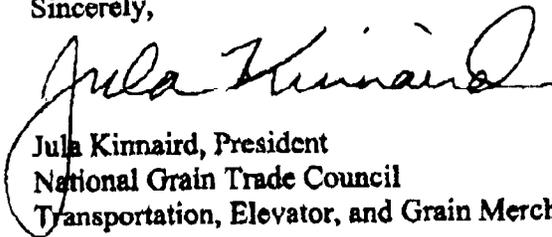
It is understandable that the Department wishes to set a high bar to provide some assurance that the companies involved would be financially sound organizations. However, the proposed net worth and insurance standards for providers of systems that electronically transmit documents, other than warehouse 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