

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1494

Export Bonus Programs

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation is proposing to amend its regulations to: (1) Delete the export experience requirement for qualification to participate in the Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP) and (2) establish the time at which new program participants would be eligible to receive bonus payments. These amendments are intended to provide the opportunity for a greater number of U.S. exporters to participate in the EEP and the DEIP. The proposed rule would also amend several provisions of the regulations to make them clearer, easier to read, and more consistent with the regulations that apply to some of the other CCC export programs.

DATES: Comments must be submitted on or before March 20, 1995.

ADDRESSES: All comments concerning these proposed regulations should be addressed to L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AG Box 1035, Washington, DC 20250-1035; FAX (202) 720-2949. All comments received will be available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, at the address stated above. Telephone (202) 720-6211. The U.S. Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. Persons with disabilities who require alternative means for communication of program information

(braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720-5881 (voice) or (202) 720-7808 (TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined to be neither significant nor economically significant for the purposes of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Paperwork Reduction Act

The amendment to 7 CFR part 1494 set forth in this proposed rule does not contain information collections that require clearance by the OMB under the provisions of 44 U.S.C. 35.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. The proposed rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect. The regulations currently require that certain

administrative remedies be exhausted before suit may be filed, and the proposed rule does not change this requirement.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

Request for Public Comment

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

The current EEP regulations require an exporter that seeks to participate in the program to qualify in accordance with the procedures set forth in 7 CFR 1494.301. These qualification procedures also apply to the DEIP pursuant to 7 CFR 1494.1200. One provision, the current § 1494.301(a)(1), requires a person seeking to qualify to submit evidence of its experience, within the preceding three calendar years, in selling for export a particular eligible commodity or an agricultural commodity which CCC determines to be similar to the eligible commodity. Under the current regulations, an exporter must qualify separately for each eligible commodity that it intends to export.

These requirements have limited exporter participation in the EEP and the DEIP. As a result, CCC is proposing to delete the current § 1494.301(a)(1) and dispense with the prior export experience requirement. If the proposed amendment is adopted, an exporter would simply qualify one time to be eligible to participate in a program and could thereafter export any eligible commodity under that program. Accordingly, the proposed rule revises the definition of "eligible exporter" in § 1494.201(q) and deletes the current § 1494.301(b), which sets forth the procedure to qualify for additional eligible commodities.

An exporter that is currently qualified to export a specific eligible commodity(ies) under one of these programs would be qualified to export any eligible commodity under such program. However, an exporter that sought to participate in both the EEP and the DEIP would have to qualify separately for each program.

The proposed rule also provides, in the revised § 1494.301(g), that a qualified exporter (*i.e.*, an "eligible exporter") that has not yet demonstrated its ability to participate successfully in the EEP would become eligible to receive a bonus payment(s) only after the eligible commodity specified in an EEP Agreement entered into the eligible country. Such an exporter would have to furnish performance security under "Option B" of the applicable Invitation and follow the procedure specified in § 1494.701(d) to request the payment of the bonus.

A qualified exporter could demonstrate its ability to participate successfully in the EEP by entering or causing to be entered into the eligible country at least 95% of the quantity of the eligible commodity specified in any one EEP Agreement. CCC would consider that an exporter had proven its ability to participate successfully in the EEP as of the date on which CCC paid to the exporter a bonus for entry of a quantity that brought the total entered quantity for any one EEP Agreement to at least 95%. For all EEP Agreements that such exporter entered into with CCC subsequent to that date, the exporter could furnish performance security under "Option A" of the applicable Invitation and be eligible to receive bonus payments upon the submission of export documents, in accordance with § 1494.701(c).

CCC has not permitted exporters to furnish performance security and seek bonus payments under "Option B" in recent EEP and DEIP Invitations. If this proposed rule is adopted, then CCC would again permit exporters to select "Option B." CCC would set the performance security rates for both "Option A" and "Option B" at the same level. (Currently this rate is 10% of the sales price, but the rate applicable to offers made in response to an Invitation will be specified in such Invitation.) Therefore, the only difference between the two options would be in the timing of the bonus payment, *i.e.*, after export for "Option A" or after entry for "Option B."

The revised § 1494.301(g) would also apply to the DEIP, pursuant to 7 CFR § 1494.1200. However, the EEP and the DEIP would continue to be administered separately and the entry of the eligible

commodity into a country under one program would not satisfy the entry requirement to demonstrate successful performance under the other program.

This proposed amendment would permit a new company without specific export experience to demonstrate its ability to participate successfully without foregoing the benefit of the export bonus. At the same time, by paying the bonus to new program participants only after the arrival of the eligible commodity, CCC would protect its interests.

CCC is also proposing to make several other minor changes that would apply to both the EEP and the DEIP. First, the proposed rule would add, in the revised § 1494.301(a)(6), a requirement that exporters interested in qualifying for program participation certify that neither the exporter nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. This would make the EEP and DEIP regulations consistent with the regulations governing CCC's export credit guarantee programs.

Second, CCC is proposing to delete the second sentence in the paragraph that is currently designated § 1474.301(e) but that has been redesignated as § 1494.301(d) in the proposed rule. This sentence states that persons with a history of unsatisfactory participation in U.S. Government programs or performance of contracts or agreements with the U.S. Government during the past three years will be ineligible to participate in the EEP, unless CCC determines that permitting the interested person to participate would be in the best interests of the program. This sentence is unnecessary, and potentially confusing, because CCC already has the authority and procedures to suspend or debar a person from program participation for these reasons pursuant to its suspension and debarment regulations (7 CFR part 1407).

Third, CCC is proposing to delete the paragraph designated § 1494.301(f)(3) in the current regulations, which provides that a person is ineligible to participate in the EEP if such person employs any individuals debarred or suspended from contracting with or participating in programs administered by any agency of the U.S. Government. This language is overly broad and CCC would be adequately protected by § 1494.301(a)(6) and (e) as revised in the proposed rule.

Fourth, CCC is proposing to rewrite the paragraph that is currently designated § 1474.301(g) but that has been redesignated as § 1494.301(f) in the

proposed rule. The first sentence was rewritten in the proposed rule to inform qualified exporters in a more direct fashion that they have a duty to update the information they have provided to CCC pursuant to § 1494.301(a) to ensure that it is current and accurate. The second sentence was deleted in the proposed rule because it is unnecessary. If CCC receives information indicating that a qualified exporter should no longer be permitted to participate in its programs, it will take action to suspend or debar such exporter pursuant to CCC's suspension and debarment regulations.

The proposed rule contains other minor, non-substantive changes that are intended to make the rule clearer, easier to read, and more consistent with the regulations that apply to some of the other CCC export programs.

List of Subjects in 7 CFR Part 1494

Administrative practice and procedure, Agricultural commodities, Exports, Government contracts, Reporting and recordkeeping requirements.

Accordingly, it is proposed that 7 CFR part 1494 be amended as follows:

PART 1494—EXPORT BONUS PROGRAMS

Subpart B—Export Enhancement Program Operations

1. The authority citation for 7 CFR part 1494, subpart B, continues to read as follows:

Authority: 7 U.S.C. 5602, 5651, 5661, 5662, 5676; 15 U.S.C. 714c.

2. Paragraph (q) of Section 1494.201 is revised to read as follows:

§ 1494.201 Definitions of terms.

* * * * *

(q) *Eligible exporter*—A person that has been notified by CCC that such person is qualified to submit offers in response to Invitations.

* * * * *

3. Section 1494.301 is amended by revising the introductory text and the paragraph (a) introductory text; by removing paragraph (a)(1) and redesignating paragraphs (a)(2) through (a)(6) as paragraphs (a)(1) through (a)(5), respectively; by adding a new paragraph (a)(6); by removing paragraph (b) and redesignating paragraphs (c) through (g) as paragraphs (b) through (f), respectively; by revising newly designated paragraphs (b), (d), (e) and (f); and by adding a new paragraph (g) to read as follows:

§ 1494.301 Information required for program participation.

Before CCC will consider an offer from an interested person, such person must qualify for participation in the program. Based upon information submitted by the interested person and available from public sources, CCC will determine whether the interested person is eligible for participation in the program.

(a) *Submission of documentation.* An interested person that wishes to qualify as an eligible exporter must furnish the following information or documentation to CCC at the address referenced in the Notice to Exporters—EEP Contacts:

* * * * *

(6) The following certification: "I certify, to the best of my knowledge and belief, that neither [name of interested person] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. ["Principals," for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of interested person] will immediately notify CCC."

(b) *Necessity to qualify.* An interested person may not submit an offer, and CCC will not consider any such offer, until CCC has notified the interested person that such person has qualified as an eligible exporter.

* * * * *

(d) *Previous performance.* CCC may request additional information with respect to the interested person's performance under any U.S. Government programs or in connection with any contracts or agreements with the U.S. Government during the past three years.

(e) *Ineligibility for program participation.* A person may be ineligible to participate in the EEP if such person:

(1) is currently debarred, suspended or proposed for debarment from contracting with or participating in any program administered by a U.S. Government agency; or

(2) is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment

from contracting with or participating in programs administered by a U.S. Government agency.

(f) *Duty to update information provided to CCC.* An eligible exporter is under a continuing obligation to inform CCC of any changes in the information or documentation submitted to CCC pursuant to paragraph (a) of this section and to provide current and accurate information to CCC.

(g) *Payment of bonus to exporters without proven EEP participation.* An eligible exporter that has not yet demonstrated its ability to participate successfully in the EEP will be eligible to receive a bonus payment(s) only after the eligible commodity specified in an EEP Agreement has entered into the eligible country. Such an exporter must furnish performance security under "Option B" of the applicable Invitation and follow the procedure specified in § 1494.701(d) to request the payment of the bonus. An eligible exporter may demonstrate its ability to participate successfully in the EEP by entering or causing to be entered into the eligible country at least 95% of the quantity of the eligible commodity specified in any one EEP Agreement. CCC will consider that an exporter has proven its ability to participate successfully in the EEP as of the date on which CCC pays to the exporter a bonus for entry of a quantity that brings the total entered quantity for any one EEP Agreement to at least 95%. For all EEP Agreements that such exporter enters into with CCC subsequent to that date, the exporter may furnish performance security under "Option A" of the applicable Invitation and will be eligible to receive bonus payments in accordance with § 1494.701(c).

Signed at Washington, DC, on January 11, 1995.

Christopher E. Goldthwait,

*General Sales Manager and Vice President,
Commodity Credit Corporation.*

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BILLING CODE 3410-10-P

Rural Housing and Community Development Service**Rural Business and Cooperative Development Service****Rural Utilities Service****Consolidated Farm Service Agency****7 CFR Parts 1948 and 1951**

RIN 0575-AB83

Intermediary Relending Program

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business and Cooperative Development Service is proposing to amend regulations for the Intermediary Relending Program (IRP). This action is needed to clarify and revise procedures and requirements regarding a variety of issues. The amendments are expected to clarify the roles of the Government and intermediaries, make the program more responsive to the needs of intermediaries and ultimate recipients, and facilitate continuing expansion of the program.

DATES: Comments must be received on or before March 20, 1995.

ADDRESSES: Submit written comments in duplicate to the Chief, Regulations Analysis and Control Branch, Rural Economic and Community Development Service, USDA, Ag. Box 0743, Washington, DC 20250-0743. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above office, located in room 6348, South Agriculture Building, 14th and Independence Avenue SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Business and Industry Loan Specialist, Rural Business and Cooperative Development Service, USDA, Ag. Box 3221, Washington, DC 20250, Telephone (202) 720-6819.

SUPPLEMENTARY INFORMATION:**Classification**

We are issuing this proposed rule in conformance with Executive Order 12866, and have determined that it is a "significant regulatory action."

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this