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(n) *Quantity.* The actual contract quantity (exclusive of any upward or downward tolerance) specified in the agreement between the reporting exporter and foreign buyer or seller.

(o) *Reporting exporter.* A person who enters into a transaction referred to in this section whose place of doing business with respect to such transaction is in the United States. A reporting exporter shall include any person who sells a commodity to a foreign buyer irrespective of whether or not such person may appear as the shipper on the export documentation or whether or not such person is required to file a Shipper's Export Declaration. A reporting exporter would not normally include agents of either the reporting exporter or foreign buyer, brokers, or freight forwarders unless such agents, brokers or freight forwarders are acting in the capacity of a principal. (See examples §20.6(c).)

(p) *United States.* All of the 50 States, the District of Columbia and Puerto Rico.

[Rev. 2, 40 FR 23839, June 3, 1975, as amended by Amdt. 1, 41 FR 19950, May 14, 1976; Amdt. 3, 45 FR 8562, Feb. 8, 1980; Amdt. 4, 45 FR 24104, Apr. 9, 1980; 68 FR 62214, Nov. 3, 2003]

## §20.5 Announcements.

Commodities for which reports are required under these regulations are set forth in appendix 1 to this part. Any change therein will be made by publication in the FEDERAL REGISTER of an amendment thereto, and, in addition, announcement of such change will be made through the press service. The unit of measure to be used in reporting the commodity, the beginning and ending dates of the marketing year for each commodity, and any other information deemed necessary to be included in the report will be specified in appendix 1 to this part and amendments thereto and in the announcements through press service.

[Rev. 2, 40 FR 23839, June 3, 1975, as amended at 68 FR 62214, Nov. 3, 2003]

## §20.6 Submission of reports.

(a) *Weekly reports.* For each commodity for which reports are required under these regulations, the reporting exporter shall file weekly with the office specified in §20.10 and not later than the time specified in paragraph (k) of this section, a report by marketing year on the applicable forms contained in appendix 2 (FAS–97, ''Report of Optional Origin Sales,'' FAS–98, ''Report of Export Sales and Exports,'' and on FAS–100, ''Report of Exports for Exporter's Own Account''), setting forth the following information and that required by such forms. Information for each applicable item on the respective form shall be reported. If the reporting exporter determines that the report forms cannot be received in the office specified in ''20.10 by the time specified in paragraph (k) of this section, the exporter shall transmit the information contained in the report forms by the use of FAX, telephone, or electronic submission. The required form must be subsequently submitted in accordance with §20.6(k)(2). Exporters have the option to submit the weekly reports using an electronic reporting system (forms 97e, 98e, and 100e) which may be accessed via a secured Internet website. Reporting exporters should contact the Export Sales Reporting staff to obtain passwords and access to the Internet reporting site. Exporters also have the option of satisfying the requirements of Forms FAS–97, FAS–98, and FAS–100 by submitting ASCII comma delimited files via e-mail to the ESR mailbox at *esr@fas.usda.gov*.

(1) *United States origin sales only.* (i) Total quantity of outstanding export sales from the previous report by country of destination.

(ii) Quantity of new export sales made during the week expressed in the specified unit of measure (do not include any tolerance). Include the quantity of any optional original export sale for which an option was exercised during the week to export the commodity from the United States.

(iii) Quantity of any purchases of the same kind of commodity made from foreign sellers during the week.

(iv) Quantity of export sales cancelled and quantity of buyback contracts made during the week.

(v) Changes in destination during the week for export sales previously reported.

(vi) Changes in the marketing year during the week for export sales previously reported.

(vii) Exports made against export sales during the week.

(viii) Total outstanding balance of export sales at the close of business for the current report.

(2) *Optional origin sales* (*United States and other countries*). (i) Total quantity of outstanding export sales from the previous report by country of destination.

(ii) Quantity of new export sales made during the week expressed in the specified unit of measure (do not include any tolerance) by country of destination.

(iii) Quantity of export sales for which an option was exercised during the week which would determine the origin of the commodity to be exported with the origin indicated as the United States or other than the United States.

(iv) Quantity of optional export sales cancelled and the quantity of optional buy-back contracts made during the week.

(v) Changes in destination during the week for sales previously reported.

(vi) Changes in the marketing year during the week for sales previously reported.

(vii) Total outstanding balance of optional export sales for which an option has not been exercised at the time of compiling the report.

(3) *Exports for exporter's own account.* (i) Total outstanding balance of exports for exporter's own account that has been shipped from the United States as shown on the previous report by country where located or, if in transit, by country of intermediate destination.

(ii) Quantity of new exports for exporter's own account exported during the week.

(iii) Quantity of previously reported exports for exporter's own account that was applied to outstanding or new export sales during the week.

(iv) Quantity of previously reported exports for exporter's own account sold to other U.S. exporters during the week.

(v) Changes in destination during the week for exports previously reported.

(vi) The total outstanding balance of exports for exporter's own account at the close of business for the current report.

(b) *Monthly reports.* The information described in paragraph (a) of this section shall be reported monthly when specified by an announcement issued pursuant to § 20.5. The forms specified in paragraph (a) of this section shall be utilized to furnish the information required to be reported monthly and such information shall be filed in the manner and at the time required by § 20.6(k).

(c) *Exporters who are required to report.* The reporting exporter has the sole responsibility of reporting any and all information required by these regulations. The following are examples of who shall be considered the reporting exporter for the purpose of these regulations. (Firm A in each example is a firm whose place of doing business with respect to the transaction is in the United States, and the commodity to be delivered under the purchase contract is subject to these regulations. See § 20.4(i) for definition of a foreign buyer and foreign seller.)

(1) Firm A makes an export sale to Firm B whose place of doing business with respect to the transaction is also in the United States. Firm B has made or will make an export sale to a foreign buyer. In this case Firm A cannot report the sale to Firm B since Firm B's place of doing business with respect to the transaction is located in the United States. In this example, Firm B is required to report the sale to the foreign buyer.

(2) Firm A makes an export sale to a foreign buyer through the foreign buyer's agent and the agent's place of doing business with respect to the transaction is in the United States. In this example Firm A is required to report the export sale since the resulting contract is between Firm A and the foreign buyer.

(3) Firm A consigns an export to his agent (other than an employee of Firm A). When the agent makes a sale to a foreign buyer, Firm A is required to report the sale. If the agent makes the sale to a firm whose place of doing

business with respect to the transaction is in the United States, Firm A will not report the sale.

(4) Firm A makes a purchase from a foreign seller. In this example, Firm A is required to report the purchase.

(5) Firm A makes a purchase from an agent of a foreign seller and the agent's place of doing business with respect to the transaction is in the United States. In this example, Firm A is required to report the purchase. The agent is not a principal party in interest in the contract and cannot report the sale to Firm A. The foreign seller is not a reporting exporter and is not required to make a report of the sale.

(6) Firm A, the agent of the foreign buyer, whose place of doing business with respect to the transaction is in the United States, purchases commodities domestically at interior warehouses and arranges for exportation to its principal, the foreign buyer. In this example, Firm A is required to report the sale and export.

(7) If a reporting exporter has a transaction not described in paragraphs (1) through (6) of this paragraph (c) and is in doubt whether a transaction should be reported, the exporter should request a decision from the office specified in §20.10.

(d) *Contract terms.* Reports of contract terms shall be filed when requested in accordance with §20.11. The report showing contract terms shall be filed on FAS–99, ''Contract Terms Supporting Export Sales and Foreign Purchases,'' and shall include the following:

(1) Reporting exporter's contract number.

(2) Date of export sale or purchase.

(3) Name of foreign buyer or foreign seller.

(4) Delivery period specified in the export sale or purchase.

(5) Delivery terms specified in the export sale or purchase (F.O.B., C. & F., etc.).

(6) Actual quantity of the export sale or purchase.

(7) Quantity not exported against the sale or foreign purchase (do not include any tolerance).

(8) Country of destination.

(9) On purchases from foreign sellers, show separately from export sales all items of this paragraph (d).

(e) *Reporting of destination.* The reporting exporters shall report the country of destination specified in the export sale contract or otherwise declared in writing by the foreign buyer. (Where a government, or agency of such government, is the sole importer of the commodity in a country, the exporter shall report that country as the country of destination only if the exporter or foreign buyer has made a direct sale to that foreign government or agency.) If the country of destination is not so specified or declared, the exporter shall report the destination as ''unknown.'' If by the time of exportation the exporter has not so ascertained the country of destination, the name of the country reported to the Bureau of Customs of the Shipper's Export Declaration for such export shipment should be reported, even though it may be an intermediate destination. The reporting exporter is not expected to report destination changes made after reporting the export on FAS–98, ''Report of Export Sales and Exports.''

(f) *Optional class or kind of commodity.* If the export sale provides for an option as to the class or kind of commodity to be delivered under the export sale, the reporting exporter should report the particular class or kind of commodity expected to be exported.

(g) *Range in contract quantity.* If the export sale provides for a range in quantity (e.g. 10,000 metric tons to 12,000 metric tons with or without a loading tolerance) with the reporting exporter or buyer having the option to declare a firm quantity at a later date, the reporting exporter shall report the maximum export sale quantity (exclusive of any loading tolerance). If an option is exercised for a lesser quantity at a later date, the reporting exporter shall report the reduction as an amendment to an export sale previously reported.

(h) *Transfer of unexported balances* from one marketing year to the next marketing year. If exports against an export sale are not complete by the end of the marketing year in which the

commodity is being reported for export, the reporting exporter shall transfer the quantity not exported against the export sale to the next marketing year on the first report submitted after the beginning of the new marketing year.

(i) *Errors on previous reports.* Whenever an exporter discovers an error or is advised by the office specified in § 20.10 of an error on a prior report, the error shall be corrected in the current weekly report to reflect the proper outstanding export sales and exports. The exporter shall also furnish a complete written explanation of such reporting error.

(j) *When reports are required.* (1) A reporting exporter shall submit reports for those commodities for which there are new export sales, outstanding export sales, exports for exporter's own account for which an offsetting export sale has not been made and reported, or purchases from foreign sellers.

(2) A reporting exporter may discontinue reporting for a commodity only when actual exports and other required reporting of changes have reduced to zero all export sales, exports for exporter's own account and purchases from foreign sellers. The reporting exporter shall report a zero balance prior to discontinuing reporting for the commodity involved.

(3) If a reporting exporter discontinues making reports because a zero balance has been reached for a particular commodity, the exporter shall be responsible to commence reporting again once a new export sale, a new export for exporter's own account, or a new purchase from a foreign seller for that commodity is made.

(k) *Manner and time of reporting—(1) Manner.* An original of all report forms, other than electronic forms and ASCII comma delimited files, must be filed with the office specified in § 20.10. Each report form shall contain the full business name, address and telephone number of the reporting exporter and the name and original signature of the person submitting the report form on behalf of the reporting exporter. Computer generated printouts may be used in lieu of standard reporting forms when approved by the office specified in § 20.10.

(2) *Time of filing reports.* Information required to be reported weekly (either via fax, telephone, or electronically) must be received in the office specified in § 20.10 no later than 11:59 p.m. eastern time, on each Monday or such other time as may be approved in advance by that office. Such weekly report must set forth the required information as to export sales transactions made during the seven day period ending the preceding Thursday, midnight. If Friday or Monday is a national holiday, the due date shall be Tuesday. If information is transmitted by other than use of forms specified in § 20.6(a) (such as by use of telephone or electronic transmission) the required forms containing such information shall be transmitted by first class mail the next business day. It is the responsibility of the reporting exporter to arrange the most efficient and expeditious manner for the office specified in § 20.10 to receive the reported information. Information required to be reported monthly must be received in the office specified in § 20.10 no later than 5:00 p.m., Eastern time, the fourth business day following the end of the reporting month, or such other time as may be approved in advance by that office, setting forth the required information as to export sales transactions made during the reporting month ending midnight the last day of such month.

[Rev. 2, 40 FR 23839, June 3, 1975, as amended by Amdt. 3, 45 FR 8562, Feb. 8, 1980; Amdt. 4, 45 FR 24104, Apr. 9, 1980; 45 FR 24439, Apr. 10, 1980; Amdt. 5, 45 FR 24439, Apr. 10, 1980; 47 FR 746, Jan. 7, 1982; 68 FR 62214, Nov. 3, 2003]

### § 20.7 Confidentiality of reports.

A reporting exporter's individual reports shall remain confidential and subject to examination only by designatees of the Administrator. Information from reports filed by exporters on a weekly basis will be compiled and published in compilation form each week following the week of reporting. Information from daily reports filed by exporters will be made available to the public on the following business day at 9 a.m., eastern time. Information from monthly reports filed by exporters will be compiled and published in compilation form in the weekly report no later