

(c) The effect that sales facilitated by initiatives would have on non-subsidizing exporters of agricultural products; and

(d) The subsidy requirements of proposed initiatives compared to the expected benefits.

Subpart B—Export Enhancement Program Operations

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

§ 1494.101 General statement.

This subpart contains the regulations governing the operation of the Export Enhancement Program (EEP) of the Commodity Credit Corporation (CCC). CCC will, from time to time, announce, through public press release, initiatives to facilitate the export of U.S. agricultural commodities to targeted markets. The public press release, which will contain the name of a person for interested parties to contact, will be followed by the issuance of an Invitation for Offers (Invitation). Invitations will be issued pursuant to this subpart by the General Sales Manager (GSM) and will specify the eligible country(ies) (the targeted market), the unit of measure, the eligible commodity, the maximum quantity of the eligible commodity eligible for a CCC bonus, the quality specifications of the eligible commodity (including possible restrictions on type, kind, grade and/or class or other quality specifications), the eligible buyer(s), the method and rate for determining liquidated damages and performance security requirements, and any other terms and conditions peculiar to that Invitation. Invitations may be one of the following two types: Those inviting exporters which have a sales contract with an eligible buyer to submit a competitive offer for a CCC Bonus; and those inviting exporters which have a sales contract with an eligible buyer to apply for an Announced CCC Bonus. After an interested person has qualified to submit an offer for an eligible commodity, the eligible exporter may submit an offer to CCC in response to an Invitation. Such offer must contain the information required by this subpart and any additional information required by

the applicable Invitation. The exporter's offer will include either the Announced CCC Bonus, if applicable, or an amount in dollars and cents for a bonus deemed necessary by the exporter to make a commercial sale of the eligible commodity for export to the eligible country competitive with export sales of the commodity by other exporting countries to buyers in the eligible country. If the exporter has furnished the required performance security and the offer is acceptable to CCC, then CCC will notify the exporter that its offer has been accepted. CCC and the exporter will enter into an Agreement in which CCC will agree to pay the bonus to the exporter in return for the exporter's submission of proof that the eligible commodity has been exported from the United States and entered into the eligible country, in accordance with the terms and conditions of the Agreement.

§ 1494.201 Definitions of terms.

Terms used in this subpart, Invitations issued pursuant to this subpart, and any documents pertaining to the EEP shall have the following meaning, unless otherwise specified in such Invitations or documents:

(a) *Agreement or EEP Agreement*—The Agreement entered into between CCC and the exporter consisting of:

- (1) The terms and conditions of this subpart;
- (2) The terms and conditions of the applicable Invitation;
- (3) The exporter's offer;
- (4) CCC's acceptance of the exporter's offer; and
- (5) The public press release for the Announced CCC Bonus in effect at the time of the offer, if applicable.

(b) *Announced CCC bonus*—A CCC bonus announced by CCC by public press release in connection with an Invitation which specifies that the CCC bonus amount will be pre-determined and announced by CCC.

(c) *FSA*—The Farm Service Agency, U.S. Department of Agriculture.

(d) *Bonus value*—The CCC bonus multiplied by the quantity of the eligible commodity exported pursuant to an Agreement, provided that the eligible commodity enters into the eligible country. (The bonus value is paid to

§ 1494.201

7 CFR Ch. XIV (1-1-01 Edition)

the exporter in CCC certificates or other form of payment.)

(e) *Business day*—Days during which employees of the U.S. Department of Agriculture in Washington, DC or in Kansas City, Missouri, as applicable depending upon the office to which a submission is to be made, are on official duty during normal business hours.

(f) *CCC*—The Commodity Credit Corporation, U.S. Department of Agriculture.

(g) *CCC bonus*—A dollar and cents amount, established through CCC's acceptance of the exporter's offer for such bonus amount, to be paid to the exporter for each unit of the eligible commodity exported pursuant to an Agreement, provided that the eligible commodity enters into the eligible country.

(h) *CCC Certificate*—The CCC Commodity Certificate or Certificates issued by CCC that may be transferred or exchanged for a CCC-owned commodity pursuant to CCC's regulations on Commodity Certificates, In Kind Payments, and Other Forms of Payment, currently codified at 7 CFR part 1470.

(i) *CCC Operations Division (CCCOD)*—The CCC Operations Division, FAS, U.S. Department of Agriculture.

(j) *Date of entry*—Either the date on the certificate of entry specified in §1494.401(f)(2) indicating that the eligible commodity entered the eligible country on that date or the date that an entry document was issued by a customs port authority or other government official, whichever is later.

(k) *Date of export*—One of the following dates, depending upon the method of shipment:

(1) The on-board date shown on the export carrier's bill of lading, when the eligible commodity is shipped from the U.S. without being transshipped through a Canadian port;

(2) The on-board date at the Canadian port shown on the export carrier's bill of lading, when the eligible commodity is shipped from a Canadian transshipment port on the St. Lawrence River, provided its identity had been preserved until shipped from Canada;

(3) The on-board date shown on the export carrier's through bill of lading, when the eligible commodity is loaded

to a lash barge for shipment from the U.S.; or

(4) The date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the eligible country, when the eligible commodity is shipped by rail or truck from the U.S.

(l) *Date of sale*—The earliest date the exporter has knowledge that a sales contract, as defined in paragraph (bb) of this section, exists with an eligible buyer.

(m) *Director*—The Director, Kansas City Commodity Office, FSA, U.S. Department of Agriculture, or the Director's designee.

(n) *Eligible Buyer*—Unless otherwise specified in the Invitation, a buyer, located in the eligible country, that has entered, or will enter, into a sales contract with an exporter. (The applicable Invitation may limit the eligible buyer to one or more particular buyers in an eligible country.)

(o) *Eligible country*—The country or countries, as specified in an Invitation, which will be the only country or countries into which an exported eligible commodity must ultimately be entered in order for the exporter to earn a bonus from CCC under that Invitation.

(p) *Eligible commodity*—The U.S. agricultural commodity specified as eligible for export under the applicable Invitation, which is of the kind, type, grade and/or class of commodity specified in the applicable Invitation. (If the eligible commodity is grain, it must meet the definition applicable for that grain under the U.S. Grain Standards Act and the regulations issued thereunder.)

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

(r) *Export or exported*—The shipment of the eligible commodity from the United States or from the Canadian transshipment port, as permitted by this subpart, destined for the eligible country.

(s) *Exporter*—An eligible exporter that enters into an Agreement with CCC under this subpart.

(t) *Export carrier*—The carrier on which the eligible commodity is

shipped under the Agreement to the eligible country or to a port in a nearby country, if transshipments other than through Canada are allowed by the applicable Invitation. ("Export carrier" may mean an ocean vessel and, on Canadian transshipments, will mean the ocean vessel loaded at the Canadian transshipment port; or, on overland shipments, a railcar or truck; or a container or lash barge loaded with the eligible commodity for which a through on-board bill of lading is issued for shipment to the eligible country, provided that the loaded container or lash barge is subsequently lifted aboard an ocean vessel.)

(u) *FAS*—The Foreign Agricultural Service, U.S. Department of Agriculture.

(v) *GSM*—The General Sales Manager, FAS, U.S. Department of Agriculture, acting in the capacity of Vice President, CCC, or the GSM's designee.

(w) *Invitation*—The Invitation for Offers issued by CCC pursuant to this subpart, generally specifying the eligible country, the eligible commodity, the maximum quantity of the eligible commodity eligible for a CCC bonus, the quality specifications of the eligible commodity, the eligible buyer(s), the method and rate for determining liquidated damages and performance security requirements, allowances for transshipments, and any other terms and conditions particular to that Invitation. (If the Invitation contains terms or conditions that are inconsistent with this subpart, the terms and conditions of the Invitation will prevail for the purposes of Agreements entered into pursuant to such Invitation.)

(x) *Notice to exporters—EEP Contacts*—A notice issued by FAS by public press release which contains specific addresses; telephone, facsimile and telex numbers; and contacts within FAS and FSA to obtain further information concerning qualification as an eligible exporter, the submission of offers in response to Invitations, amendments to Agreements, requests for bonus payments, the submission of export and entry documentation, and other matters related to the EEP.

(y) *Official Inspection Certificate*—A valid official export inspection or other

quality analysis certificate, as specified in the applicable Invitation.

(z) *Official weight certificate*—A valid official export weight or other quantity certificate, as specified in the applicable Invitation.

(aa) *Person*—An individual, partnership, corporation, association or other legal entity.

(bb) *Sales contract*—The sales contract entered into between an eligible exporter and an eligible buyer which sets forth the terms and conditions of a sale of the eligible commodity from the eligible exporter to the buyer. (Written evidence of sale may be in the form of a signed sales contract, an offer and acceptance between parties, or other documentary evidence of sale. The written evidence of sale for the purposes of the EEP must, at a minimum, document the following information: the eligible commodity, quantity, quality specifications, delivery terms (FOB, C&F, etc.) to the eligible country, delivery period, unit price, payment terms, date of sale, and evidence of agreement between buyer and seller. A sales contract with an intervening purchaser or an affiliate or subsidiary of the eligible exporter is not an eligible sales contract for the purpose of this subpart.)

(cc) *Transshipment*—The entry of the eligible commodity into a country other than the eligible country which occurs prior to the subsequent entry of the eligible commodity into the eligible country.

(dd) *Time*—All references to time shall refer to local time in Washington, DC.

(ee) *Unit of measure*—The unit of measure for the eligible commodity, as specified in the applicable Invitation.

(ff) *United States or U.S.*—All of the 50 States, the District of Columbia, and the territories and possessions of the United States.

(gg) *U.S. agricultural commodity*. (1) An agricultural commodity or product entirely produced in the United States; or

(2) A product of an agricultural commodity—

(i) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

§ 1494.301

7 CFR Ch. XIV (1-1-01 Edition)

(ii) That the Secretary determines to be a high value agricultural product. For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

[56 FR 25011, June 3, 1991, as amended at 60 FR 21039, May 1, 1995; 62 FR 24561, May 6, 1997]

§ 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:

(1) The address of the interested person's office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the interested person, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the interested person, if the interested person is a corporation;

(4) The name and address of an office(s) of the interested person within the U.S., if the interested person is a foreign corporation or other foreign entity; and

(5) A certified statement describing the interested person's participation, if any, during the past three years in U.S. Government programs, contracts or agreements.

(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 ad-

ministered 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.

(c) *Additional submissions.* CCC will promptly notify interested persons that have submitted information required by this section whether they have qualified to have their offers considered. Any person failing to qualify will be notified of the basis of CCC's decision and will be given an opportunity to provide additional information for consideration by CCC.

(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