

Dated: April 30, 1997.

Lon Hatamiya,
Administrator.

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1493 and 1494

Revised Definition of U.S. Agricultural Commodity for Commercial Export Programs

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is amending its commercial export program regulations to change the definition of the term "U.S. agricultural commodity." These changes are to conform the applicable regulations with a provision of the Federal Agriculture Improvement and Reform Act of 1996. This final rule is applicable to the Export Enhancement Program (EEP), the Dairy Export Incentive Program (DEIP), CCC's Export Credit Guarantee Program (GSM-102), CCC's Intermediate Export Credit Guarantee Program (GSM-103), and the Supplier Credit Guarantee Program (SCGP). The revised definition contains two subparagraphs. The first subparagraph is similar to the current definition of U.S. agricultural commodity. The second subparagraph applies only to a product of an agricultural commodity that the Secretary designates as a high value product. Under the applicable statute and the revised definition, if this designation is made, to qualify as a U.S. agricultural commodity 90 percent or more of the agricultural components of the product (by weight, excluding packaging and water) must be entirely produced in the United States.

EFFECTIVE DATE: June 5, 1997.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1035, Washington D.C., 20250-1035; Fax (202) 720-2949; 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 final 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 determined that the Regulatory Flexibility Act is not applicable to this final 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

These programs are 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

The Foreign Agricultural Service (FAS) is excluded from the requirements of preparing procedures to implement the National Environmental Policy Act and is categorically excluded from the preparation of an Environmental Assessment or Environmental Impact Statement unless the Administrator of FAS determines that an action may have a significant environmental effect 7 CFR 1b.4(b)(7). The Administrator has made no such determination with respect to this action.

Paperwork Reduction Act

The amendments to 7 CFR parts 1493 and 1494 set forth in this final rule do not contain information collections that require clearance by the OMB under the provisions of 44 U.S.C. 35.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. The final rule would not 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 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.

Background

The Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127) ("1996 Act") became effective on April 4, 1996. Section 243 (c) of the 1996 Act amended the definition of "United States agricultural commodity" set forth in section 102(7) of the Agricultural Trade Act of 1978. The new definition of a United States agricultural commodity reads as follows: "(A) an agricultural commodity or product entirely produced in the United States; or (B) 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 (ii) that the Secretary determines to be a high value agricultural product."

This amendment did not affect that part of the definition specifically concerning fish. As before, for purposes of Section 102(7), 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.

The revised definition is applicable to the Export Enhancement Program (EEP), 7 CFR part 1494, subpart B; the Dairy Export Incentive Program (DEIP), 7 CFR part 1494, subpart D; CCC's Export Credit Guarantee Program (GSM-102), 7 CFR part 1493, subpart B; CCC's Intermediate Export Credit Guarantee Program (GSM-103), 7 CFR part 1493, subpart B; and the Supplier Credit Guarantee Program (SCGP), 7 CFR part 1493, subpart D. Pursuant to 7 CFR part 1494, subpart D, the operational regulations of the EEP found at 7 CFR 1493, subpart B, also apply to the DEIP. Therefore, the changes made by this final rule are applicable to the DEIP via a change to the EEP regulations.

This final rule amends each of the above regulations to include the revised statutory definition of a United States agricultural commodity and to make conforming changes to the applicable certifications made by exporters. Such certifications are made by exporters at

the time of making offers (in EEP and DEIP) and at the time of submitting applications for payment guarantees and evidence of export reports in the GSM-102/103 and SCGP. CCC is proceeding directly through a final rule because the regulatory amendments are required by the statutory change.

On the effective date of this rule, CCC's Notices to Participants Numbers GSM FY 96-2, EEP FY 96-4, DEIP FY 96-4, COAP/SOAP FY 96-3, and SCGP FY 96-1, issued on July 18, 1996, are superseded. Under these Notices to Participants, exporters of designated high value products were to make separate certifications that conformed to the new definition of United States Agricultural Commodity.

List of Subjects

7 CFR Part 1493

Administrative practice and procedures, Agricultural commodities, Credit, Exports, Financing, Guarantees, Reporting and recordkeeping requirements.

7 CFR Part 1494

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

Accordingly, 7 CFR parts 1493 and 1494 are amended as follows:

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

Subpart B—CCC Export Credit Guarantee Program (GSM-102) and CCC Intermediate Export Credit Guarantee Program (GSM-103) Operations

1. The authority citation for 7 CFR part 1493 continues to read as follows:

Authority: 7 U.S.C. 5602, 5622, 5661, 5662, 5663, 5664, 5676; 15 U.S.C. 714b(d), 714c(f).

2. Section 1493.20 is amended by revising paragraph (z) to read as follows:

§ 1493.20 Definition of terms.

* * * * *

(z) 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

(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.

* * * * *

3. Section 1493.50 is amended by revising paragraph (a) to read as follows:

§ 1493.50 Certification requirements for obtaining payment guarantee.

* * * * *

(a) The agricultural commodity or product to be exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.20(z).

* * * * *

4. Section 1493.90 is amended by revising paragraph (a) to read as follows:

§ 1493.90 Certification requirements for the evidence of export.

* * * * *

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.20(z).

* * * * *

5. Section 1493.410 is amended by revising paragraph (x) to read as follows:

§ 1493.410 Definition of terms.

* * * * *

(x) 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

(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.

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6. Section 1493.440 is amended by revising paragraph (a) to read as follows:

§ 1493.440 Certification requirements for a payment guarantee.

(a) The agricultural commodity or product to be exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.410(x).

7. Section 1493.480 is amended by revising paragraph (a) to read as follows:

§ 1493.480 Certification requirements for the evidence of export.

* * * * *

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity as defined by § 1493.410(x).

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PART 1494—EXPORT BONUS PROGRAMS

Subpart B—Export Enhancement Program Operations

1. The authority citation for 7 CFR part 1994, subpart B, continues to read as follows:

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

2. Section 1494.201 is amended by revising paragraph (gg) to read as follows:

§ 1494.201 Definition of terms.

* * * * *

(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

(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.

3. Section 1494.501 is amended by revising paragraph (c)(20)(xi) to read as follows:

§ 1494.501 Submission of offers to CCC.

* * * * *

(c) * * *

(20) * * *

(xi) The agricultural commodity or product to be exported under an EEP Agreement is a U.S. agricultural commodity as defined by § 1494.201(gg).

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Signed at Washington, DC, on April 10, 1997.

Christopher E. Goldthwait,

General Sales Manager and Vice President, Commodity Credit Corporation.

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