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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).

[56 FR 25011, June 3, 1991, as amended at 60 FR 21039, May 1, 1995]

§ 1494.401 Performance security.

(a) *Requirement to establish performance security.* Prior to the submission of an offer to CCC in response to an Invitation, an eligible exporter must establish performance security, in a form which is acceptable to CCC, in order to guarantee the eligible exporter's faithful performance of the Agreement. If CCC enters into an Agreement with the eligible exporter, this performance security must remain in effect until its cancellation or reduction is authorized by CCC pursuant to paragraph (f) of this section. An offer made by an eligible exporter will not be considered if proof of the establishment of the performance security is not made available to CCC by 3 p.m. on the date for which the offer is submitted for consideration.

(b) *Form of performance security.* The performance security must be acceptable to CCC and may be an irrevocable standby letter of credit, a bond, or a certified or cashier's check. If a standby letter of credit is furnished as performance security, the opening bank may be a U.S. bank or a foreign bank. If the standby letter of credit is opened by a foreign bank, it must be 100 percent confirmed by a U.S. bank. If a bond is furnished as performance security, the surety(ies) must be among those appearing on the list of approved sureties maintained by the U.S. Department of the Treasury. If a cashier's or certified check is furnished as performance security, the bank issuing the cashier's or certified check must be a U.S. bank.

(c) *Amount of performance security.* The amount of the performance secu-

urity to be furnished to CCC in response to a particular Invitation will depend upon whether the eligible exporter intends to select "Option A" or "Option B" for the timing of the bonus payment. If the eligible exporter furnishes performance security under "Option A" of the applicable Invitation, the eligible exporter may request payment of the bonus after export of the eligible commodity but before entry of the commodity into the eligible country. If the eligible exporter furnishes performance security under "Option B" of the applicable Invitation, the eligible exporter may request payment of the bonus only after the exported eligible commodity has entered into the eligible country. The applicable Invitation will specify the exact amount of performance security for the eligible commodity required under either "Option A" or "Option B" and the method and rate for determining liquidated damages. After the exporter and CCC enter into an Agreement, the exporter may request CCC to change the performance security option for an entire Agreement from "Option B" to "Option A" and, if CCC agrees to this change, the exporter will increase the performance security amount to the level required by the applicable Invitation for "Option A".

(d) *Additional security.* The exporter shall promptly furnish such additional security as CCC may determine is necessary to protect CCC under an Agreement if the surety(ies) or obligating bank:

(1) Becomes unacceptable to the U.S. Government or CCC; and/or

(2) Fails to furnish reports on its financial condition as required by the U.S. Government or CCC.

(e) *Right to funds under the performance security.* If CCC enters into an Agreement with an exporter under the EEP, CCC will have the right to funds from the performance security established by the exporter for such Agreement to recover:

(1) The amount of any bonus paid to the exporter under the Agreement if the exporter fails to perform in accordance with such Agreement;

(2) Any funds owed by the exporter to CCC related to the specific EEP Agreement for which the performance security was established, including those for liquidated damages, discounts for late performance, overpayments made by CCC, storage charges, or other damages or charges as determined by CCC; and/or

(3) Any amounts or funds that could be owed by the exporter to CCC in accordance with subparagraphs (e) (1) and (2) of this section for unfulfilled obligations under the Agreement if the performance security should expire prior to the exporter's fulfillment of these obligations. Should the exporter fulfill these obligations, in accordance with the Agreement, after CCC has drawn upon the performance security, CCC will return the funds drawn to the exporter or other appropriate party, as determined by CCC. CCC may return the performance security if it determines that the exporter is not liable for any damages incurred by CCC as a result of the exporter's failure to fulfill its obligations under the Agreement and that the exporter will not retain any bonus payment which was not earned.

(f) *Cancellation or reduction of performance security.* (1) CCC will agree, upon request by the exporter, to a cancellation of the performance security established for an Agreement when CCC determines, on the basis of evidence provided by the exporter or other evidence available to CCC, that:

(i) The exporter has fully performed under the Agreement;

(ii) The exporter has fully compensated CCC for all costs incurred or damages suffered by CCC, unless CCC has determined to hold the exporter harmless for such damages pursuant to §1494.801(d) as a result of the exporter's nonperformance of the Agreement; or

(iii) It is no longer in the best interest of the EEP to require the exporter to maintain the performance security, and the exporter submits to CCC a written statement agreeing that all other terms and conditions of the Agreement will remain unchanged pending final resolution of the exporter's liabilities to CCC.

(2) To support a request for the cancellation of performance security fur-

nished in connection with an Agreement, the exporter must provide to CCC evidence of the export of the eligible commodity as provided by §1494.701(c), and the entry of the eligible commodity into the eligible country or countries. The entry certification must be in English or accompanied by a certified or other translation acceptable to CCC. To show entry of the eligible commodity into the eligible country, the exporter must furnish to CCC an original certification signed by a duly authorized customs or port official of the eligible country, by the eligible buyer, by an agent or representative of the vessel or shipline which delivered the eligible commodity to the eligible country, or by a private surveyor in the target country or other documentation deemed acceptable by the GSM showing:

(i) That the eligible commodity entered the eligible country;

(ii) The identification of the export carrier;

(iii) The quantity of the eligible commodity unloaded;

(iv) The kind, type, grade and/or class of the eligible commodity; and

(v) The date(s) and place(s) of unloading of the eligible commodity in the eligible country.

(3) If the exporter makes multiple shipments against a sales contract with an eligible buyer, CCC may agree to a proportional reduction in the amount of the required performance security when the exporter has furnished evidence that the exporter has performed under the Agreement with respect to a particular shipment.

(4) Upon the payment of liquidated damages by an exporter to CCC under a specific Agreement or the determination by CCC, pursuant to §1494.801(d), to hold the exporter harmless for the payment of liquidated damages owed to CCC under a specific Agreement, CCC will allow the exporter to cancel or reassign that portion of the performance security opened for such specific Agreement that would relate to the value of the liquidated damages.

§ 1494.501 Submission of offers to CCC.

(a) *Consideration of offers.* Unless otherwise specified in the Invitation, CCC will consider offers on a daily basis

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from the date of issuance of the Invitation until such time that CCC announces that offers will no longer be accepted under the Invitation, the total quantity of the eligible commodity announced in the Invitation has been awarded, or the Invitation has expired as indicated by the expiration date shown in the Invitation.

(1) Prior to the submission of an offer to CCC, the eligible exporter must have entered into a sales contract, as defined in §1494.201(bb), with an eligible buyer for the export sale and the delivery of the eligible commodity to the eligible country.

(2) The date of sale of the eligible exporter's sales contract with an eligible buyer must be after the issuance date of the applicable Invitation.

(3) The sales contract between the eligible exporter and an eligible buyer may be conditioned upon the eligible exporter's entering into an Agreement with CCC under the EEP for the payment of a bonus.

(4) CCC will not be responsible to any person for any loss caused by the failure of the eligible exporter to obtain a CCC bonus.

(5) The eligible exporter must promptly notify CCC in writing of any amendment to the sales contract with an eligible buyer.

(b) *Submission of offers.* Eligible exporters must submit offers, or modifications or withdrawals thereof, to the address, telephone, telex or facsimile numbers specified in the Notice to Exporters—Contacts for EEP. Telephonic offers must be confirmed in writing immediately thereafter by telex or facsimile. If a telephonic offer is not confirmed in writing by 9 a.m. on the next business day, the offer will not be considered. The date and time affixed to submissions will be as determined by CCC.

(c) *Content of offers.* Offers to CCC for a CCC bonus under the EEP must contain the information shown below in the same numerical order as shown below. CCC reserves the right to reject any offer that so materially departs from this prescribed format that its consideration would hinder the offer review process. The applicable Invitation may require the submission of fur-

ther information necessary for the consideration of an offer.

(1) The use of the numerical designation assigned to the applicable Invitation, which shall signify that the offer is submitted subject to all the terms and conditions of this subpart and the Invitation in response to which the offer is being submitted for consideration by CCC.

(2) The date and time for which the offer is submitted for consideration. The time shall be stated as "after 3 p.m." For example, the information required by paragraphs (c)(1) and (c)(2) of this section could be stated as follows: "Invitation No. GSM-500-1, Revision No. X, For Consideration After 3 p.m. on August 1, 1991."

(3) The full business name and address of the eligible exporter making the offer.

(4) The name and title of the individual signing the offer.

(5) The telephone number and telex or facsimile number of the eligible exporter submitting the offer.

(6) The CCC bonus in dollar and cents requested by the eligible exporter for each unit of measure of the eligible commodity to be exported to the eligible country. The offer shall contain only one CCC bonus. In offers submitted in response to an Invitation in which CCC has announced the bonus amount, the eligible exporter shall state the dollar and cents amount of the Announced CCC Bonus.

(7) The quantity, on a net weight basis, (less any dockage, if applicable) of the eligible commodity for which the eligible exporter wishes to receive a CCC bonus pursuant to an EEP Agreement. This quantity shall be exclusive of tolerances and expressed in the unit of measure specified in the applicable Invitation. This quantity may be less than the sales contract quantity.

(8) The U.S. coast of export. The Invitation may require the eligible exporter to indicate: The coasts of export if more than one coast of export is allowed for an offer; the Canadian port if the eligible commodity is to be transhipped through a Canadian port on the St. Lawrence River; or the U.S. city and state from which the shipments will cross the border into the eligible

country if the eligible commodity is to be shipped by rail or truck.

(9) The quality of the eligible commodity to be exported to the eligible buyer, if required by the applicable Invitation, including any additional quality specifications not found in the Invitation but included in the tender specifications by the eligible buyer or the sales contract with the eligible buyer. The Invitation may limit an offer to one or more quality designations for the eligible commodity.

(10) The names of the eligible buyer and the eligible country. Unless otherwise provided for in the applicable Invitation, an offer shall contain only one eligible buyer and one eligible country. The Invitation may also provide that the eligible buyer need not necessarily be located in the eligible country.

(11) The date of sale of the sales contract with the eligible buyer.

(12) The number assigned by the eligible exporter to the sales contract.

(13) The quantity of the eligible commodity specified in the sales contract, expressed in the unit of measure specified in the applicable Invitation.

(14) The sales contract loading tolerance, if any, expressed in a percentage.

(15) The sales contract unit price, delivery terms (e.g., FOB, C&F, etc.); the nature of any arrangements or understandings of the eligible exporter and any other person that would affect the sales contract, including but not limited to arrangements or understandings concerning commissions, rebates, and other payments if applicable; credit payment terms (e.g., GSM-102, GSM-103, or other credit arrangements); and, if required by the applicable Invitation, the discharge port. The possible credit payment terms referenced in an offer are for CCC's information only and are not to be construed as a contingency for consideration or acceptance. The eligible exporter is fully responsible for the arrangement of such payment terms independently from the EEP offer and CCC bears no responsibility if such credit payment terms cannot be secured.

(16) The delivery period specified in the sales contract expressed on the basis of either shipment from the

United States or the Canadian transshipment port or arrival in the eligible country. If an arrival period is shown, the offer must also indicate an anticipated shipment period. If a multiple month delivery schedule is agreed upon in the sales contract the offer must specify the quantity of the eligible commodity to be delivered each month or at other specified intervals.

(17) Any options which may be exercised by the eligible buyer under the sales contract. If the offer is accepted by CCC, the exporter must immediately inform CCC if any such options are exercised by the buyer.

(18) The name and address of the sales agent, if any, for the sales contract.

(19) The designation of bonus payment under "Option A" or "Option B," as described in §1494.401(c).

(20) The words "ALL ITEM 20 CERTIFICATIONS ARE BEING MADE IN THIS OFFER" which, when included in the offer by the eligible exporter, will indicate that the eligible exporter is certifying that:

(i) The information furnished to CCC with respect to the sales contract is correct;

(ii) The date of sale with an eligible buyer was after the issuance date of the applicable Invitation;

(iii) The sale does not replace any sale made to the eligible buyer by the eligible exporter, or any affiliate or subsidiary of the eligible exporter, prior to the issuance date of the applicable Invitation;

(iv) There are no other arrangements or understandings between the eligible exporter and any other person that would alter the information provided under paragraph (c) of this section;

(v) There were and will be no corrupt payments or extra sales services, or other items extraneous to the export sale provided in connection with the export sale, and the transaction complied with applicable U.S. law;

(vi) The CCC bonus requested in the offer has been arrived at independently, without any consultation, communication, or agreement with any other eligible exporter or competitor relating to:

(A) The amount of the CCC bonus;