

which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V published at 48 FR 29115 (June 24, 1983).

#### **Executive Order 12778**

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this interim rule are not retroactive and preempt State laws to the extent that such laws are inconsistent with the provisions of this interim rule. Before any legal action is brought regarding determinations made under provisions of 7 CFR part 1464, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

#### **Paperwork Reduction Act**

This interim rule does not change the CFSA information collection requirements that have been approved by OMB and assigned control number 0560-0058. The FCIC information collection requirements for 0563-0003 have been modified and approved by OMB to reflect the program requirements imposed by the Federal Crop Insurance Reform Act of 1994.

#### *A. The Federal Crop Insurance Act of 1994*

The 1994 Act was enacted on October 13, 1994, and amended the Federal Crop Insurance Act. The 1994 Act requires FCIC to implement a catastrophic risk protection plan of insurance which is the basic level of coverage required to be purchased by a producer to be eligible for price support and other U.S. Department of Agriculture farm program benefits. FCIC issued an interim rule published in the **Federal Register** on Friday, January 6, 1995 (Vol. 60, No. 4, pages 1996 through 2005) implementing this and other 1994 Act provisions.

#### *B. Tobacco Loan Program*

This rule amends 7 CFR part 1464 for the tobacco program to reflect the 1994 Act's insurance provisions. Under the rule, as under the act, beginning with the 1995 crops, tobacco producers will be ineligible for price support unless they purchase catastrophic risk protection crop insurance in accordance with FCIC rules in an amount which equals or exceeds the minimal amount set by FCIC. This requirement is statutory. For that reason, because this rule mirrors the previously published FCIC rules, and because of the onset of the growing season, it has been determined that there would be no purpose in delaying the effectiveness of this rule and that such delay would be contrary to the public interest.

Therefore, it has been determined that this rule should be published as an interim rule without prior comment.

#### **List of Subjects in 7 CFR Part 1464**

Assessments, Loan program, Agriculture, Price support program, Tobacco, Warehouses.

For the reasons set out in the preamble, 7 CFR part 1464 is amended as follows:

#### **PART 1464—TOBACCO**

1. The authority citation for part 1464 continues to read as follows:

**Authority:** 7 U.S.C. 1421, 1423, 1441, 1445, 1445-1, and 1445-2; 15 U.S.C. 714b, 714c.

2. Section 1464.7 is amended by adding a new paragraph (f) to read as follows:

#### **§ 1464.7 Eligible producer.**

\* \* \* \* \*

(f) Must be in compliance with the provisions of parts 400 and 402 of this title by purchasing an amount of catastrophic insurance coverage which equals or exceeds the minimal required under those parts.

Signed at Washington, DC on April 21, 1995.

**Bruce R. Weber,**

*Acting Executive Vice President, Commodity Credit Corporation.*

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BILLING CODE 3410-05-M

#### **7 CFR Part 1494**

#### **Export Bonus Programs**

**AGENCY:** Commodity Credit Corporation (CCC), USDA.

**ACTION:** Final rule.

**SUMMARY:** CCC is issuing this final rule 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 final rule also amends 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.

**EFFECTIVE DATE:** May 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service,

U.S. Department of Agriculture, AG Box 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 been 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**

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 information collection requirements contained in this rule have previously been submitted to OMB for review under the Paperwork Reduction Act and were assigned OMB control numbers 0551-0028 and 0551-0029.

#### **Executive Order 12778**

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule will 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 will not have retroactive effect. The regulations currently require that certain administrative remedies be exhausted before suit may be filed, and this final 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.

#### Background

CCC published a proposed rule in the **Federal Register** of January 18, 1995 (60 FR 3564) that would amend 7 CFR part 1494 to delete the export experience requirement for qualification to participate in the EEP and the DEIP and establish the time at which new program participants would be eligible to receive bonus payments. In addition, CCC proposed that changes be made to the regulations to require a certification from exporters seeking to qualify for program participation; to delete unnecessary or redundant language; and to inform qualified exporters in a more direct fashion that they have a duty to update information they have provided to CCC pursuant to 7 CFR 1494.301(a) to ensure that it is current and accurate. The proposed rule also contained other minor, non-substantive changes 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.

#### Comments

The deadline for submitting comments on the proposed rule was March 20, 1995. CCC received comments from six U.S. exporters, two producer associations, and one U.S. trade association. These nine parties made approximately 12 separate and significant comments regarding the proposed rule.

Five commenters expressed support for CCC's proposal to delete the export experience requirement. One commenter stated that the export experience requirement has seriously limited participation in the DEIP by certain exporters. Another commenter

felt that this requirement has had the effect of creating a monopoly which reduced the competitive edge of U.S. exports. Furthermore, this respondent felt that the experience requirement has forced novice exporters to have to deal with export sales agents qualified under the EEP or DEIP. This additional layer, in the view of the commenter, decreases the efficiency of the export sale. One commenter felt that a firm that has the contacts and resources to do business overseas should be allowed the opportunity to do international business, through its participation in the programs, in the same way that it has the opportunity to do business in the domestic market.

Another commenter felt that the experience requirement has restricted the ability of many U.S. dairy product companies to export and that dispensing with this requirement will broaden the potential exporter base for U.S. dairy products. This respondent, however, was opposed to CCC's proposal to defer payment of bonuses to new program participants until they have demonstrated their ability to participate successfully in a program. This commenter expressed the opinion that this provision of the proposed rule is discriminatory because the timing of the receipt of the export bonus and the performance security requirements work to the competitive disadvantage of novice exporters and the advantage of experienced exporters.

Four commenters disagreed with the proposal to delete the export experience requirement. These commenters were concerned that removal of this requirement would, in some way, threaten the integrity of the EEP and DEIP and the image of the United States as a reliable export supplier. One commenter felt that the qualification requirements in the current DEIP regulations are not onerous and can be readily satisfied by parties who are seriously interested in developing export business. One commenter expressed the opinion that the deletion of the experience requirement could encourage export transactions by parties that lack the experience and financial standing to successfully execute such transactions. One commenter felt that removal of the experience requirement would open the programs to potential fraud. This commenter advocated that even more controls be placed on program participation.

Another respondent felt that, if the experience requirement is deleted, the market would be plagued with companies and brokers that are inexperienced and perhaps less than honest. Program participation by

inexperienced companies would, in the long run, cause small domestic producers to shy away from the international market, because of bad experiences, and foreign buyers to buy solely from large companies. However, this commenter did express support for the change in the proposed rule such that an exporter would simply qualify one time to be eligible for a program and could thereafter export any eligible commodity under that program.

CCC did not receive comments on any of the other proposed changes to 7 CFR part 1494.

#### Discussion

After considering all of the significant comments, CCC has determined to make the changes to 7 CFR 1494.201 and 1494.301 as proposed. CCC agrees with those commenters that expressed the view that the deletion of the export experience requirement will permit additional companies to participate in the EEP and DEIP and increase competition for export business.

CCC does not agree with those commenters that felt that the additional exporters that will participate in the EEP and DEIP as a result of this change will present an increased threat to the programs as a result of abuse or fraud. CCC will continue to require performance security from exporters and take aggressive action in the face of any apparent program violations. In addition, CCC does not agree with the commenters' views that allowing inexperienced exporters to participate in the programs will adversely affect other small exporters' participation or domestic suppliers' relationships with exporters, because domestic suppliers can take steps to evaluate individual exporters and to protect themselves from nonperformance and other potential exporter problems.

The proposed timing of the bonus payments to new program participants will provide a means of allowing exporters to gain experience within the program, yet protect CCC from paying a bonus until the product arrives in the eligible country. CCC's intention, in adopting this bonus mechanism, is to address the types of concerns about potential program abuse raised by some commenters. Furthermore, while the timing of the bonus payment is different for qualified exporters and those without proven program participation, the amount of performance security required and the timing of the release of the performance security for both categories of exporters will be the same. Therefore, CCC has designed a mechanism which will impose the minimal additional burden on new

program participants necessary to protect CCC's interests.

#### List of Subjects in 7 CFR Part 1494

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

Accordingly, 7 CFR part 1494 is amended to read 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 § 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 section 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 this 25th day of April, 1995 at Washington, DC.

**Christopher E. Goldthwait,**

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

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### DEPARTMENT OF JUSTICE

#### Immigration and Naturalization Service

#### 8 CFR Part 245a

[INS No. 1321-91; AG Order No. 1964-95]

RIN 1115-AC18

#### Procedure for Automatic Termination of Temporary Resident Status Upon Final Order of Deportation or Exclusion

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends existing regulations by providing, in specified circumstances, for the automatic termination of temporary resident status under provisions of the Immigration and Nationality Act, as amended (Act), upon the entry of a final order of deportation or exclusion. This amendment is necessary to avoid possible delays in, or termination of, pending deportation and exclusion proceedings that would result if the Immigration and Naturalization Service (INS) were required to follow existing procedures for the termination of temporary resident status. This amendment permits the expeditious deportation and removal of aliens who hold temporary resident status and have been convicted of an aggravated felony