

there is an increase in rates. Except when there is a decrease in wage rates because of a statutory reduction in scheduled rates, the employee is entitled to pay retention as provided in 5 CFR 536.104(a)(3).

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APPALACHIAN REGIONAL COMMISSION

5 CFR Part 1900

Repeal of Employee Responsibilities and Conduct Regulations for Appalachian Regional Commission Federal Employees (Federal Staff)

AGENCY: Appalachian Regional Commission (ARC or Agency).

ACTION: Final rule.

SUMMARY: The Appalachian Regional Commission is issuing as a final rule regulations for the officers and employees of the Agency's Federal staff which repeal its superseded employee standards of conduct and cross-reference the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture Regulations (Regulations) issued by the Office of Government Ethics (OGE).

EFFECTIVE DATE: December 7, 1995.

FOR FURTHER INFORMATION CONTACT: Guy Paul Land, Counsel to the Federal Co-Chairman, Appalachian Regional Commission, 1666 Connecticut Avenue NW., Washington DC 20235, 202-884-7660.

SUPPLEMENTARY INFORMATION: On August 7, 1992, OGE published Standards of Ethical Conduct for Employees of the Executive Branch. The Standards, which are codified at 5 CFR part 2635, became effective on February 3, 1993. They established uniform ethical conduct standards applicable to all executive branch personnel and hence are applicable to ARC Federal employees. On April 7, 1993, OGE also published the Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture Regulations which are applicable to all executive branch employees. The Financial Disclosure Regulations, which are codified at 5 CFR part 2634, took effect upon publication except for the rules on confidential disclosure which became effective on October 5, 1992. These Regulations are also applicable to ARC Federal employees. As a result of the implementation by OGE of the

Standards of Conduct and Financial Disclosure Regulations for executive branch personnel, on the effective date of this final rule, the Agency's regulations on employee Responsibilities and Conduct, 5 CFR part 1900, will be amended to remove sections 1900.735-101 through 1900.735-108 and add a new section 1900.100 to provide a cross-reference to the Executive Branch Standards and Financial Disclosure Regulations.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), the Appalachian Regional Commission finds good cause exists for waiving the general notice of proposed rulemaking as to this final rule. The notice is being waived because this rulemaking relating to ARC Federal employees concerns matters of agency organization, practice and procedure. Further, it is in the public interest that the final rule, which repeals superseded ARC regulations and promulgates a cross-reference to the currently effective branch-wide Standards and Financial Disclosure Regulations, become effective upon publication in the Federal Register.

Executive Order 12866

In promulgating this final regulation, the Appalachian Regional Commission adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This final rule has not been reviewed by the Office of Management and Budget under that Executive order, since it deals with agency organization, management, and personnel matters and is not in any event deemed "significant" thereunder.

Regulatory Flexibility Act

The Appalachian Regional Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only ARC Federal employees.

Paperwork Reduction Act

The Appalachian Regional Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 1900

Conflict of interests, Government employees.

Approved: November 30, 1995.

Jesse L. White, Jr.,

Federal Co-Chairman, Appalachian Regional Commission.

For the reasons set forth in the preamble, the Appalachian Regional Commission is revising part 1900 of title 5 of the Code of Federal Regulations to read as follows:

PART 1900—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Authority: 5 U.S.C. 7301, 40 U.S.C. App. 106.

Section 1900.100 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Officers and employees of the Appalachian Regional Commission Federal Staff are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 3635 and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Services, USDA.

ACTION: Final rule.

SUMMARY: This rule amends regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480).

The purposes of these changes are: To eliminate the potential for certain conflicts of interest; to keep the costs of the Public Law 480, title I program as low as possible; to insure that all persons seeking to participate in supplying and shipping commodities financed under Public Law 480, title I, receive fair and equitable treatment; and to reflect a reorganization of administrative functions within the Department of Agriculture.

EFFECTIVE DATE: See **SUPPLEMENTARY INFORMATION** for compliance requirements.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, P.L. 480 Operations Division, Export Credits,

Foreign Agricultural Service, U.S. Department of Agriculture, Room 4549 South Building, 14th and Independence SW., Washington, D.C. 20250-1033. Telephone: (202) 720-3664.

SUPPLEMENTARY INFORMATION: This final rule is issued in conformance with Executive Order 12866. It has been determined to be significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act. The General Sales Manager has certified that this rule will not have a significant economic impact on a substantial number of small entities. Although this rule regulates certain activities of shipping agents in the Department's foreign assistance activities, the limitations imposed should not adversely impact upon the volume of business handled by any particular small business entity. A copy of this final rule has been submitted to the General Counsel, Small Business Administration.

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 the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. The final rule would 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 final rule would not have retroactive effect. The rule does not require that administrative remedies be exhausted before suit may be filed.

Background

The Secretary of Agriculture implements title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480). This function is delegated to the General Sales Manager, Foreign Agricultural Service. On November 12, 1992, the Foreign Agricultural Service (FAS) published a proposed rule (57 FR 53607) to amend the regulations governing the financing of the sale and exportation of agricultural commodities made available under title I, Public Law

480. Corrections to the proposed rule were published November 27, 1992 (57 FR 56406).

Comments suggesting revisions to the proposed rule are discussed below, except those that were outside the scope of the proposed rule or of an editorial nature. FAS has made minor editorial changes and other changes to respond to some of the comments received, and to reflect the redesignation of certain offices within the Department of Agriculture involved in the administration of the title I, Public Law 480 program.

Discussion of Comments

Ocean Transportation-Related Services. The proposed rule would have prohibited a shipping agent from providing expediting services to a vessel owner at discharge ports. FAS proposed this change in order to eliminate the potential for a conflict of interest that might arise if a shipping agent representing a charterer were also to receive a fee from the vessel owner to expedite discharge operations, with the result that the agent might show favoritism to the owner in subsequent freight solicitations.

The comments received stressed that the rule would eliminate a possible source of revenue for shipping agent firms, with greater impact on small businesses, and could thereby reduce the number of shipping agents participating in the title I, Public Law 480 program.

FAS will not adopt this aspect of the proposed rule because any adverse impact upon the operations of the title I, Public Law 480 program from the hypothesized conflict of interest is speculative and, therefore, would not justify the harmful effect on competition and smaller businesses. Because the title I program requires strict competitive bidding procedures in the procurement of freight, there is little potential for favoritism in the vessel selection process.

Affiliates. The proposed rule would have expanded the current definition of "affiliate" to include two legal entities that are owned or controlled by the same legal entity. Currently, a firm cannot be a shipping agent during the same fiscal year in which it, or its affiliate, provides ocean transportation-related services. If the definition of affiliate were expanded as proposed, presumably more firms would be subject to this prohibition. The proposal was intended to prevent a participant from selecting a firm as shipping agent because that firm could offer ocean transportation-related services at a discount.

One comment argued that there was no reason to be concerned because an independent but indirectly affiliated company acting as a title I shipping agent could not derive inappropriate benefits from a related entity providing wholly different services with respect to, for example, title III shipments. This comment also recommended CCC return to the practice of determining conflicts of interest on a "transaction-by-transaction" basis, an approach followed prior to the Food, Agriculture, Conservation, and Trade Act of 1990. Two comments noted that the proposed expansion of the definition of affiliate would eliminate from competition any multinational freight forwarder, including at least one firm currently active as a shipping agent.

FAS has determined not to expand the affiliate definition in this rule because it may, in fact, hinder operations under other assistance programs. Although it is theoretically possible, for example, that a firm providing inland transportation services overseas could influence selection of its "affiliated" shipping agent through the prospect of discounted services, we have no reason to believe this has taken place. Thus, there is no empirical basis to justify expanding the definition of "affiliates," especially where to do so would reduce the number of firms able to provide ocean transportation-related services in other programs, such as titles II and III of Public Law 480, or would reduce the number of firms from which participants may select a shipping agent.

Section 407(c)(4) of Public Law 480 requires that CCC analyze the potential for conflict of interest over the term of a fiscal year, rather than on a transaction-by-transaction basis. Therefore, returning to the transaction-by-transaction basis is not an option available to CCC.

Another comment proposed that FAS expand the definition of affiliate to cover all situations where two legal entities are owned by the same individuals and operate from the same offices using the same employees.

Although FAS is not adopting a rule that would automatically consider two firms in this situation as affiliates, FAS will investigate questionable situations to determine if two firms may legally be considered as one firm or if one firm may be considered as the *alter ego* of another officer or director of another company when applying the existing affiliation rules. We also note that the existing "affiliate" definition includes firms with common officers or directors or investments between firms and these

factors would likely encompass the situation suggested by the comment.

Subcontractors of A.I.D. Freight Agents. One comment argued that subcontractors of freight agents employed by the Agency for International Development (A.I.D.) should be eligible to act as title I shipping agents because section 407(d)(3) of Public Law 480 did not specifically refer to subcontractors; and that to preclude such subcontractors from participating as title I, Public Law 480 shipping agents would be an unwarranted extension of the statute.

The proposed rule specifically precluding subcontractors of freight agents employed by A.I.D. from acting as shipping agents under title I, Public Law 480 is a codification of FAS's prior interpretation of the scope of section 407(d)(3). See 47 FR 53609. This interpretation, concurred in by A.I.D., is reasonable given the subcontractor's active involvement in arranging ocean transportation.

No Competitive Advantage. The proposed rule included a prohibition against shipping agents affording competitive advantage to any particular supplier of commodities or ocean transportation. One comment suggested the rule should prohibit limiting competition among suppliers of commodities or ocean transportation by artificially or unreasonably restricting the quantity purchased or size of vessel which can be offered. Such a specific prohibition is unnecessary because FAS reviews each proposed commodity and freight invitation for bids to eliminate any restrictions that cannot be justified as furthering the purposes of the title I program.

A second comment contended that the proposed rule was too broad and prohibited a prudent business person from maintaining regular contact with others in the business and unduly limited the exchange of information that could benefit an importing country in planning its purchases. The comment further questioned whether FAS could effectively enforce the prohibition.

This comment misinterpreted the proposed rule. The rule does not prohibit a shipping agent from gathering information, such as price trends or crop quality, from trade sources and passing the information to its principal. Nor does it prevent an agent from pursuing normal business contacts. The rule simply highlights an important aspect of the fair and impartial performance of an agent's duties. FAS will request investigations of alleged violations of this regulation; the agent may be suspended or debarred from the program if violations are established.

Independent Contractors. The proposed rule required that an independent contractor hired by a shipping agent to perform functions of a shipping agent must furnish to FAS the same information and documentation as the agent. One comment stated that this rule was too loosely drafted and encompassed certain unintended relationships; *i.e.*, a shipping agent may hire "independent contractors" to perform any of a number of services.

FAS disagrees and has adopted the proposed rule as written because it clearly specifies that the requirement applies only to persons hired by a shipping agent "to perform functions of a shipping agent." This very narrow category of persons should be subject to the same standards as the shipping agent itself to prevent evasion of the regulations.

Payment or Other Benefit. The proposed rule prohibited participants from receiving certain enumerated benefits, such as office space, equipment, and travel expenses, from the agents they selected. This was intended to make it more likely that participants would select agents on merit and to eliminate the possibility that participants might favor larger companies, which could more easily afford to offer these benefits. One comment, submitted by a small firm, objected to this provision because it would prevent a participant from financing trips to the United States by potential buyers, thus stifling an important opportunity for market development. The commentor recommended that the rule permit certain payments, such as reasonable travel expenses directly related to the procurement of commodities.

FAS will not adopt the rule as proposed because improper actions or payments made in connection with the selection of a shipping agent would already be prohibited by the Foreign Corrupt Practices Act. Also, while the efficient operation of the title I, Public Law 480 program would suffer from incompetent agents, FAS cannot conclude that the payment of benefits which are consistent with existing law results in the use of incompetent agents.

CCC will, however, change the current rule by prohibiting "payments, kickbacks, or other illegal benefits" in connection with the agent's selection so that the rule, consistent with other existing laws, clearly encompasses any corrupt financial payment to a country in connection with the agent's selection. This adequately protects CCC's financial interest in the program.

Limitation on Brokerage Payments. The proposed rule would have capped a shipping agent's commission at $\frac{2}{3}$ of the maximum total commission which CCC can finance (2.5% of the value paid for freight) in order to allow for a commission to a shipping broker under the cap. A number of comments from shipping agents stated that such a cap would drive some shipping agent firms out of business; would not reduce freight rates; and would not have any effect on the decision of vessel owners whether to use a ships broker in offering a vessel. Other comments, primarily from ships brokers, urged that FAS change the rule to limit the shipping agent's commission to 1.25% (one-half of the maximum commission which CCC can finance) even if the vessel owner does not use a ships broker in the transaction.

The comments suggest that any reduction in freight rates as a result of a cap on shipping agents' commissions is unlikely. Absent this benefit to the program, FAS does not see any need to change the current regulations because we have not identified any adverse impact on the program from the existing regulation.

Contracts Required. FAS proposed to require that suppliers of ocean transportation furnish, if requested by FAS, copies of relevant lightening, stevedoring and bagging contracts, whether or not CCC financed ocean freight or ocean freight differential in connection with the voyage. Since the final rule no longer contains the limitations on commissions and affiliates that were published in the proposed rule, this requirement will apply only when CCC is financing a portion of the ocean freight. FAS has revised the final rule to clarify that it is the supplier of ocean transportation which must provide these contracts, if requested by CCC. USDA will not delay issuance of the commodity supplier's copy of the Form CCC-106 pending receipts of the contracts. FAS will use this information in monitoring compliance with the supplier reporting requirements contained in § 17.12 of the regulations.

However, CCC will require, as proposed, that, when CCC finances any part of the ocean freight, the participant or its agent must provide copies of liner booking notes to USDA before USDA releases Form CCC-106. This will also continue to be the practice with respect to copies of charter parties.

Non-Reversible Laydays and Despatch. Currently, CCC shares despatch with the participant and laydays are reversible. The proposed rule provided that CCC would share

despatch earnings at the load port with the commodity supplier thereby encouraging quicker loading and lower freight rates. Comments suggested that CCC should not share in any despatch since it is not involved in loading and discharge operations. These comments also suggested that the vessel operator should pay despatch to the commodity supplier at loading and to the charterer at discharge, pointing out that such a change would more closely reflect commercial practices and possibly expedite vessel operations.

CCC agrees with these comments. Accordingly, the new rule eliminates CCC's sharing in any despatch earnings. With this change, title I procedures in this regard will follow those of the title III, Public Law 480 program administered by A.I.D.

Several other changes to the rule follow from this change. There is no longer any need for CCC to delay payment of the final 5 percent of the ocean freight or ocean freight differential pending completion of demurrage/despatch calculations. Therefore, the final rule also provides that 100% of the ocean freight or ocean freight differential is payable when the vessel and cargo arrive at the first port of discharge, and, in the event of a force majeure, 100% of the freight will be payable. Further, the amount of security that CCC will require before it advances payments for ocean freight or ocean freight differential is increased from 95% to 100% to reflect the increased freight payable on arrival. Participants and vessel owners should recognize that, because CCC will not share in despatch, CCC will not be responsible for resolving disputes involving calculation of laytime or payment of demurrage or despatch.

The final rule adopts non-reversible laydays to reflect the fact that different parties will be sharing in despatch at load and discharge. Several comments noted that a change to non-reversible laydays would disadvantage importing countries because these countries may be more likely to owe demurrage if they cannot offset time lost at discharge against time gained at loading. FAS proposed this change in order to reflect commercial practices in the shipping trade that would benefit title I, Public Law 480 by reducing freight rates. Countries which can turn vessels around quickly at the discharge port will benefit by retaining the entire despatch earned.

Commodity Letters of Credit. The proposed change in § 17.15(h)(1) addressed a specific situation that occurred under the title I program. Suppliers of ocean transportation under

title I have issued bills of lading containing a provision noting a lien on the cargo if they have loaded commodities before they have been advised that an acceptable freight letter of credit has been opened to their benefit. This has unfairly delayed commodity suppliers from receiving payment from the bank because letters of credit typically contain a documentary requirement for a "clean bill of lading." This practice, if allowed to continue, could have increased program costs by placing an unreasonable burden on commodity suppliers. The final rule adopts the proposal to specifically require that commodity letters of credit allow for payment even if the bill of lading states that the vessel owner has a lien on the cargo. The vessel owner may include such a statement on bills of lading and, of course, may refuse to load and may claim detention if there is no freight letter of credit.

Miscellaneous Change to Supplier Reporting Requirements. The proposed rule also added, as a clarification, a list of specific items that must be reported to CCC pursuant to section 17.12 of the regulations. This section implements section 407(b) of Public Law 480. In reviewing this matter, FAS has determined that it would also be helpful to the trade to specify that suppliers must also report payments to foreign governments or their agencies. While FAS has interpreted the current regulations to require reports of payments to foreign government agencies (because they fall within the class of persons included in the term "representative of the importer or participant"), FAS believes that this interpretation should be reflected in the regulations. Therefore, the final rule amends § 17.12 of the regulations by specifying that suppliers must also report payment of commissions, fees or other compensation to the participant, or any agency of the participant.

Effective Date

The provisions of this rule shall apply to contracts entered into under purchase authorizations issued on or after January 8, 1996 and to USDA acceptance of nominations of shipping agents received after January 8, 1996 covering services provided during U.S. fiscal year 1996 (October 1, 1995–September 30, 1996) and each U.S. fiscal year thereafter.

Paperwork Reduction Act

Most reporting and recordkeeping requirements contained in this final rule have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction

Act of 1980. OMB has assigned control number 0551-0005 to this information collection. Reporting and recordkeeping requirements in this final rule that have not been previously approved by OMB are not effective until approved by OMB.

List of Subjects in 7 CFR Part 17

Agricultural commodities; exports; finance; maritime carriers.

Accordingly, 7 CFR Part 17, Subpart A, is amended as follows:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 7 U.S.C. 1701-1705, 1736a, 1736c, 5676; E.O. 12220, 45 FR 44245.

2. The zip codes "20250-1000" is revised to read "20250-1033" each time it appears in §§ 17.1(f), 17.7(c)(4)(i), 17.10(b)(5), 17.14(c)(2) and paragraphs (B)(6)(a) and (F)(4)(a) in Appendix A.

3. Section 17.2 is amended by removing definitions of "ASCS" and "ASCS offices" in paragraph (a) and adding definitions of "FSA" and "FSA offices" in alphabetical order, and by adding definitions of "expediting services," "ocean transportation brokerage," and "ocean transportation-related services" in paragraph (c) to read as follows:

§ 17.2 Definitions of terms. * * *

(a) *Terms relating to the United States, its agencies and officials.*

* * * * *

"FSA" means the Farm Service Agency, U.S. Department of Agriculture. "FSA offices" means the FSA offices listed in § 17.21 and any other offices or agencies which may succeed to the functions of these offices.

* * * * *

(c) *Other terms.*

* * * * *

Expediting services means services provided to the vessel owner at the discharge port in order to facilitate the discharge and sailing of the vessel; this may include assisting with paperwork, obtaining permits and inspections, supervision and consultation.

* * * * *

Ocean transportation brokerage means services provided by shipping agents related to their engagement to arrange ocean transportation and services provided by ships brokers related to their engagement to arrange employment of vessels.

Ocean transportation-related services means furnishing the following services: lightening, stevedoring, and bagging (whether these services are performed at

load or discharge), and inland transportation, i.e., transportation from the discharge port to the designated inland point of entry in the destination country, if the discharge port is not located in the destination country.

* * * * *

4. Part 17 is provided by revising the term "ASCS" to read "FSA" wherever it appears.

5. Section 17.5 is amended by changing the term "Assistant General Sales Manager" to read "Deputy Administrator, Export Credits" in paragraph (a)(1), (d)(1) and (2), (e), and (g)(1) and (2), removing and reserving paragraph (a)(3), revising paragraph (a)(4), adding a new paragraph (a)(5), adding "section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985," after "any title of the Act," in paragraphs (b)(2) and (3), revising paragraphs (c)(7) and (8), and revising the last sentence of paragraph (d)(2) to read as follows:

§ 17.5 Agents for the participant or importer.

(a) *General.*

* * * * *

(3) [Reserved]

(4) A freight agent employed by the Agency for International Development under titles II and III and is not eligible to act as an agent for the participant or importer during the period of such employment. A subcontractor of such freight agent is not eligible to act as an agent for the participant or importer during the period of its subcontract.

(5) A shipping agent may not take any action which would give a competitive advantage to any supplier of commodities or ocean transportation. This includes, but is not limited to, providing advance notice of IFB's or amendments, or selectively enforcing IFB or contract requirements.

* * * * *

(c) *Information to be furnished.* A person nominated to act as an agent of the participant or importer, and any independent contractor that may be hired by such person to perform functions of a shipping agent, shall furnish to the Deputy Administrator, Export Credits, the following information or documentation as may be applicable:

* * * * *

(7) For USDA acceptance of a nomination covering services provided during U.S. fiscal year 1996 (October 1-September 30) and each U.S. fiscal year thereafter, a written statement signed by such person:

(i) Certifying that, during the U.S. fiscal year covered by USDA's

acceptance of the nomination, the person has not engaged in, and will not engage in, supplying commodities under any title of the Act or the Food for Progress Act of 1985 or furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether any part of the ocean transportation is financed by the U.S. Government; and that the person has not served and will not serve as an agent, broker, consultant or other representative of firms engaged in providing such commodities, ocean transportation and ocean transportation-related services;

(ii) Certifying that, for ocean transportation brokerage services provided during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not shared and will not share freight commissions with the participant, the importer, or any agent, broker, consultant or other representative of the participant or the importer, whether CCC finances any part of the ocean freight. CCC will consider as sharing a commission a situation where the agent forgoes part or all of a commission and the supplier of ocean transportation pays a commission directly to the participant, the importer, or any other person on behalf of the participant or the importer. (See also § 17.8(c)(8), which prohibits address commissions or payments); and

(iii) Undertaking that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, affiliates of such person have not engaged in and will not engage in the activities or actions prohibited in this paragraph (c)(7).

(8) A certification that neither the person nor any affiliates has arranged to give or receive any payment, kickback, or illegal benefit in connection with the person's selection as agent of the participant or importer.

(d) *USDA acceptance.*

* * * * *

(2) * * * USDA will withdraw such acceptance if the agent of the participant or importer, or any of the affiliates of such agent, violates the certifications or undertakings made pursuant to paragraph (c)(7) of this section.

* * * * *

6. The address of the Kansas City FSA Commodity Office is revised to read "U.S. Department of Agriculture, P.O. Box 419205, Kansas City, Missouri 64141-6205" in §§ 17.7(c)(4)(iii), 17.14(c)(1), and paragraphs (V)(1), (6)

and (10) and paragraphs (W)(1), (6) and (10) in Appendix A.

7. Section 17.7 is amended by adding the following text at the end of paragraph (c)(6):

§ 17.7 Eligibility of suppliers and selling agents.

* * * * *

(c) *Commodity suppliers (approval).*

* * *

* * * * *

(6) * * * Such performance security shall be in addition to the amount of the standard performance security required of all offerors in the Invitation for Bids. This additional performance security shall conform to the requirements in the Invitation for Bids for the performance security, and may be combined with the standard performance security into a single performance security. Upon successful completion of one or more contracts by the supplier, CCC may remove the requirement for the additional performance security.

§ 17.10 [Amended]

* * * * *

8. Section 17.10 is amended by revising the telephone number to read "(202) 720-5780" in paragraph (a) introductory text and in paragraph (b)(5).

9. Section 17.12 is amended by revising paragraph (a), and revising the last sentence of paragraph (c) to read as follows:

§ 17.12 Reports required from suppliers of commodities and ocean transportation.

(a) *General.* Suppliers of—

(1) Agricultural commodities financed under the Act, and

(2) Vessels on which such commodities are transported, if ocean freight or ocean freight differential with respect thereto is financed by CCC, shall report to the General Sales Manager any commission, fee or other compensation of any kind which in connection with the supplying of such commodities or vessels is paid or to be paid by the supplier to any agent, broker, consultant or other representative of the importer or participant; to the participant; or to any agency, including a corporation owned or controlled by the importer or participant, to which the supplier furnishes such commodities or vessels. This includes, but is not limited to, payments to such entities for services such as lightening, stevedoring, discharging, and bagging if such services are included in the ocean freight contract as being for the account of the vessel owner; freight commissions; address commissions; bank commissions; inward freight

commissions; agency fees; consular fees; stevedoring overtime; brokerage fees; dispatcher's fees; outport agent's services; freight forwarding fees; supervision fees and payments for expediting services.

(3) Suppliers shall report any such payment delivered to an agent, broker, or other representative of the importer or importing country even if the payment is not designated for the agent.

(c) *Reporting.* * * * Suppliers shall submit reports to the General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250-1001.

10. Section 17.14 is amended by revising the introductory text of paragraph (d), removing the first sentence of the introductory text in paragraph (e), revising paragraph (e)(3), revising "95 percent" to read "100 percent" in the first sentence of paragraph (e)(4) and removing the second and third sentences of paragraph (e)(4), removing paragraph (e)(5) and redesignating paragraph (e)(6) as (e)(5), removing paragraph (k)(8), revising the heading of paragraph (l) revising paragraphs (l) (1) and (2), removing and reserving paragraphs (l) (3) and (4), revising paragraphs (l) (5) and (6), revising "95 percent" to read "100 percent" in the second sentence of paragraph (l)(7) and the first sentence of paragraph (l)(8), removing the second and third sentences of paragraph (l)(8), revising paragraph (m), and removing and reserving paragraph (n) to read as follows:

§ 17.14 Ocean transportation.

(d) *Advice of vessel approval.* USDA will give written approval of charters and liner bookings on Form CCC-106, Advice of Vessel Approval. The Form CCC-106 will state whether the vessel is approved as a dry cargo liner, dry bulk carrier, or tanker, and whether CCC will finance any part of the ocean freight. If CCC agrees to finance any portion of the ocean freight, the importing country or its agent shall forward a copy of the charter party or liner booking note immediately after execution to the Director, P.L. 480 Operations Division, FAS (or the Director, Kansas City FSA Commodity Office, for cotton), for review and approval prior to issuance of Form CCC-106-2. CCC may also require the supplier of ocean transportation to submit copies of lightening, stevedoring, or bagging contracts for any voyage for which CCC finances ocean freight or ocean freight differential. USDA will

issue Form CCC-106, Advice of Vessel Approval, as follows:

(e) *Special charter party provisions required when any part of ocean freight is financed by CCC.*

(3) The ocean freight is earned and that 100 percent thereof is payable by the charterers when the vessel and cargo arrive at the first port of discharge, subject to paragraph (e)(4) of this section, and to the further condition that if a force majeure as described in paragraph (l)(7) of this section results in the loss of part of the vessel's cargo, 100 percent of the ocean freight is payable on the part so lost. This provision does not relieve the carrier of the obligation to carry to other points of discharge if so required by the charter party.

(1) *Reimbursement for ocean freight or ocean freight differential separately financed.* (1) When the Form CCC-106 states that a notice of arrival is not required, CCC will reimburse 100 percent of the ocean freight or ocean freight differential, as appropriate, upon presentation of required documents.

(2) When the Form CCC-106 states that a notice of arrival is required, CCC will reimburse up to 100 percent of the ocean freight or ocean freight differential, as appropriate, before the vessel arrives at the first port of discharge if the supplier has furnished CCC, as security, a letter of credit, acceptable in amount and form to CCC and issued by a U.S. bank.

(3) [Reserved]

(4) [Reserved]

(5) The amount of security required by CCC under paragraph (2) of this section may be computed as follows: 100 percent of the ocean freight or ocean freight differential, as appropriate, on the basis of either:

(i) The tonnage stated in the charter party (without tolerance), if the supplier does not furnish to CCC a copy of the ocean bill of lading, or

(ii) The tonnage shown on the ocean bill of lading, times the ocean freight rate or ocean freight differential rate, as appropriate, shown on the related Form CCC-106, if the supplier furnishes to CCC a copy of the ocean bill of lading.

(6) On receipt of an acceptable letter of credit, the Controller will waive the notice of arrival requirement established by § 17.18(d)(2).

(m) *Demurrage/Despatch.* CCC will not finance demurrage and CCC will not share in despatch earnings. Owners and commodity suppliers will settle laytime accounts at load port(s) and owners and

charterers will settle laytime accounts at discharge port(s). Under no circumstances shall CCC be responsible for resolving disputes involving calculation of laytime or the payment of demurrage or despatch.

(n) [Reserved]

11. Section 17.15 is amended by revising the first sentence of paragraph (h)(1) to read as follows:

§ 17.15 Letter of commitment method of financing.

(h) *Issuance of letters of credit.* * * *

(1) *General.* The application or request for, and any agreement relating to, any letter of credit issued, confirmed, or advised in connection with a letter of commitment to a banking institution, may contain such provisions as the approved applicant and the banking institution may agree on, and the approved applicant and the banking institution may agree to any extension of the life of, or any other modification of, or variation from, the provisions of any such letter of credit: *Provided*, That such provisions and any such extension, modification or variance shall be in no respect inconsistent with or contrary to the provisions of the letter of commitment; in the event of any such inconsistency or conflict, the provisions of the letter of commitment shall prevail with respect to CCC financing: *And provided further*, That when a letter of credit provides for acceptance of time drafts, such letter of credit (or application therefor) shall specify that the discount and acceptance fees shall be for the account of the importer: *And provided further*, That commodity letters of credit must allow payment to the commodity supplier even if the bill of lading states that the vessel owner has placed a lien on the cargo. * * *

§ 17.18 [Amended]

12. Section 17.18 is amended by removing paragraph (d)(6) and redesignating paragraph (d)(7) as (d)(6).

13. Section 17.21 is revised to read as follows:

§ 17.21 FSA Offices.

(a) Kansas City Commodity Office, FSA, U.S. Department of Agriculture, P.O. Box 419205, Kansas City, Missouri 64141-6205.

(b) Financial Management Division, FSA, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

14. Section 17.22 is revised to read as follows:

§ 17.22 Recordkeeping and access to records.

Suppliers and agents of the participant or importer shall keep accurate books, records and accounts with respect to all contracts entered into hereunder, including those pertaining to ocean transportation-related services and records of all payments by suppliers to representatives of the importer or participant, if CCC finances any part of the ocean freight. Suppliers and agents shall permit authorized representatives of the U.S. Government to have access to their premises during regular hours to inspect, examine, audit and make copies of such books, records and accounts. Suppliers and agents shall retain such records until the expiration of three years after final payment under such contracts.

§ 17.23 [Removed]

15. Section 17.23 is removed.

Signed at Washington, DC on August 22, 1995.

Christopher E. Goldthait,
General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 95-29527 Filed 12-6-95; 8:45 am]

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Agricultural Marketing Service**7 CFR Part 52**

[FV-95-328]

United States Standards for Grades of Frozen Okra

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document amends the existing U.S. standards for frozen okra to remove references to trimmed pods. This change will allow producers of frozen okra the option to pack whole and cut okra without trimming. Also, a conforming change is made to language in the standards removing the reference to "apparent untrimmed pods." This change enables the frozen okra industry to produce frozen okra more efficiently and better meet market needs.

DATES: Effective December 7, 1995. Comments received by January 8, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and

Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090-4693. Comments should reference the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090-6456, Telephone (202) 720-4693.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under the United States Standards for Grades of Frozen Okra (7 CFR Part 52) to improve grade standards. The standards are effective under the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1622, 1624), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

The Department is issuing this rule in conformance with Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The AMS Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, P.L. 96-354 (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

The American Frozen Food Institute (AFFI) has petitioned for emergency relief from a requirement in the United States frozen okra standards. AFFI is a trade association representing over 560 frozen food companies that account for over 90 percent of frozen food production in the United States. The frozen okra industry requested that USDA revise the grade standards for frozen okra so that producers of frozen okra will have the option to pack whole and cut okra without trimming and still meet the requirements of the United

States Standards for Grades of Okra. The U.S. grade standards are voluntary standards. However, there is widespread use of the standards for frozen okra in contract requirements.

When the United States grade standards were first issued, okra was cut by hand. With the advent of mechanical harvesting, the techniques of harvesting have changed. Also processing equipment, including electronic sorters, has improved the quality such that the frozen okra industry can control quality more effectively without extensive handling.

Moreover, AFFI stated in its petition to revise the standards that since the frozen okra standards were last revised in 1969, new varieties have been established which leave the stems edible and tender when harvested with pods of the desirable length for freezing. AFFI noted that all other forms of whole okra including fresh, pickled, etc., are marketed untrimmed. AFFI also stated that the cost associated with trimming frozen whole okra was approximately \$.0625 per pound of okra. Based on 1994 United States production of 65,114,000 pounds of frozen okra sold, trimming okra costs U.S. processors of frozen okra approximately \$4,069,625 each year. AFFI claimed that in the time it takes to revise the frozen okra standard through ordinary channels, frozen okra processors could incur costs of more than \$8 million.

Based on all the information received, USDA is changing the grade standards by amending the product description in §§ 52.1511 and 52.1512, Styles, in the United States Standards for Grades of Frozen Okra. Also, in § 52.1517(c)(5)(i), "apparent untrimmed pods" is removed from the standards as a defect since it no longer applies.

No additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers. This change is expected to facilitate marketing of frozen okra.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule upon publication in the Federal Register because the harvesting season for okra has already begun, the standards are voluntary, and this revision of the standards that permits the industry to more efficiently meet market needs, may reduce costs to the consumers. This rule also provides a 30-day comment period. The Department will consider all comments received