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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture in order to reflect the Secretary's designation of the Chief Financial Officer as the Department official responsible for establishing nonprocurement debarment and suspension policy on a Department-wide basis.

EFFECTIVE DATE: Effective March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Gary W. Butler, Deputy Assistant General Counsel, General Law Division, Office of the General Counsel, Department of Agriculture, Room 2321-S, Washington, DC 20250, telephone 202-720-2577.

SUPPLEMENTARY INFORMATION: On June 23, 1997, the Secretary of Agriculture decided to designate the Chief Financial Officer as the official within the Department responsible for the development, promulgation, and coordination of Department-wide policy concerning nonprocurement debarment and suspension, as contained in 7 CFR part 3017. This decision was based on the fact that the Department has adopted a decentralized arrangement for the imposition of nonprocurement debarment and suspension actions. As a consequence, the Department lacks a helmsman to guide Department policy in this important area and to coordinate the Department's interaction with other agencies with respect to government-wide policy. This delegation of authority will implement that decision. This delegation, however, does not affect which officials may serve as the

"debarment official," as that term is defined at 7 CFR 3017.105.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required and good cause is found that this rule may be made effective upon publication in the **Federal Register**.

Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 605), and thus is exempt from the provisions of that Act. Finally, this action is not a rule as defined in 5 U.S.C. 804, and thus does not require review by Congress.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, 7 CFR part 2 is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: Sec. 212(a), Pub. L. 103-354, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949-1953 Comp., p. 1024.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

2. Section 2.28 is amended by adding a new paragraph (b)(17) that reads as follows:

§ 2.28 Chief Financial Officer.

(b) * * *

(17) Develop, promulgate, and coordinate Department-wide policy concerning nonprocurement debarment and suspension, as contained in 7 CFR part 3017.

* * * * *

Dated: February 27, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98-5789 Filed 3-5-98; 8:45 am]

BILLING CODE 3410-01-U

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1496

RIN 0560-AF09

Procurement of Processed Agricultural Commodities for Donation Under Title II, Public Law 480

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule clarifies the regulations governing Commodity Credit Corporation's (CCC) procedures for purchasing processed agricultural commodities for donation overseas under Title II of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480), and implements recent amendments to the Merchant Marine Act, 1996, regarding shipments through Great Lakes ports.

EFFECTIVE DATE: This final rule will become effective April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Jeffrey Jackson, Program Manager, USDA/FSA, Procurement and Donations Division, STOP 0551, 1400 Independence Avenue, SW., Washington, DC 20250-0551; telephone (202) 720-3995.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for the purposes of Executive Order 12866 and therefore has 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.

Paperwork Reduction Act

The amendments to 7 CFR part 1496 set forth in this final rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. Chapter 35, OMB Control Number 0560-0177, 5 CFR part 1320.

Executive Order 12372

This final rule 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 46 FR 29115 (June 24, 1983).

Executive Order 12988

This final rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The final rule would have pre-emptive 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. Administrative proceedings are not required before parties may seek judicial review.

Background*General*

Pursuant to Title II of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480), the United States donates agricultural commodities overseas to foreign governments, intergovernmental organizations, or private relief agencies (commonly referred to as "cooperating sponsors") to meet famine or other relief requirements, combat malnutrition, and promote economic development. These donations are pursuant to agreements between cooperating sponsors and the Agency for International Development (AID). Commodity Credit Corporation (CCC), an agency within the Department of Agriculture, is responsible for providing the donated commodities. CCC provides the commodities either from its inventory or by purchases in the market.

Commodity Procurement

When purchasing packaged commodities for Title II, Public Law 480, CCC will solicit offers to sell on a "free alongside ship (f.a.s.)", or "intermodal bridge-point" basis. F.A.S. sale terms call for the commodity seller to deliver the commodities free alongside a vessel at a U.S. port for subsequent loading onboard an ocean going vessel. The ocean carrier takes custody of the cargo when it is in an f.a.s. position. Under intermodal sales terms, the seller delivers the commodities at a cargo handling facility or other transfer point. The ocean carrier takes custody of the cargo at the intermodal bridge-point and is responsible for moving the cargo to a U.S. port for loading on board an ocean vessel. Intermodal shipments involve

the use of more than one means of conveyance, such as truck, rail, container vans, and barges. The ocean carrier may move the cargo from the intermodal-bridge-point to a port in the same conveyance as delivered, or may move the cargo from one conveyance to another at the intermodal bridge-point, such as from rail cars into container vans or barges and then transport the cargo to a port where it is loaded onto an ocean going vessel.

Under Title II, Public Law 480, either the cooperating sponsor or AID will issue an invitation for bids for the procurement of ocean transportation for the donated commodities and contract with the ocean carrier. AID pays for the freight charges incurred by it or a cooperating sponsor from funds advanced to AID by CCC.

Regulations governing the bid evaluation process for the procurement of processed agricultural commodities for Title II, Public Law 480 appear at 7 CFR part 1496. Generally, CCC evaluates offers to sell commodities for Title II, Public Law 480 on the general principle of "lowest landed cost." This simply means that, in deciding which commodity sale offer to accept, CCC will consider both the price it would have to pay to acquire the commodity and the anticipated freight charges to ship the commodity to the foreign destination. By way of simplified example, if AID notifies CCC that it requires wheat flour for donation to Costa Rica, CCC will invite offers to sell flour to CCC. As a result of this solicitation, CCC receives two commodity offers—\$100/mt f.a.s. New Orleans and \$110/mt f.a.s. Houston. CCC will also review the available ocean freight services. If CCC receives ocean freight rate quotations of \$90/mt from New Orleans and \$75/mt from Houston, CCC will award the commodity sale to the party offering to deliver at Houston because that sale represents the lowest landed cost.

The ocean carriage of Title II, Public Law 480 commodities is subject to sections 901(b) and 901b of the Merchant Marine Act, 1936, 46 U.S.C. App. sections 1241(b) and 1241f, commonly referred to as the "cargo preference laws." These provisions generally require that agencies administering certain export programs, including Title II, Public Law 480, must assure that at least 75 percent of such ocean shipments each year are carried on U.S.-flag vessels to the extent they are available at fair and reasonable rates. CCC will decide if the commodity purchased is to be shipped on a U.S.-flag vessel after reviewing the various lowest landed cost options indicating

the most economical means to achieve cargo preference requirements. Since U.S.-flag vessel rates are, as a general matter, higher than foreign-flag vessel rates, CCC generally would use only U.S.-flag vessel rates in the lowest landed cost analysis for that portion of the cargo to be shipped on U.S.-flag vessels.

Maritime Security Act of 1996

Section 17 of the Maritime Security Act of 1996 (MSA), Public Law 104-239, amended section 901b(c) of the Merchant Marine Act, 1936 (46 App. 1241f(c)) to mandate that CCC follow certain procedures in its purchasing process for packaged commodities. Now, CCC must initially evaluate all commodity offers received in response to a particular invitation on a lowest landed cost basis without regard to the flag of the vessels offering service. Following that evaluation, "there shall be allocated to the Great Lakes port range any cargoes for which it has the lowest landed cost under that calculation." (46 U.S.C. App. 1241f(c)(3)(B)). In other words, if this overall lowest landed cost evaluation demonstrates that a commodity sale offered for delivery at a Great Lakes port represents the lowest landed cost, CCC must accept that commodity sale offer. This purchasing requirement is applicable for up to 25 percent of the total annual tonnage of bagged, processed or fortified commodities furnished under Title II, Public Law 480.

On February 12, 1997, CCC published a proposed rule (62 FR 6497) regarding implementation of section 17 of the MSA. The proposed rule suggested that the applicability of section 17 of the MSA be limited to f.a.s. offers. That is, only commodity offers specifying delivery to a vessel at a Great Lakes port would be considered as a Great Lakes offer to which the purchasing requirement applied. Intermodal bridge-point offers could not be considered as a Great Lakes offer under the proposed rule. The preamble to the proposed rule explained that it was limited in this way because of difficulties in defining what would constitute an intermodal bridge-point offer at a Great Lakes port and concerns regarding both disruption of normal trade practices and discouraging vessel calls at the Great Lakes. CCC invited the public to submit written comments on the proposed rule and, on March 13, 1997, held a public hearing to promote further discussion and comment.

CCC received a total of 47 comments in response to the proposed rule. They included submissions from

representatives from Great Lakes port authorities, ports from other coastal ranges, shipping and transportation industries, vendors supplying commodities to the Public Law 480 program, other Governmental Agencies, labor unions, port city mayors, cargo handling facilities, and several Members of Congress and U.S. Senators.

Analysis of Comments

Comment: The great majority of comments (41 responses including the Maritime Administration) suggested that, by limiting the proposed rule to f.a.s. offers, CCC too narrowly construed section 17 of the MSA. They suggested that CCC should consider intermodal bridge-point offers in the Great Lakes area as an offer to deliver commodities at the Great Lakes port range although the cargoes may not be placed on board a vessel at a Great Lakes port. Some comments stated that section 17 required that intermodal offers at bridge points be considered as Great Lakes offers.

Response: CCC agrees that the term "Great Lakes port range" is broad enough to encompass intermodal bridge point offers. Section 17 of the MSA does not define that term. The word "port" need not necessarily be limited to the area where ships load cargo. In common parlance, a port may refer to a city or geographic region servicing the location where ships load.

Furthermore, the legislative history of section 17 shows a clear intent to correct a perceived negative impact on this region of the country from the cargo preference requirements. It is argued that CCC's purchase of commodities on the basis of lowest landed cost utilizing only U.S.-flag vessel rates for the purpose of economically meeting cargo preference requirements draws cargo away from Great Lakes ports. This is because currently no U.S.-flag carriers offer service at Great Lakes ports for packaged cargo. Therefore, commodity offers for delivery to Great Lakes ports are not considered at that point in the procurement process. To place Great Lakes ports on an equal footing with other coastal ranges, yet maintain cargo preference requirements, section 17 of the MSA mandates a change in our purchasing process.

Including intermodal bridge-point shipments within the scope of section 17 of the MSA, would further the goals of that legislation to counter perceived inequities of the cargo preference requirements.

Comment: Almost all the comments opposing the proposed rule stated that intermodal bridge-point offers should be included to promote their use in U.S.

Government food aid programs. Commenters stated that intermodal bridge-point movements are efficient, rapid and economical. This service could benefit the food aid programs by lowering transportation costs and improving timeliness of deliveries, while securing commodities from theft, damage, and infestation.

Response: The U.S. transportation industry and shippers rely upon intermodalism as an integral and important component to transport goods efficiently. Further efficiencies may be realized from the use of intermodal bridge-point shipments. For example, containers are often transported empty when returned overseas to be packed again with imports to the United States. These containers could be returned overseas with Title II cargoes at competitive "lowest landed cost" rates from the Great Lakes area. CCC agrees that broadening the definition of a Great Lakes offer to include intermodal bridge-point service will allow CCC the opportunity to select from a greater range of transportation services. Therefore, more program dollars can be spent on the procurement of agricultural commodities for food aid.

Comment: Comments suggested a functional rather than a geographical definition of "Great Lakes port range" to avoid arbitrary distinctions if CCC decided to include intermodal bridge-point offers in addition to f.a.s. delivery. Under this approach, to be considered as a Great Lakes port offer, comments suggested that a commodity offer must be either for delivery f.a.s. at a Great Lakes port or intermodal bridge-point at a marine cargo-handling terminal physically serving vessels and capable of loading ocean going conveyances.

Response: In the preamble to the proposed rule, CCC indicated that broadening the rule to include intermodal bridge-point offers could lead to arbitrary distinctions as to which facilities would be considered geographically as part of the Great Lakes port range. CCC agrees that this functional definition avoids this problem. CCC had considered defining a "Great Lakes port" as the geographical boundary of the local Port Authority. However, this approach might have eliminated certain facilities simply because they were not within those boundaries. Some facilities may be located within the confines of a Port Authority, while others may only be a few miles away. Requiring that the facility actually serve vessels will assure that the facility is not so remote from the geographic port area as to undermine the purpose of the new legislation.

Comment: One commenter stated that the intent of Section 17 was to promote vessel service in the Great Lakes and to support Great Lakes ports and labor. Therefore, intermodal bridge-point service should only be considered if ocean going vessel service is not available.

Response: CCC does not agree to adopt this approach because it could restrict competition among ocean carriers offering different types of service and result in higher costs to the program.

Comment: One port interest commented that broadening the definition of Great Lakes port to include intermodal bridge-point shipments would be detrimental to ports other than Great Lakes ports.

Response: CCC does not agree with the comment. As other port interests noted, intermodal shipments involve carriers determining the actual port of loading to an ocean going vessel. Such decisions are based upon commercial factors. The cargo that is purchased at an intermodal bridge-point will move through one of any number of coastal ports as determined by the carrier.

Comment: Some comments noted, in connection with this functional definition, that intermodal bridge-point offers may not include any handling at Great Lakes port areas. As stated above, some ocean carriers take possession of cargo at a transfer point and simply move the trains to another area closer to the port where vessels load. For example, cargo delivered at Chicago may be railed to New York and loaded into a conveyance at that terminal. Commenters stated that this type of movement should not be considered as a Great Lakes port range allocation because section 17 of the MSA is intended to eliminate any discriminatory or unfair treatment of Great Lakes ports in the administration of the Title II program and to ensure that the cargo preference laws do not negatively affect Great Lakes ports and port labor. To allow allocations where a rail car merely moves through a Great Lakes port and is handed off from commodity supplier to the ocean carrier and railed to another port for cargo handling and vessel loading would knowingly pervert the intent of Section 17.

Response: CCC agrees that Section 17 intended that Great Lakes ports derive an economic benefit from Title II commodity allocations made to the Great Lakes port range. Accordingly, the final regulation requires that cargo be handled at marine cargo-handling facilities to be considered as an intermodal bridge-point Great Lakes

offer under section 17. In this regard, the regulation will require that commodities must be moved from one transportation conveyance to another at such a facility.

Comment: Two respondents (representing one port and one port association) stated that the proposed rule is somewhat ambiguous and, regardless of intent, may be construed as a set-aside for the Great Lakes and therefore in violation of Article 1, section 9, clause 6 of the Constitution of the United States prohibiting any regulation of commerce or revenue giving a preference to the ports of one State over those of another.

Response: Any comments regarding the constitutionality of section 17 of the MSA are beyond the scope of this rulemaking.

Comment: One commodity supplier suggested that the 25 percent limit in section 17 of the MSA be administered on a monthly basis.

Response: CCC does not have the option of administering the 25 percent limitation on a monthly basis. Section 17 specifically states that a 25 percent cap applies to the total annual tonnage of processed, bagged and fortified commodities furnished under Title II, Public Law 480. CCC will monitor tonnage allocated to Great Lakes ports over the year to ensure that it does not exceed the cap.

Comment: One commenter stated that the proposed rule was deficient because it did not set out any "reasonable requirements for financial and operational integrity" to be applicable to vessel operators interested in carrying Title II, Pub. L. 480 cargo. Section 901b(c)(3)(C)(I) of the Merchant Marine Act, 1936, as amended by section 17 of the MSA, provides that "[I]n awarding any contract for the transportation by vessel from the Great Lakes port range * * * each agency * * * shall consider expressions of freight interest for any vessel from a vessel operator who meets reasonable requirements for financial and operational integrity * * *."

Response: Section 17 of the MSA does not have direct application to CCC because CCC does not award ocean transportation contracts. In any event, CCC does impose requirements with regard to financial, operational, and performance integrity of carriers submitting rate and service quotations. CCC now requires that carriers possess (1) a satisfactory performance record, (2) a satisfactory record of integrity and business ethics, (3) adequate financial resources, and (4) the ability to comply with the required delivery schedule, taking into consideration all existing commercial and governmental business

commitments. We have evaluated the written comments received in response to CCC's proposed rule, along with comments recorded in the public forum held on March 13, 1997. For purposes of meeting requirements of section 17 of MSA, CCC has decided to adopt, as a final rule, a procedure to permit Great Lakes intermodal bridge-port offers at facilities capable of loading ocean going vessels as a Great Lakes port range allocation.

To properly assess the impact that section 17 of the MSA has upon the Title II program and the manner in which CCC has implemented it, a cost benefit evaluation will be made within 3 years of the effective date of this rule. Collection of data after implementation of this rule is of particular importance to the evaluation, since no ocean going service and limited intermodal service has been available in the Great Lakes for Public Law 480 shipments.

No comments were received concerning CCC's clarification of § 1496.5(b)(1) and the amendment proposed is being adopted as final without any substantive change.

List of Subjects in 7 CFR Part 1496

Agricultural commodities; Exports.

Accordingly, 7 CFR part 1496 is amended as follows:

PART 1496—PROCUREMENT OF PROCESSED AGRICULTURAL COMMODITIES FOR DONATION UNDER TITLE II, PUBLIC LAW 480

1. The authority citation for part 1496 is revised to read as follows:

Authority: 7 U.S.C. 1721-1726a; 1731-1736g-2; 46 U.S.C. App. 1241(b), and 1241(f).

2. In § 1496.5, paragraphs (b)(1) and (f) are revised to read as follows:

§ 1496.5 Consideration of bids.

* * * * *

(b)(1) *Availability of ocean service.* Prior to receipt of offers from commodity suppliers, CCC will review ocean freight information from available sources including, but not limited to, trade journal newspapers, port publications, and steamship publications to determine the availability of appropriate ocean service.

* * * * *

(f) *Great Lakes ports.* (1) Commodities offered for delivery "free alongside ship" (f.a.s.) Great Lakes port range or intermodal bridge-port Great Lakes port range that represent the overall (foreign and U.S. flag) lowest landed cost will be awarded on that basis. Such offers will not be reevaluated on a lowest landed cost U.S.-flag basis unless CCC determines that 25 percent of the total

annual tonnage of bagged, processed or fortified commodities furnished under Title II of Public Law 480 has been, or will be, transported from the Great Lakes port range during that fiscal year.

(2) CCC will consider commodity offers as offers for delivery "intermodal bridge-port Great Lakes port range" only if:

(i) The offer specifies delivery at a marine cargo-handling facility that is capable of loading ocean going vessels at a Great Lakes port, as well as loading ocean going conveyances such as barges and container vans, and

(ii) The commodities will be moved from one transportation conveyance to another at such a facility.

* * * * *

Signed at Washington, DC, on February 26, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98-5771 Filed 3-5-98; 8:45 am]

BILLING CODE 3410-05-U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 417

[Docket No. 98-003N]

Establishment Review of Product Production Records

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice on complying with the HACCP system regulations.

SUMMARY: The Food Safety and Inspection Service is publishing this document to provide information to owners and operators of federally inspected establishments about what actions they must take to comply with the requirement, in the hazard analysis and critical control point system regulations, to review the records associated with production of a product prior to its shipment for distribution. The regulations do not prescribe how establishments meet this requirement and, thus, are sufficiently flexible to accommodate various records' review schemes. However, establishments must determine that all critical limits were met and, when appropriate, that corrective actions were taken. Establishments must also ensure the completeness of their records before shipping the product for distribution.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Regulations and