

Proposed Rules

Federal Register

Vol. 62, No. 29

Wednesday, February 12, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1496

RIN 0560-AF09

Procurement of Processed Agricultural Commodities for Donation Under Title II, Pub. L. 480

AGENCY: Commodity Credit Corporation, USDA

ACTION: Proposed Rule.

SUMMARY: This proposed regulation would revise 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, as amended, ("Pub. L. 480"). This proposal would implement recent statutory changes and adopt a simpler and more efficient procurement process.

DATES: Written comments concerning this proposed rule must be submitted by April 14, 1997.

ADDRESSES: Comments must be sent to USDA/FSA, Procurement and Donations Division, Export Operations Branch, Rm. 5755-S, Mail Stop 0551, P.O. Box 2415, Washington DC 20013-2415.

FOR FURTHER INFORMATION CONTACT: Jeff Jackson, (202) 720-3995.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 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.

Paperwork Reduction Act

The amendments to 7 CFR part 1496 set forth in this proposed rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. 35.

Executive Order 12372

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

Background

General

Pursuant to Title II, Pub. L. 480, the United States donates agricultural commodities overseas to meet famine or other relief requirements, combat malnutrition, and promote economic development. This program is administered by the Agency for International Development ("A.I.D."). A.I.D. donates commodities to foreign governments, intergovernmental organizations, or private relief agencies, commonly referred to as "cooperating sponsors" for the above purposes through agreements between A.I.D. and a cooperating sponsor.

CCC has the responsibility to acquire and make available the agricultural commodities needed to carry out agreements under Title II, Pub. L. 480. CCC will either provide these commodities from its inventory or by purchases in the market. In addition to bearing the cost of the donated commodities, CCC is authorized to pay other related costs including packaging, processing, surveys, fumigation, transportation to ports of export, and ocean transportation costs. CCC does not contract for the ocean transportation services to ship the commodities.

Cooperating sponsors or A.I.D. are responsible for contracting for ocean transportation of the commodities. Generally, A.I.D. will pay for the ocean freight charges incurred by it or a cooperating sponsor from funds advanced to A.I.D. from CCC.

Commodity Procurement

CCC will procure packaged commodities requested for Title II, Pub. L. 480 through a public solicitation for bids requesting offers to sell on an f.a.s. vessel or intermodal basis. CCC evaluates offers to sell commodities submitted pursuant to an invitation for bids on the general principle of "lowest landed cost." This simply means that, in deciding which commodity offer to accept, CCC will consider both the price it would have to pay to acquire the commodity and the anticipated freight costs to ship the commodity to foreign destination. Regulations governing the bid evaluation process for the procurement of processed agricultural commodities for Title II, Pub. L. 480 appear at 7 CFR part 1496. In making a lowest landed cost analysis, CCC relies upon published tariff rates on file with the Federal Maritime Commission and current rate information furnished to the Kansas City Commodity Office by the ocean freight carriers. The most economical combination of commodity price and transportation rate will determine the commodity offer CCC accepts.

The ocean carriage of Title II, Pub. L. 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 involved in certain export programs, including Title II, Pub. L. 480, must assure that at least 75 percent of such ocean shipments 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. This involves the use of only U.S.-flag vessel rates in the lowest landed cost analyses for that portion of the cargo to be shipped on U.S.-flag vessels.

As indicated above, CCC procures packaged commodities on a free along side (f.a.s.) vessel, or intermodal basis. These delivery terms do not include costs of ocean transportation. Since CCC does not contract for ocean transportation, CCC will notify the cooperating sponsor or A.I.D of the commodity offer accepted based upon its lowest landed cost analysis. The cooperating sponsor or A.I.D then issues its own invitation for bids for the procurement of transportation for commodities to which interested ocean carriers must respond. The cooperating sponsor or A.I.D must contract with a vessel to carry the commodity purchased at the rate used by CCC in making its lowest landed cost determination, or a lower rate. If CCC has determined that a quantity of cargo must be shipped on a U.S.-flag vessel to meet cargo preference requirements, the cooperating sponsor or A.I.D must contract with a U.S.-flag vessel carrier.

Maritime Security Act of 1996 (MSA)

Section 17 of the Maritime Security Act of 1996 ("MSA") 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. The new procedures are intended to correct a perceived unfairness to Great Lakes ports stemming from cargo preference requirements. Currently no U.S.-flag or foreign-flag carriers offer service at Great Lakes ports for this type of cargo. It is argued that CCC's purchase of commodities on the basis of lowest landed cost utilizing U.S.-flag vessel rates for the purpose of meeting cargo preference requirements in the most economical manner has the effect of drawing cargo away from Great Lakes ports because commodity offers for delivery to Great Lakes ports would not be considered at that point in the procurement process. In an effort to place Great Lakes ports on an equal footing with other coastal ranges, yet maintaining cargo preference requirements, section 17 of the MSA mandates a change in our purchasing process. Generally, CCC will now be required to 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. If that evaluation demonstrates that commodities offered for delivery at a particular Great Lakes port represents the lowest landed cost, CCC must purchase such commodities for delivery at that Great Lakes port. This purchasing requirement is applicable to up to 25

percent of the total annual tonnage of bagged, processed or fortified commodities furnished under Title II, Pub. L. 480.

CCC is still required to assure that, annually, at least 75 percent of the Title II cargo is shipped on U.S.-flag vessels. In implementing this requirement, CCC is free to purchase commodities on a lowest landed cost U.S.-flag vessel basis for cargo offered for delivery to any port or port range after the 25 percent Great Lakes quantity is reached.

The new provision requires that a number of issues be addressed. First, since CCC generally purchases Title II commodities on a monthly basis and it is impossible to determine in advance the quantity of commodities to be actually purchased, CCC cannot know, at any point in the year, when the 25 percent Great Lakes tonnage point is reached. Consequently, CCC proposes to administer the 25 percent requirement on an annual basis. In other words, beginning with the first purchase in each cargo preference year (April 1—March 31), 25 percent or more of the total monthly purchase may be allocated to Great Lakes port range on an overall lowest landed basis. This would allow CCC the flexibility to take advantage of seasonal and other surges in service offered through the Great Lakes ports during the course of the year.

Section 901b(c) of the Merchant Marine Act, 1936, as amended, now requires that CCC allocate to Great Lakes ports "any cargoes for which it has" the overall lowest landed cost, but does not define what may be considered as a Great Lakes port offer. Clearly, the lowest f.a.s. vessel offer for export from Great Lakes ports would qualify. A more difficult question involves intermodal-bridge-point (bridge-point) offers. In bridge-point movements, the commodity supplier is responsible for the transportation and related costs to deliver the commodity to the designated U.S. bridge-point location. The ocean transportation carrier becomes responsible for the cargo at the bridge-point location and must transport the commodities from that point and pay all related costs to deliver the commodity onboard the vessel. Such costs include car unloading, container stuffing (where applicable), etc. The bridge-point may not be within the confines of a port operation and the commodities may be loaded on a vessel at a port that is in a different part of the country than the bridge-point. This raises the issue of how bridge-point service should be considered when determining what are Great Lakes port offers.

Certain interests have suggested that the purpose of the recent amendment

was to make-up for potential revenue and employment opportunities lost to the Great Lakes by virtue of the cargo preference requirements and that bridge-point-service that includes cargo handling; i.e., stuffing containers at Great Lakes ports contributes to this goal even if the cargo is ultimately exported from other ports. For this reason, it is suggested that any commodity offers for this type of service that represent the lowest landed cost should be viewed as Great Lakes cargo. On the other hand, if the commodities are not stuffed into transportation conveyances at the intermodal bridge-point at Great Lakes ports and the carrier merely takes risk of loss to the cargo, these interests suggest that the commodity offer should not be considered as a Great Lakes port range offer.

While there is certainly some merit to this analysis, the suggestion raises some administrative problems. If CCC were to adopt this suggestion, it appears that it would have to make some rather arbitrary decisions as to what constitutes a port area in order to determine whether a particular service facility is geographically part of a Great Lakes port. Also, the more inclusive definition could disrupt normal trade practices of an ocean transportation carrier. For example, a carrier that normally takes possession of the cargo at bridge-point (not within the confines of the port) because of certain economies would be forced to utilize a less favored facility. Furthermore, this interpretation could counteract efforts to generate more vessel calls at Great Lakes ports, because once the 25 percent annual cargo level is reached by considering service facilities as representing Great Lakes ports, CCC could begin to consider lowest landed costs on a U.S.-flag vessel basis. This could eliminate utilization of f.a.s. vessel offers in the Great Lakes.

For the above reasons, the proposed rule defines Great Lakes cargo as cargo offered for delivery f.a.s. vessel. However, CCC is particularly interested in receiving comments from all interested parties concerning this problem and will take them into consideration when formulating a final rule.

In addition to the above changes, CCC is proposing to clarify § 1496.5(b)(1) without any substantive change.

List of Subjects in 7 CFR Part 1496

Agricultural commodities; exports.

Accordingly, it is proposed that 7 CFR part 1496 be revised as follows:

PART 1496—PROCUREMENT OF PROCESSED AGRICULTURAL COMMODITIES FOR DONATION UNDER TITLE II, PUB. L. 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 proposed to be 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, steamship publications in order to determine the availability of appropriate ocean service.

* * * * *

(f) *Great Lakes ports.* Commodities offered for delivery f.a.s. vessel Great Lakes port range that represent the overall (foreign and U.S. flag) lowest landed cost will be awarded on that basis and will not be evaluated 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.

Signed at Washington, DC, on February 3, 1997.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–3370 Filed 2–11–97; 8:45 am]

BILLING CODE 3410–05–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for power circuit breakers, disconnect switches, current and potential transformers, autotransformer, surge arresters.

SUMMARY: The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Power Circuit Breakers, Disconnect Switches, Current and Potential Transformers, Autotransformer, Surge Arresters. The

basis for a waiver of the Nonmanufacturer Rule for these products is that there are no small business manufacturers or processors available to supply these products to the Federal Government. The effect of a waiver would be to allow an otherwise qualified Nonmanufacturer to supply other than the product of a domestic small business manufacturer or processor on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this document is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before February 18, 1997.

ADDRESSES: David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street S.W., Washington, DC 20416, Tel: (202) 205–6475.

FOR FURTHER INFORMATION CONTACT:

David Wm. Loines, Procurement Analyst, (202) 205–6475, FAX (202) 205–7324.

SUPPLEMENTARY INFORMATION: Public law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any “class of products” for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines “class of products” based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual (SIC). The second is the Product and Service Code (PSC) established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request for a waiver of the Nonmanufacturer Rule for Power Circuit Breakers (SIC 3613, PSC 5925), Disconnect Switches (SIC 3613, PSC 5930), Current and Potential

Transformers (SIC 3612, PSC 5950), Autotransformer (SIC 3612, PSC 5950), Surge Arresters (SIC 3643, PSC 5920), and invites the public to comment or provide information on potential small business manufacturers for these products.

In an effort to identify potential small business manufacturers, the SBA has searched the Procurement Automated Source System (PASS) and Thomas Register, and the SBA will publish a notice in the Commerce Business Daily. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for these classes of products.

Dated: February 6, 1997.

Judith A. Roussel,

Associate Administrator for Government Contracting.

[FR Doc. 97–3457 Filed 2–11–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–12–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections of the access doors to the midspar/spring beam fuse pins on all engine pylons to detect cracks on the external surface; repetitive inspections of each midspar/spring beam fuse pin to detect if it protrudes beyond its mating nut by a specified distance; and repair of any discrepancy found. The actions specified by that AD are intended to prevent migration of this fuse pin, which, if not detected and corrected in a timely manner, could result in failure of the engine pylon and consequent separation of the engine from the wing. This new action would increase the intervals between inspections of the access doors and each midspar/spring beam fuse pin, and consequently decrease the frequency of inspections. This proposal is prompted by new data provided the manufacturer indicating