

# Proposed Rules

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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-AH39

#### Procurement of Commodities for Foreign Donation

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule; supplemental.

**SUMMARY:** This proposed rule proposes additional changes related to a proposed rule published by the Commodity Credit Corporation (CCC) on December 16, 2005, entitled "Procurement of Commodities for Foreign Donation," to specifically recognize CCC's obligations under the cargo preference legislation of the Merchant Marine Act, 1936 and to clarify the "extenuating circumstances" that may preclude awards on the basis of lowest-landed cost. CCC is also re-opening and extending the comment period on the proposed rule to accord interested persons an opportunity to comment thereon.

**DATES:** Comments on this proposed rule and the proposed rule published December 16, 2005 (70 FR 74717-74721) must be received on or before May 8, 2006 in order to be assured consideration.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *E-Mail:* Send comments to [Richard.Chavez@USDA.gov](mailto:Richard.Chavez@USDA.gov).
- *Fax:* Submit comments by facsimile transmission to: (202) 690-2221.
- *Mail:* Send comments to: Director, Commodity Procurement Policy & Analysis Division, Farm Service Agency, United States Department of Agriculture (USDA), Rm. 5755-S, 1400 Independence Avenue, SW., Washington, DC 20250-0551.
- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal Rulemaking Portal:* Go to <http://www.regulations.gov>. Follow the

online instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Richard Chavez, phone: (202) 690-0194; E-Mail: [Richard.Chavez@USDA.gov](mailto:Richard.Chavez@USDA.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

CCC procures agricultural commodities for donation overseas under various food aid authorities. These authorities include Title II of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480), which is administered by the U.S. Agency for International Development (USAID), and the Food for Progress and the McGovern-Dole International Food for Education and Child Nutrition Programs, which are administered by the Foreign Agricultural Service within USDA. On December 16, 2005, CCC published a proposed rule proposing to change the bid evaluation process used in connection with the purchase of commodities for these programs. See 70 FR 74717-74721. Generally, as discussed in the preamble to that proposed rule, CCC proposed a one-step bid evaluation process for these procurements that would analyze actual freight offers together with commodity offers to arrive at an overall lowest-landed cost. The comment period for the proposed rule ended March 9, 2006. See 71 FR 3442.

In reviewing the proposed rule after interagency discussions, CCC believes it would be helpful to clarify two points regarding the proposed procurement process. First, CCC should state that it will administer any new procurement system in a manner consistent with its obligations under the cargo preference legislation of the Merchant Marine Act, 1936. Secondly, CCC should clarify the "extenuating circumstances" that may preclude awards on the basis of lowest-landed cost.

CCC will, of course, comply with cargo preference requirements. The existing regulations at 7 CFR 1496.5(a)(1), which were unchanged by the proposed rule, specify that lowest-landed cost will be calculated on the basis of U.S. flag rates and service for that portion of the commodities being purchased that CCC determines is necessary and practicable to meet cargo preference requirements \* \* \*. It is deemed advisable to more closely relate this point to the bid award. Therefore,

CCC is revising proposed § 1496.7(b) to include specific acknowledgments of cargo preference requirements in regard to awarding bids.

The proposed rule also included an exception to the lowest-landed cost principle when "extenuating circumstance" justified using vessel services other than single voyage contracts or f.o.b. and f.a.s. vessel delivery terms. In such cases there would be no separate vessel offers to match with commodity offers. Under the earlier proposed rule, examples of such extenuating circumstances "may include, but are not limited to, internal strife at the foreign destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination." It was CCC's intent that such extenuating circumstances would always be of the nature of the examples cited and CCC is revising § 1496.7(b) of the proposed rule to clarify this point.

In order to obtain full public input on this proposed rule, CCC encourages respondents to provide information and data on the economic effects of the proposed adoption of a one-step procurement system on their business operations. CCC would welcome comments on these effects from all participants in international food aid transactions such as ocean carriers, commodity suppliers, ports, railroads, and private relief agencies. These comments should include data appropriate for economic analysis.

CCC will continue to be engaged in providing outreach and assistance efforts in association with transition to a one-step procurement process. In this regard, we are interested in learning what types of information would be of interest to the public to help in understanding the new system, as well as a means for providing that information

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### Environmental Evaluation

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969

(NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

#### Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this proposed rule.

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Paperwork Reduction Act

This supplemental proposed rule does not affect the information collection described in the December 16, 2005 proposed rule. The proposed rule invited public comment on the information collection and the comments have been summarized and included in the request for OMB approval under the Paperwork Reduction Act of 1995.

#### Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act, which requires Federal Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The KCCO is now in the process of updating its computer bid-evaluation systems that would accommodate a more unified one step bid evaluation. Freight invitations

would call for bids to be submitted through a web-based entry system.

Most of the information collections required by this rule are fully implemented for the public to conduct business with FSA electronically. However, a few may be completed and saved on a computer, but must be printed, signed and submitted to FSA in paper form.

#### Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

#### List of Subjects in 7 CFR Part 1496

Agricultural commodities, Exports, Foreign aid.

Accordingly, CCC proposes to amend 7 CFR 1496.7 as set forth in the proposed rule published December 16, 2005 (70 FR 74717–74721) 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. 1431(b); 1721–1726a; 1731–1736g–2; 1736o; 1736o–1; 15 U.S.C. 714b and 714c; 46 U.S.C. App. 1241(b), and 1241(f).

2. In § 1496.7, paragraph (b) is revised to read as follows:

#### § 1496.7 Final contract determinations.

\* \* \* \* \*

(b) *Combination of bids.* CCC will determine which combination of commodity bids and bids for ocean freight rates result in the lowest-landed cost of delivery of the commodity to the foreign destination. CCC will award the contract for the purchase of the commodity that results in the lowest-landed cost and would be transported in compliance with cargo preference requirements. The Contracting Officer may determine that extenuating circumstances preclude awards on the basis of lowest-landed cost, or efficiency and cost-savings justify the use of types of ocean service that would not involve an analysis of freight bids for each of CCC's commodity purchases; however, in all such cases, commodities would be transported in compliance with cargo preference requirements. Examples of extenuating circumstances are events such as internal strife at the foreign

destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination. Other types of services may include, but are not limited to, multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery Cost and Freight (C & F), delivery Cost Insurance and Freight (CIF), and indexed ocean freight costs. Before contracts are awarded for other than a lowest-landed cost, the Contracting Officer shall consult with the applicable program agencies, and set forth, in writing, the reasons the contracts should be awarded on other than a lowest-landed cost.

\* \* \* \* \*

Signed at Washington, DC, on March 31, 2006.

**Thomas B. Hofeller,**

*Acting Executive Vice President, Commodity Credit Corporation.*

[FR Doc. E6–5089 Filed 4–6–06; 8:45 am]

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## DEPARTMENT OF STATE

### 22 CFR Part 62

RIN: 1400–AC15

[Public Notice 5356]

#### Rule Title: Exchange Visitor Program—Training and Internship Programs

**AGENCY:** Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** The Department is proposing to revise its training program regulations. These revisions will, among other things, eliminate the distinction between “non-specialty occupations” and “specialty occupations”. Also, a new 12-month “intern” program is proposed to permit recent foreign graduates of degree-granting post-secondary accredited educational institutions to come to the United States to pursue work-based learning experiences in the fields in which they received their degrees.

A requirement that sponsors complete an individualized Form DS–7002 Training/Internship Placement Plan for each trainee and intern prior to issuing a Form DS–2019 to the trainee or intern is also proposed. The Department will publish a Notice regarding the design of the proposed Form DS–7002, soliciting public comment regarding all recordkeeping, reporting, and data collection units. Sponsors should note that Forms DS–7002 contain a provision prohibiting the making of materially false, fictitious, or fraudulent statements or misrepresentations in connection