

state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule will not have retroactive effect. The regulations currently require that certain administrative remedies be exhausted before suit may be filed, and this final rule does not change this requirement.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

Background

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

Comments

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

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

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

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

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

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

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

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

Discussion

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

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

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