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DEPARTMENT OF COMMERCE

International Trade Administration

[Application 12-00005]

EXPORT TRADE CERTIFICATE OF REVIEW

ACTION: Notice of Application for an Export Trade Certificate of Review from
Colombia Rice Export Quota, Inc.

SUMMARY: The Export Trading Company Affairs (“ETCA”) unit, Office of Competition and Economic Analysis, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review (“Certificate”). This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482-5131 (this is not a toll free number) or E-mail at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. §§ 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified

in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR § 325.6(a) require the Secretary to publish a notice in the *Federal Register*, identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments:

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked “privileged” or “confidential business information” will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021X, Washington, D.C. 20230, or transmitted by E-mail at etca@trade.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as “Export Trade Certificate of Review, application number 12-00005.” A summary of the application follows.

Summary of the Application:

Applicant: Colombia Rice Export Quota, Inc. (“COLOM-RICE”)
1700 Pennsylvania Avenue, NW
Suite 200
Washington, DC 20006

Application No.: 12-00005

Date Deemed Submitted: June 5, 2012

Members (in addition to applicant):

Arkansas Rice Research and Promotion Board, P.O. Box 31, Little Rock, AR 72203-0031; California Rice Research Board, P.O. Box 507, Yuba City, CA 95992; Louisiana Rice Research Board, 1373 Caffey Road, Rayne, LA 70578; Mississippi Rice Promotion Board, 2538 Crosby Road, Marigold, MS 38759; Missouri Rice Research and Merchandising Council, P.O. Box 77, Malden, MO 63863; Texas Rice Producers’ Board, 301 W. Webb, El Campo, TX 77434; USA Rice, Merchants’ Association, 2101 Wilson Boulevard, Arlington, VA 22201-3040; USA Rice Millers’ Association, 2101 Wilson Boulevard, Arlington, VA 22201-3040; and Federación Nacional de Arroceros de Colombia (FEDEARROZ) Carrera 100 No. 25H – 25, Bogotá – Colombia.

COLOM-RICE seeks a Certificate to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets.

Export Trade

Products:

Rice classifiable for customs purposes under HTS Codes 1006.1090, 1006.2000, 1006.3000 and 1006.4000. The rice products as described in the Agricultural Tariff Schedule of the Republic of Colombia, as appended to the U.S.-Colombia Trade Promotion Agreement (“TPA”), signed into law by the President on October 12, 2011, and including the following Colombian HTS Codes: 1006.1090 -- rice in hull, except for seed (*arroz con cascara, excepto para siembra*); 1006.2000 – hulled rice – rough rice or brown rice (*arroz descascarillado, arroz cargo o arroz pardo*); 1006.3000 – rice semi-milled or milled, whether polished or glazed (*arroz semiblanqueado o blanqueado, incluso pulido o glaseado*); 1006.4000 – broken rice (*arroz partido*).

Export Markets

Rice for which tariff-rate quotas (“TRQs”) awards will be made will be exported to the Republic of Colombia.

Export Trade Activities and Methods of Operation

1. Purpose.

Colombia Rice Export Quota, Inc. (“COL-RICE”) will manage on an open tender basis the TRQs for rice products granted by the Republic of Colombia to the United States under the terms of the TPA, or any amended or successor agreement providing for Colombia TRQs for rice from the United States of America. Specifically, the TRQs for rice products are set forth at Paragraph 20 of Appendix I of the General Notes of Colombia, Annex 2.3 to the TPA. COL-RICE also will provide for distributions of the proceeds

received from the tender process based on exports of rice (“the TRQ System”) to support the operation and administration of COL-RICE and to fund research projects for the benefit of the rice industry of the United States and to fund market development and/or competitiveness projects for the benefit of the rice production sector of the Republic of Colombia, as established by paragraph 6 of Article 5 of Decree No. 0728 of 2012, issued by the Ministry of Agriculture and Rural Development of Colombia.

2. Implementation.

A. Administrator. COL-RICE shall contract with a neutral third party Administrator (i.e., a party who is not engaged in the production, sale, distribution or export of rice or rice products) who shall bear responsibility for administering the TRQ System, subject to general supervision and oversight by the Board of Directors of COL-RICE.

B. Membership. COL-RICE’s members under this certificate are: Arkansas Rice Research and Promotion Board; California Rice Research Board; Louisiana Rice Research Board; Mississippi Rice Promotion Board; Missouri Rice Research and Merchandising Council; Texas Rice Producers’ Board; USA Rice Merchants’ Association; and USA Rice Millers’ Association on behalf of the U.S. rice industry; and Federación Nacional de Arroceros de Colombia (FEDEARROZ) on behalf of the rice production sector of the Republic of Colombia, as provided for in the letter of May 3, 2012, Radicado No.

20121100031363 issued by the Ministry of Agriculture and Rural Development according to paragraph 5 of Article 5 of Decree No.0728 of 2012, issued by the Ministry of Agriculture and Rural Development of Colombia.

C. Open Tender Process. COL-RICE shall offer TRQ Certificates for duty- free shipments of U.S. rice to the Republic of Colombia solely and exclusively through an open tender process with certificates awarded to the highest bidders (“TRQ Certificates”). COL-RICE shall hold tenders in accordance with tranches at least once each year. The award of TRQ Certificates under the open tender process shall be determined solely and independently by the Administrator in accordance with Section I without any participation by the Members of COL-RICE or the COL-RICE Board of Directors.

D. Persons or Entities Eligible to Bid. Any person or entity incorporated or with a legal address in the United States of America shall be eligible to bid in the open tender process.

E. Notice. The Administrator shall publish notice (“Notice”) of each open tender process to be held to award TRQ Certificates in the *Journal of Commerce* and, at the discretion of the Administrator, in other publications of general circulation within the U.S. rice industry; and in a publication of general circulation in Colombia. The Notice will invite independent bids and will specify (i) the total amount (in metric tons) that will be allocated pursuant to the applicable tender;

(ii) the shipment period for which the TRQ Certificates will be valid; (iii) the date and time by which all bids must be received by the Administrator in order to be considered (the “Bid Date”); and (iv) a minimum bid amount per ton, as established by the Board of Directors, to ensure the costs of administering the auction are recovered. The Notice normally will be published not later than 30 business days prior to the first day of the shipment period and will specify a Bid Date that is at least 10 business days after the date of publication of the Notice. The Notice will specify the format for bid submissions. Bids must be received by the Administrator not later than 5:00 p.m. EST on the Bid Date.

F. Contents of Bid. The bid shall be in a format established by the Administrator and shall state (i) the name, address, telephone and facsimile numbers, and email address of the bidder; (ii) the quantity of rice bid, in an amount stated in metric tons, or fractions thereof; (iii) the bid price in U.S. dollars per metric ton; and (iv) the total value of the bid. The bid form shall contain a provision, that must be signed by the bidder, agreeing that (i) any dispute that may arise relating to the bidding process or to the award of TRQ Certificates shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules; and (ii) judgment on any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

G. Performance Security. The bidder shall submit with each bid a performance bond, irrevocable letter of credit drawn on a U.S. bank, cashier’s check, wire

transfer or equivalent security, in a form approved and for the benefit of an account designated by the Administrator, in the amount of \$50,000 or the total value of the bid, whichever is less. The bidder shall forfeit such performance security if the bidder fails to pay for any TRQ Certificates awarded within five (5) business days. The bidder may chose to apply the performance security to the price of any successful bid, or to retain the performance security for a subsequent open tender process. Promptly after the close of the open tender process, the Administrator shall return any unused or non-forfeited security to the bidder.

H. Confidentiality of Bids. The Administrator shall treat all bids and their contents as confidential. The Administrator shall disclose information about bids only to another neutral third party, or authorized government official of the United States or of the Republic of Colombia and only as necessary to ensure the effective operation of the TRQ System or where required by law. However, after the issuance of all TRQ Certificates from an open tender process, the Administrator shall notify all bidders and shall disclose publicly (i) the total tonnage for which TRQ Certificates were awarded, and (ii) the average price and lowest price per metric ton of all successful bids.

I. Award of TRQ Certificates. The Administrator shall award TRQ Certificates for the available tonnage to the bidders who have submitted the highest price conforming bids. If two or more bidders have submitted bids with identical prices, the Administrator shall divide the remaining available tonnage in proportion to

the quantities of their bids, and offer each TRQ Certificates in the resulting tonnages. If any bidder declines all or part of the tonnage offered, the Administrator shall offer that tonnage first to the other tying bidders, and then to the next highest bidder.

J. Payment for TRQ Certificates. Promptly after being notified of a TRQ award and within the time specified in the Notice, the bidder shall pay the full amount of the bid, either by wire transfer or by certified check, to an account designated by the Administrator. If the bidder fails to make payment within five (5) days, the Administrator shall revoke the award and award the tonnage to the next highest bidder(s).

K. Delivery of TRQ Certificates. The Administrator shall establish an account for each successful bidder in the amount of tonnage available for TRQ Certificates. Upon request, the Administrator will issue TRQ Certificates in the tonnage designated by the bidder, consistent with the balance in that account.

L. Transferability. TRQ Certificates shall be freely transferable except that (i) any TRQ Certificate holder who intends to sell, transfer or assign any rights under that Certificate shall publish such intention on a website maintained by the Administrator at least three (3) business days prior to any sale, transfer or assignment; and (ii) any TRQ holder that sells, transfers or assigns its rights under

a TRQ Certificate shall provide the Administrator with notice and a copy of the sale, transfer or assignment within three (3) business days.

M. Deposit of Proceeds: The Administrator shall cause all proceeds of the open tender process to be deposited in interest-bearing accounts in a financial institution approved by the COL-RICE Board of Directors.

N. Disposition of Proceeds. The proceeds of the open tender process shall be applied and distributed as follows:

i. The Administrator shall pay from tender proceeds, as they become available, all operating expenses of COL-RICE, including legal, accounting and administrative costs of establishing and operating the TRQ System, as authorized by the Board of Directors.

ii. The legal, accounting and administrative expenses of the USA Rice Federation, the US Rice Producers Association, and FEDEARROZ directly related to establishing COL-RICE, shall be reimbursed from the proceeds of the COL-RICE as they become available and subject to the review of the Board.

iii. Of the proceeds remaining at the end of each year of operations and after all costs described in (i) and (ii) above have been paid – 1. In years one (1) through ten (10), fifty percent (50%) shall be distributed to each of the six (6) state chartered rice research boards named as members above on a pro rata basis, that share being each state's pro rata share of the average of the immediately preceding three (3) years U.S. rice production, to fund rice research projects as defined by each of the six (6) state chartered research boards to benefit the United

States rice industry. The funds are to be used for direct research projects and not to be used for general administrative purposes.

2. In years eleven (11) through eighteen (18), fifty percent (50%) shall be distributed to each of the six (6) state chartered rice research boards named as members above on a pro rata basis, that share being each state's pro rata share of the average of the immediately preceding three (3) years U.S. rice production, to fund research and promotion projects as defined by each of the six (6) state chartered research boards to benefit the United States rice industry as may be within the purview of each board. These funds are to be used for direct projects and are not to be used for general administrative purposes.

3. In all years, fifty percent (50%) of the proceeds shall be distributed to the Colombian Member to fund market development and/or competitiveness projects for the benefit of the rice production sector of the Republic of Colombia, as established by paragraph 6 of Article 5 of Decree No. 0728 of 2012, issued by the Ministry of Agriculture and Rural Development of Colombia.

O. Arbitration of Disputes. Any dispute, controversy or claim arising out of or relating to the TRQ System or the breach thereof shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

P. Confidential Information. The Administrator shall maintain as confidential all export documentation or other business sensitive information submitted in connection with application for COL-RICE membership, bidding in the open tender process or requests for distribution of proceeds, where such documents or information has been marked “Confidential” by the person making the submission. The Administrator shall disclose such information only to another neutral third party or authorized government official of the Government of the United States of America or an official of the Government of the Republic of Colombia; and only where necessary to ensure the effective operation of the TRQ System or where required by law (including appropriate disclosure in connection with the arbitration of a dispute).

Q. Annual Reports. COL-RICE shall publish an annual report including a statement of its operating expenses and data on the distribution of proceeds, as reflected in the audited financial statement of the COL-RICE TRQ System. A copy of the certificate will be kept in the International Trade Administration’s Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

June 19, 2012
Date

Joseph E. Flynn, Director
Office of Competition and
Economic Analysis

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