



DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 12-00002]

EXPORT TRADE CERTIFICATE OF REVIEW

ACTION: Notice of issuance of an Export Trade Certificate of Review to SunWest Foods, Inc (Application #12-00002).

SUMMARY: On August 20, 2012, the U.S. Department of Commerce issued an Export Trade Certificate of Review to SunWest Foods, Inc (“SunWest”). This notice summarizes the conduct for which certification has been granted.

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 email at etca@trade.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2010). The U.S. Department of Commerce, International Trade Administration, Office of

Competition and Economic Analysis (“OCEA”) is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the issuance in the **Federal Register**. Under Section 305(a) of the Export Trading Company Act (15 U.S.C. 4012(b)(1)) and 15 CFR 325.11(a), any person aggrieved by the Secretary’s determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Member (within the meaning of 15 CFR 325.2(1))

SunWest Milling Company, Inc.

Description of Certified Conduct

SunWest is certified to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets.

Export Trade

Products: SunWest proposes to export under the Certificate, directly and through other suppliers, rice and rice products, including, but not limited to: harvest rice; rough rice; brown rice; milled, under milled, and unpolished rice, coated rice; oiled rice; enriched rice; rice bran; polished rice, head rice; broken rice; second head rice; brewers rice; screenings; and rice flour; but not including wild rice.

Services: All services related to the export of Products.

Technology Rights: All intellectual property rights associated with Products or Services, including, but not limited to: patents, trademarks, services marks, trade names, copyrights and neighboring (related) rights, trade secrets, knowhow, and confidential databases and computer programs.

Export Trade Facilitation Services (as They Relate to the Export of Products): Services to facilitate the export of Products, including but not limited to: consulting and trade strategy; converting harvest rice to marketable finished rice products via the drying, storage, milling, and packaging processes; arranging and coordinating delivery of Products to port of export; arranging for inland and/or ocean transportation; allocating Products to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, and freight forwarding; insurance and financing; documentation and services related to compliance with customs requirements; sales and marketing; export brokerage; foreign marketing and analysis; foreign market development; overseas advertising and promotion; Products-related research and design based upon foreign buyer and consumer preferences; inspection and quality control; shipping and export management; export licensing; provisions of overseas sales and distribution facilities and overseas sales staff; legal, accounting, and tax assistance; development and application of management information systems; trade show exhibitions; professional services in the area of government relations and assistance with federal and state export assistance programs (e.g., export enhancement and market promotion programs); invoicing (billing) foreign buyers; collecting (letters of credit and other financial instruments) payment for Products; and arranging for payment of applicable commissions and fees.

Export Markets:

All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

To engage in Export Trade in the Export Markets, SunWest (and its affiliated company and Member SunWest Milling Company, Inc.) may:

1. Exchange information with Suppliers or Export Intermediaries individually regarding availability of Products for export, prices of Products for sale in the Export Markets, and coordinating the export of Products to Export Markets;
2. Confer with Suppliers individually regarding offers to purchase and offers to sell by SunWest for specific export sales opportunities;
3. Process other Suppliers' harvest rice to marketable finished Products for Export Markets via drying, storage, milling, and packaging processes;
4. Solicit other Suppliers to offer/sell Products to SunWest or its Member for subsequent sales into Export Markets;

5. Solicit orders for the export of Products from potential foreign distributors and purchasers in Export Markets;
6. Prepare and submit offers of Products to potential foreign distributors, purchasers, and other entities for sale in Export Markets;
7. Establish the price and quantity of Products for sale in Export Markets and set other terms for any export sale;
8. Negotiate and enter into agreements for sale of Products in Export Markets;
9. Enter into agreements to purchase Products from one or more Suppliers to fulfill specific export sales obligations. In such agreements, SunWest and its Member may agree to purchase Products for sale in the Export Markets exclusively from one or more Suppliers, and the Supplier (or Suppliers) may agree to deal exclusively with SunWest or its Member for the sale of their Products in the Export Markets.
10. Assign sales of Products to, and/or divide or share export orders among, Suppliers or other persons based on orders, export markets, territories, customers, or any other basis SunWest or its Member deem appropriate;
11. Broker and take title to the Products;

12. Enter into agreements with one or more Export Intermediaries for the sale of Products in the Export Markets, in which agreements (a) SunWest or its Member may agree to deal exclusively with that Export Trade Intermediary in a particular Export Market, and/or (b) that Export Intermediary may agree to represent SunWest or its Member exclusively in a particular export market for the export of Products;
13. Enter into agreements with customers in the Export Markets in which the customer may agree to purchase Products exclusively from SunWest or its Member.
14. Apply for and utilize government export assistance and incentive programs;
15. Refuse to (a) purchase Products, (b) sell Products, (c) provide Services, or (d) provide information regarding export sales of Products to any Supplier(s) or other entities for any reason SunWest or its Member deem appropriate;
16. Refuse to (a) sell Products, (b) quote prices of Products, (c) provide Export Trade Facilitation Services, (d) provide information regarding Products, or (e) market or sell Products to any customers or distributors in the Export Markets, or in any countries or geographic areas in the Export Markets; and
17. Meet with Suppliers or other entities periodically to discuss general matters specific to the activities approved in this Certificate (not related to price and supply

arrangements between SunWest or its Member and the individual Suppliers) such as relevant facts concerning the Export Markets (e.g., demand conditions, transportation costs and prices in the export markets), or the possibility of joint marketing, bidding or selling arrangements in the Export Markets.

Terms and Conditions of Certificate

1. Neither SunWest nor its Member shall intentionally disclose, directly or indirectly, to any Supplier any information regarding any other Supplier's costs, production, inventories, domestic prices, domestic sales, capacity to produce products for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.
2. SunWest and its Member will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Definitions

"Supplier" means a person who mills, produces, provides, markets, or sells Products, Services, and/or Technology Rights.

"Export Intermediary" means a person who acts as a distributor, representative, sales or marketing agent, joint marketer, or broker, or who performs similar functions.

Dated: September 24, 2012

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

BILLING CODE 3510-DR-P