Proposed Rules

Federal Register
Vol. 73, No. 243
Wednesday, December 17, 2008

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 1493

RIN 0551–AA79

Export Credit Guarantee Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: This advanced notice of proposed rulemaking (ANPR) solicits comments on options to reform the USDA, Commodity Credit Corporation (CCC), Export Credit Guarantee Program (GSM–102). The purpose of the ANPR is to invite suggestions on improvements and changes to be made in the implementation and operation of the GSM–102 program, with the intent of improving the GSM–102 program's effectiveness, efficiency, and lower costs.

DATES: Comments on this notice must be received by February 2, 2009 to be assured consideration.

ADDRESSES: You may submit comments by any of the following methods:

- E-Mail: *GSM102.ANPR@fas.usda.gov*.
- Fax: (202) 720–2495, Attention: ''GSM102/ANPR Comments''.
- Mail to: P. Mark Rowse, Director, Office of Trade Programs, Credit Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1025, Washington, DC 20250–1025.
- Hand Delivery or Courier: 1250 Maryland Avenue, SW., Washington, DC 20024.

All comments received will be available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: P. Mark Rowse, Director, Credit Programs Division, at the address stated above or telephone: (202) 720–0624.

SUPPLEMENTARY INFORMATION:

Background

The GSM–102 program is currently authorized under the Agricultural Trade Act of 1978, as amended. The GSM–102 program helps to ensure that credit is available to finance commercial exports of U.S. agricultural products on competitive credit terms. The CCC currently has authorized availability of guarantees for transactions in at least 176 countries and regions, with 2,900 exporters eligible to participate. Since 1981, CCC has issued approximately $86.5 billion in credit guarantees under the GSM–102 program.

By allowing assignment of the guarantee by the U.S exporter to an approved U.S. financial institution, the program guarantees credit extended by the approved U.S. financial institution (or, less commonly, by the U.S. exporter if not assigned) to approved foreign banks. The credit facility mechanism is a dollar-denominated, irrevocable letter of credit.

Under the terms of the guarantee, typically, 98 percent of principal and a portion of interest are covered on credit terms of up to three years. By financing less than 100 percent of the exported value, CCC encourages risk-sharing by the exporter or the exporter's assignee.

By law, the program may not be used for foreign aid, foreign policy or debt rescheduling purposes, or in countries that the Secretary of Agriculture (the Secretary) has determined cannot service the debt.

Defaults/Claims

If the foreign bank fails to make any payment as agreed under the GSM–102 program guaranteed transaction, the exporter or assignee must submit a notice of default to the CCC. A claim for loss also may be filed, and the CCC will promptly pay claims found to be in good order. For CCC audit purposes, the U.S. exporter must obtain documentation to show that the commodity arrived in the eligible country, and must maintain all transaction documents for five years from the date of completion of all payments.

Participation Criteria

The CCC must qualify exporters for participation before accepting guarantee applications. An exporter must have a business office in the United States and must not be debarred or suspended from any U.S. government program. Financial institutions must meet established criteria and be approved by the CCC.

The CCC evaluates the ability of each country and each approved foreign bank to service CCC-guaranteed debt. For programming purposes, a credit limit is established for each obligor country. Banks within that approved obligor country are reviewed and individual bank credit lines are established. New banks may be added or existing approved bank levels may be increased or decreased as appropriate, based on available information.

Eligible Commodities

The CCC selects agricultural commodities and products according to market potential and eligibility based on applicable legislative and regulatory requirements. These include bulk, intermediate and consumer ready agricultural products encompassing food, feed, fiber, aquaculture and forest products. The agricultural commodities must be 100 percent U.S. origin unless they have been determined by the Secretary to be high-value agricultural products. If a high-value product determination is made, 90 percent or more of the agricultural components by weight, excluding packaging and added water, must be entirely produced in the United States.

Fees

The issuance of the guarantee is subject to a fee paid by the applicant. In July 2005, USDA initiated a risk-based fee structure. A fee is charged based on the terms of the guarantee in tenure (length of credit period) and terms for principal payment installments, whether 6 months or annually, and the risk grade of the obligor country. The CCC assigns a numeric risk category (0–6, lowest to highest risk). The risk category, along with the other factors cited, determines the fee charged.

Statutory Revisions and Budgetary Limits

Prior to the June 18, 2008, enactment into law of the Food, Conservation, and Energy Act of 2008, provisions of the Agricultural Trade Act of 1978, as amended, required the Export Credit Guarantee programs operated by CCC to make available not less that $5.5 billion in credit guarantees under its combined authority to issue short-term credit guarantees (GSM–102 and Supplier Credit Guarantee (SCGP) programs) up to three years, and medium-term credit guarantees (GSM–103 program) from three to 10 years. Origination fees for the short-term credit guarantees were also previously capped at 1 percent. Section 1542 of the Food, Agriculture, Conservation and Trade Act of 1990 required that CCC make available not less than $1 billion in direct credit or credit guarantees to emerging markets, of which a portion should be made available for facilities and services.

The authority for the SCGP, the GSM–103 program, and the 1 percent origination fee cap were all repealed by the Food, Conservation, and Energy Act of 2008. The Food, Conservation, and Energy Act of 2008 also amended the statutory funding levels for short-term credit guarantees by requiring that CCC make credit guarantees available for each fiscal year (FY) through FY 2012 in an amount equal to, but not more than, (a) the lesser of $5.5 billion in credit guarantees, (b) or the sum of the amount of credit guarantees that could be made available using budget authority of $40 million, plus any unobligated budget authority for credit guarantees from prior fiscal years and required that, to the maximum extent practicable, ensure that the risk-based fees associated with the guarantees cover, but do not exceed, the operating costs and losses for the program over the long term.

Recent History

Beginning in FY 2005, increased global liquidity and the advent of risk-based fees resulted in a decline in program usage from an average annual value of sales registered of approximately $3 billion for the preceding 10-year period, to $1.36 billion in FY 2006. However, from July through September of FY 2007, CCC experienced a significant increase in participation and dollar value levels under the GSM–102 program. Part of this increase was the result of increased commodity prices. However, tightening of global credit markets also is believed to have contributed significantly to the increase in participation and program demand. These driving factors propelled GSM–102 transactions from $1.4 billion in FY 2007, to over $3 billon in FY 2008. Demand and usage is expected to further increase in FY 2009.

Comments

As a result of anticipated increase in demand, we are soliciting the responses of interested parties to the following specific questions concerning options under consideration for the GSM–102 program. Interested parties may choose to address any or all of the questions listed or provide other comments. CCC's aim is to improve upon the GSM–102's effectiveness and efficiency, and lower costs.

Additional program information inclusive of our fee structure is available on our Web site at *http://www.fas.usda.gov/excredits/ecgp.asp*.

1. Fees

—Does the current risk-based fee schedule correctly distinguish levels of risk specific to loan tenor, country of obligor and amount of coverage?
—Does the current risk-based fee structure capture sufficient variables that are responsive to the changing credit markets?
—Should CCC consider charging fees for amendments to guarantees or applications?
—How should the fee structure take into account levels of risk particular to individual obligors?

2. Alternative Registration Processes

—Should CCC consider moving from the current first-come, first-serve and pro-rata methodologies for issuance of guarantees?
—Should the GSM–102 program be run on an awards basis? CCC would award GSM–102 guarantees on a competitive basis based upon exporter bids which would propose varying levels of coverage and different fee structures.
—Should CCC consider permitting exporters to submit letters of intent in which they propose how much they would like to export under a specified announcement? CCC would review all letters of intent and award shares of the announcement based on the letters of intent.
—Should CCC require copies of sales contracts and proof of financing to be submitted with the application for guarantee?
—Should CCC require that a ''firm sale'' include approved financing?

3. Additional Questions

—Should CCC consider permitting global banking whereby any CCC approved bank could finance sales of U.S. agricultural products for shipment to any CCC approved country?
—Should CCC consider no longer permitting sales in which the exporter, intervening purchaser, or importers are affiliated organizations?
—Should CCC consider no longer permitting sales in which there is an intervening purchaser?
—Should CCC consider no longer permitting foreign bank amendments to the application/guarantee except under extraordinary circumstances which would require documentation from the original foreign bank?
—Should CCC consider more rigid qualification criteria for exporters?
—Should CCC bring the time frame for claims payment into conformity with that contemplated under the Prompt Payment Act?

Consideration of Comments: Additional comments on other program modifications to the GSM–102 program that are responsive to the principles outlined herein are encouraged. CCC will carefully consider all comments submitted by interested parties. After consideration of the comments received, CCC will consider what changes should be made to the GSM–102 program. Some of the changes described above would require solicitation and consideration of comments received from interested parties via the rulemaking process. Other changes might be adopted by changing internal policies and procedures. Comments received will help CCC to determine the extent and scope of any future rulemaking.

Signed at Washington, DC, on November 26, 2008.

W. Kirk Miller,

Executive Vice President, Commodity Credit Corporation, and Administrator, Foreign Agricultural Service.

[FR Doc. E8–29831 Filed 12–16–08; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2008–BT–TP–0017]

RIN 1904–AB87

Energy Conservation Program for Certain Commercial and Industrial Equipment: Test Procedures for Metal Halide Lamp Ballasts

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comment concerning its proposal to establish metal halide lamp ballast test procedures that manufacturers would use to demonstrate compliance with the metal halide ballast energy conservation standards mandated by the statute.

DATES: DOE will hold a public meeting in Washington, DC, on Friday, December 19, 2008, beginning at 9 a.m.