

# Proposed Rules

Federal Register

Vol. 62, No. 158

Friday, August 15, 1997

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

#### Expanding Export Transactions for CCC Payment Guarantees

**AGENCY:** Commodity Credit Corporation (CCC), USDA.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** CCC requests comments on two options to modify the regulations found at 7 CFR part 1493, subpart B, governing CCC's Export Credit Guarantee Program (GSM-102) and Intermediate Export Credit Guarantee Program (GSM-103). One option would permit CCC to guarantee payments pursuant to sight letters of credit issued by eligible foreign banks, which letters of credit would not include deferred payment terms. The other option would permit CCC to guarantee payment of obligations of eligible foreign banks arising out of transactions not involving an export letter of credit. For example, such obligations could be created by foreign banks providing guarantees of obligations of foreign buyers, including, for example, drafts drawn on and accepted by such buyers.

CCC also welcomes and will consider comments or recommendations regarding other approaches to increasing the flexibility of these programs.

**DATES:** Comments are due on or before September 15, 1997.

**ADDRESSES:** All comments should be addressed to L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, AG Stop 1035, Washington, DC 20250-1035; FAX (202) 720-2949. All comments received will be available for public inspection at the above address during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1035, Washington D.C., 20250-1035; Fax

(202) 720-2949; Telephone (202) 720-6211. The U.S. Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 720-5881 (voice) or (202) 720-7808 (TDD).

#### SUPPLEMENTARY INFORMATION:

##### Background

The GSM-102 and GSM-103 programs are intended to increase exports of U.S. agricultural commodities and to serve other purposes stated in subpart A of 7 CFR part 1493. Criteria for allocating the availability of credit guarantees under these programs among countries and commodities are also found in subpart. In addition, the subpart contains certain program restrictions, including a prohibition on making credit guarantees available in connection with sales to any country that the Secretary of Agriculture determines cannot adequately service the debt associated with such sales.

Since late 1980, CCC has issued payment guarantees totaling \$56.7 billion (guarantee value) under the GSM-102 program. This program covers U.S. agricultural export transactions where payments are governed by irrevocable letters of credit issued by eligible foreign banks, and credits are extended by U.S. exporters or financial institutions to such foreign banks for a maximum of three years. Since FY 1986, CCC has issued payment guarantees totaling \$2.2 billion under the GSM-103 program. In this program, which is similar to the GSM-102 program, the credit periods are for not less than three, but no more than 10, years.

The regulations for the GSM-102 and 103 programs at 7 CFR part 1493 were specifically designed to assist export transactions having at least two characteristics: (1) they are financed through foreign bank letters of credit, and (2) the foreign bank makes payment on deferred terms (credit terms being provided for either in the letter of credit or a related obligation). Under the regulations as currently written, export transactions that lack either one of these

characteristics are not eligible for GSM-102 or 103 payment guarantees. For example, transactions involving payment by sight letters of credit with no related credit obligation (i.e., no credit extended to the issuing foreign bank) are not eligible. Neither are other forms of collections involving acceptances or other forms of financial documents handled by U.S. banks that are also guaranteed by a foreign bank. Such collections may be subject to the Uniform Rules for Collections (International Chamber of Commerce (ICC) Publication 522©), in contrast to existing GSM-102/103 transactions which must involve letters of credit subject to the Uniform Customs and Practice for Documentary Credits (ICC Publication 500©).

To enable CCC to better evaluate whether to modify 7 CFR part 1493 to permit the GSM-102 and 103 programs to include a greater range of transactions for which CCC would assume foreign bank risk, it was decided to seek the views of program participants and others through this advance notice of proposed rulemaking.

##### Options

**Option 1.** Amend regulations to permit CCC to issue payment guarantees covering sight letter of credit transactions (with no credit extended to the foreign bank issuing the letter of credit).

This option would require a revision of 7 CFR 1493.10. Specifically, 7 CFR 1493.10(b) provides that CCC will consider applications for payment guarantees only in connection with export sales where the payment will be made in one of two ways:

(1) An irrevocable foreign bank letter of credit, issued in favor of the exporter, specifically stating the deferred payment terms under which the foreign bank is obligated to make payments; or

(2) An irrevocable foreign bank letter of credit, issued in favor of the exporter, that is supported by a related obligation specifically stating the deferred payment terms under which the foreign bank is obligated to pay.

To implement this option, it would be necessary to delete the requirement under (1) above that the letter of credit state deferred payment terms. Other conforming changes would have to be made to various parts of the regulations.

### Possible Benefits of This Option

1. Might facilitate additional export transactions without increasing CCC's multi-year credit exposure to a country at a time when such exposure is approaching the maximum exposure established by CCC. Since payment would be due at sight, CCC's exposure would be reduced more quickly than in a transaction calling for deferred payment. As a result, more transactions could be done with a country which was nearing its CCC-established credit limitations.

2. Might increase the number of export transactions where U.S. financial institutions could reduce their letter of credit confirmation fees because of the availability of CCC's guarantee.

### Possible Disadvantages of This Option

1. Might be of interest to foreign buyers and U.S. banks and exporters only when the risk of default by the issuing foreign bank is considered high and U.S. banks are unwilling to confirm letters of credit or are willing to do so only at very high fees. The rate of defaults and, therefore, CCC's costs, might be high.

2. Might duplicate insurance or guarantee coverage available from private sector firms or other U.S. Government agencies.

3. Might displace cash export sales of U.S. agricultural commodities since no credit is necessary to make the transactions workable.

Option 2. Amend regulations to permit CCC to guarantee payment of eligible foreign bank obligations in transactions calling for deferred payment but not involving an irrevocable letter of credit.

One type of transaction under this option could involve foreign bank guarantees of financial instruments, including, for example, drafts drawn on, and accepted by, foreign buyers. However, the range of possible types of transactions and foreign bank guarantees could be broader than this, and commenters are urged to be as specific and detailed as possible in proposing or opposing alternatives that might be covered by this option. CCC is aware of a bank guarantee known as an *aval*. CCC is concerned, however, that *avals*, although commonly used in civil law jurisdictions, are virtually unknown in American jurisprudence and may not be readily enforceable in the United States.

CCC is also especially interested in comments on whether it should require, as a condition of eligibility for a guarantee, that collections of financial and commercial documents be subject

to the Uniform Rules for Collections set forth in the International Chamber of Commerce Publication 522©", or to other requirements. In this connection, commenters may wish to state clearly their understanding of the extent of the non-documentary risk that exporters would bear in a transaction where the importer refused to accept documents despite conformity of the documents with the collection instruction. In such a case the CCC guarantee would not appear to apply because the drawee would not have incurred a payment obligation to which the foreign bank guarantee would apply. Similarly, CCC seeks comments regarding whether it should require any specific wording or content in the obligation that would be guaranteed by the foreign bank or in the foreign bank's guarantee itself.

### Possible Benefits of This Option

1. Might increase U.S. agricultural exports by leveraging credits made available by the private sector.

2. New or more cost-effective export opportunities might arise by increasing the flexibility with which export transactions could be structured, with payment of credits still guaranteed by eligible foreign banks.

3. Might enable or encourage participation in GSM-102 and 103 programs by additional financial institutions, resulting in a more competitive credit environment.

### Possible Disadvantage of this Option

1. Exporters might face greater problems or risks in negotiating documents should they choose to participate in these types of transactions.

### Considerations Regarding Comments

CCC will consider a number of factors in reviewing comments and determining whether to implement one or both of the options, or modifications thereof.

1. GSM-102/103 Criteria. As discussed above, 7 CFR part 1493, subpart A, contains objectives and criteria for these programs. Some of these, such as the requirement that countries to which credits are to be extended must be "creditworthy", are mandated by statute. Commenters should familiarize themselves with subpart A and include a discussion of relevant regulatory provisions in their comments. They should particularly address the issue of whether transactions pursuant to the proposed options would more likely be in addition to, or would more likely displace, unassisted private sector transactions. Commenters should bear in mind that, in considering options for

additional program flexibility, CCC does not intend to relax current criteria that serve to manage program risk or protect the assets of CCC.

2. Government Performance and Results Act (GPRA). In September 1997 the government-wide provisions of the GPRA will take effect. The GPRA is a performance-based management system that is directly tied to the budget process. Under the GPRA each federal agency must present to Congress its goals, how it spends money and organizes its personnel to achieve these goals, and the extent to which it achieves its goals. Each agency must prepare a 5-year strategic plan as part of its budget submission. To incorporate new programs or an expansion of existing programs into this planning process, agencies must address such issues as how benefits will be measured, why the functions or services are not being adequately performed by the private sector, and whether the new activities will be cost-effective. Commenters are invited to address specifically these issues.

Signed at Washington, DC, on August 11, 1997.

**Mary T. Chambliss,**

*Acting General Sales Manager,*

*Commodity Credit Corporation.*

[FR Doc. 97-21670 Filed 8-14-97; 8:45 am]

BILLING CODE 3410-10-P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 252

[INS No. 1695-95]

RIN 1115-AD95

#### Inspection of Alien Crewmembers; 90-Day Modified Inspection Procedure

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Immigration and Naturalization Service (Service) regulations by codifying the Service's longstanding practice of authorizing, on a discretionary basis, multiple landing privileges for certain maritime crewmembers actively serving on board a limited number of commercial maritime cruise ships and ferries making regular trips to and from the United States. This proposed rule would codify the Service's current procedure of granting, in appropriate cases, certain crewmembers' conditional landing permits. An alien crewmember who is