# Proposed Rules

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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–ZA00**

### Supplier Credit Guarantee Program

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

**ACTION:** Advance Notice of Proposed Rulemaking (ANPR).

**SUMMARY:** This ANPR solicits comments on options to reform the USDA, CCC, Supplier Credit Guarantee Program (SCGP). The purpose of this ANPR is to invite suggestions on changes to reform the program to reduce the risk of default, improve the ability to effect a collection on defaulted obligations, and consider alternative program mechanisms and forms of payment obligations that are consistent with commercial export practices. The intent of this request is to seek comments on program reforms that would improve the SCGP's effectiveness and efficiency and lower costs.

**DATES:** Comments must be submitted on or before February 23, 2006.

**ADDRESSES:** You may submit comments, by any of the following methods: E-mail: *SCGP.ANPR@fas.usda.gov.*

Fax: (202) 690–1595 Attention: ''SCGP/ANPR Comments.''

Mail: William S. Hawkins, Director, Program Administration Division, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1031, Washington, DC 20250–1031.

Hand Delivery/Courier: 1400 Independence Ave., SW., Room 4083, Washington, DC 20250–1031.

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

**FOR FURTHER INFORMATION CONTACT:** William S. Hawkins, Director, Administration Division, at the address stated above. Telephone: (202) 720–3241.

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations for the SCGP became effective on August 30, 1996. The program became operational with an announcement for Mexico on that same day, providing coverage for high-value agricultural products such as fruits, vegetables, tree nuts, potatoes, wine, brandy, dairy products, and ice cream. The products made eligible were those that typically traded in smaller transactions and not commonly financed under the existing CCC Export Credit Guarantee Program (GSM–102). CCC viewed the SCGP as a means of supplementing the GSM–102 program and providing more flexibility and options in leveraging private sector credit.

Since 1981, the GSM–102 program has served as a means of guaranteeing the payment by foreign banks of credit extended by U.S. exporters or banks for agricultural commodity sales. The SCGP provides a similar guarantee for payment by importers when U.S. exporters' extend short-term credit, up to 180-days, in export sales. CCC developed the SCGP as an export credit alternative that did not require a letter of credit as a payment mechanism, would better accommodate smaller transaction sizes associated with containerized shipping, and would react to importers' general desire to obtain open-account terms of payment from U.S. exporters.

At inception, the SCGP offered a 50 percent guarantee in the event that an importer of U.S. agricultural commodities or products defaulted on an obligation to pay the exporter for the value of the goods sold. On December 3, 1997, CCC amended the commodity eligibility for the SCGP to include bulk commodities such as cotton, feed grains, oilseeds, protein meals, and wheat. On October 1, 1999, guaranteed coverage under the SCGP increased from 50 to 65 percent.

The SCGP relies upon the principle of risk-sharing between exporter and CCC to work. Exporters are often in a unique position to assess the ability of an importer to pay for an export transaction because of past contractual experience, access to importer's credit references, or specialized knowledge of the agricultural business sector in the importing country. Since inception, the instrument establishing the importer's obligation to pay the export value has been a promissory note form, prescribed by CCC and issued by the importer to the exporter. The U.S. exporter can hold the SCGP payment guarantee or assign the guarantee to a U.S. financial institution. In many cases, where the exporter has assigned SCGP payment guarantees to a U.S. financial institution, the exporter is paid the percentage guaranteed by CCC by that financial institution and retains the risk of payment by the importer. In other cases, the U.S. financial institution, in taking an assignment of the SCGP payment guarantee, may be willing to pay the exporter for the entire export value if that financial institution is able to make a credit assessment of the importer and is willing to accept the risk of default for the uncovered portion of the sale.

Overall, since 1997, CCC issued approximately $2.78 billion in credit guarantees under the SCGP supporting more than $4.3 billion in U.S. export sales of agricultural commodities and products. Mexico has dominated the SCGP as an import destination with more than 60 percent of the volume of activity, but other regions such as Central America, South East Asia, and the Caribbean have benefited and further growth in these regions is expected. The SCGP has supported the U.S. export of a variety of agricultural commodities and products ranging from bulk commodities such as feed grains, oilseeds, protein meals, rice, and cotton, but also including significant volumes of red meat, poultry, fruits, grocery store items, and other high value agricultural products.

From 1997 to 2004, the defaults experienced in the SCGP were manageable given the limited size of the SCGP at that time and the sporadic nature of the defaults incurred. However, in 2004 and 2005 CCC experienced significant defaults under the SCGP. In reaction to these increased defaults, CCC made improvements to its claims recovery process, but CCC continues to seek other means to reduce defaults and better recoveries.

CCC's interest in SCGP improvements also arises from the outcome of the recent World Trade Organization (WTO) dispute brought by Brazil against the

United States with respect to the CCC export credit guarantee programs, including SCGP. The WTO dispute panel's ruling requires CCC to charge premia that are adequate to cover the long-term operating costs and losses of the programs as a whole. In response, on July 1, 2005, CCC revised the premia for the export credit guarantee programs to reflect program default risk and operating costs. CCC is interested in exploring potential revisions to the structure, design, or operation of SCGP that can contribute to meeting this ''break-even'' goal, particularly by incurring fewer program losses.

We request interested parties to comment on the following specific questions under consideration for the SCGP. Interested parties may choose to address any or all of the questions listed or provide other comment. CCC's aim is to improve upon the SCGP's integrity, effectiveness, flexibility, and continued viability.

1. *Transaction Size Considerations:* What limit, if any, should be imposed on the value of transactions or the amount of exposure that CCC should take on the importer that would be consistent with commercial practices?

2. *Level of Guarantee Coverage:*

• Is the current level of guarantee coverage at 65 percent appropriate?

• If a higher level of guarantee coverage is desired, what measures should CCC adopt to better ensure that importers are capable of meeting their credit obligations?

• If CCC offered a lower level of guarantee coverage, at what point would one the SCGP no longer be a viable program for U.S. exporters?

3. *Assignments of Payment Guarantees:*

• Should CCC require assignment of the SCGP payment guarantee and risk?

• Should CCC permit, but not require the exporter to assign the SCGP payment guarantee risk?

• Should CCC not permit the exporter to assign the SCGP payment guarantee and risk?

4. *Alternative Payment Obligations:*

• Should CCC permit alternative forms of payment obligations that would change the obligor risk from the importer to a foreign bank? (Examples of such alternative payment obligation are: A banker's acceptance from an eligible foreign bank, a guarantee of an eligible foreign bank of the importer's obligation to pay, or a bank aval (obligation to pay) added to the importer's promissory note.)

• What are the estimated costs of requiring a foreign bank guarantee mechanism on the importer's obligation as stated in the question above?

5. *Collection Experiences on Foreign Bank Obligations:* What are U.S. exporters' or U.S. financial institutions' collection experiences in using banker's acceptances or avalized promissory notes?

6. *Risk Mitigation Techniques:*

• Should CCC permit the U.S. exporter or financial institution to mitigate their risk on the portion of the transaction value not covered by the SCGP payment guarantee?

• If CCC permits risk mitigation, what should CCC do to ensure that the risk-sharing principal is maintained and that all monies are shared, on a pro-rata basis, between CCC and the exporter/assignee?

7. *Standby Letters of Credit:*

• Should CCC require that the importer open a standby letter of credit to the exporter for a portion of the export value that could be drawn upon by the exporter and shared with CCC on a pro-rate basis in the event of the default?

• What costs might be expected if the importer were required to maintain a standby letter of credit associated with the SCGP transaction?

8. *Creditworthiness Assessment of Importers:*

• What are exporters' and U.S. financial institutions' experiences in their attempts to assess the creditworthiness of the importer using commercial credit reference services?

• Are there countries and regions where credit assessments on agricultural importers cannot be performed readily and reliably?

9. *Collections and Recoveries:*

• How can CCC best partner with the exporter and/or the financial institution that has accepted assignment of a SCGP payment guarantee in order to effect a collection?

• What other means should CCC employ in its recovery efforts on SCGP defaults?

10. *Other Concerns:* What other concerns, comments, or interests relating to the program regulations, mechanisms, and operations of the SCGP are important?

**Consideration of Comments**

Additional comments on other program modifications to the SCGP 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, if any, should be made to the SCGP. Some of the above-described changes would require additional notice and consideration of comments from interested parties via the rulemaking process. Other changes might be adopted by changing internal policies and procedures. Comments received will help the Department determine that extent and scope of any future rulemaking.

**Authority:** 7 U.S.C. 5602, 5622, 5661, 5662, 5663, 5664, 5676; 15 U.S.C. 714b(d), 714c(f).

Signed at Washington, DC, on December 16, 2005.

**W. Kirk Miller,**

*General Sales Manager and Vice President, Commodity Credit Corporation.*

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 73

RIN 3150–AH60

### Design Basis Threat; Reopening of Comment Period

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule: Reopening of comment period.

**SUMMARY:** On November 7, 2005 (70 FR 67380), the Nuclear Regulatory Commission (NRC) published for public comment a proposed rule consolidating the supplemental requirements established by the April 29, 2003, design basis threat (DBT) orders with the existing DBT requirements in 10 CFR 73.1(a). Specific details of the attributes of the DBT to be protected against, which include both safeguards information (SGI) and classified information, are consolidated in adversary characteristics documents (ACDs) and Regulatory Guides (RGs). The proposed rule would revise the DBT requirements both for radiological sabotage and for theft or diversion of Strategic Special Nuclear Material (SSNM). ACDs and RGs provide guidance to licensees concerning the DBT for radiological sabotage, theft and diversion. They contain the specific details of the attributes of the threat which licensees need to know in order to evaluate what is necessary to comply with the proposed rule. On December 21, 2005, the Nuclear Energy Institute (NEI) requested a 30 day extension to the public comment period. Their request was based on the fact that though the proposed rule was published on November 7, 2005, the RGs and the ACDs were not available at that time. NEI requested copies of these documents. The NRC staff agreed to