



Billing Code 3410-10

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1493

RIN 0551-AA99

Export Credit Guarantee (GSM-102) Program and Facility Guarantee Program (FGP) Certifications

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

ACTION: Final rule.

SUMMARY: This final rule modifies the certifications required to qualify to participate in the Export Credit Guarantee (GSM-102) Program and the Facility Guarantee Program (FGP) to make them consistent with Government-wide debarment and suspension guidelines and U.S. Department of Agriculture requirements. Specifically, CCC is eliminating the requirement for participants to make certain certifications with respect to affiliates.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: U.S. Department of Agriculture, Foreign Agricultural Service, Credit Programs Division, 1400 Independence Ave., SW, Stop 1025, Room 5509, Washington, DC 20250-1025.

FOR FURTHER INFORMATION CONTACT: Amy Slusher, Deputy Director, Credit Programs Division, 202-720-6211, Amy.Slusher@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 2014, CCC published a Final Rule in the Federal Register (79 FR 68589) revising and amending the regulations that administer the Export Credit Guarantee (GSM-102) Program. On September 22, 2016, CCC published a Final Rule in the Federal Register (81 FR 65510) revising and amending the regulations that administer the Facility Guarantee Program (FGP). Both of these final rules incorporated certifications required of U.S. exporters, U.S. sellers, U.S. financial institutions and foreign financial institutions applying to participate in these programs. The certifications for the GSM-102 program are found at 7 CFR 1493.60, and those for the FGP at 7 CFR 1493.250. The certifications are, in part, based on Government-wide requirements related to suspension and debarment found at 2 CFR part 180 and prohibitions barring delinquent debtors from obtaining Federal loans, insurance and guarantees (31 CFR part 285). Certain certifications (at 7 CFR 1493.60(a)(1) through (4) and 7 CFR 1493.250(a)(1) through (4)) require the applicant to certify with respect to the applicant itself, as well as its “principals” and “affiliates” (as defined in 2 CFR part 180). FAS is eliminating the requirement for applicants to make these certifications with respect to “affiliates,” for several reasons. First, there is no Government-wide or Department of Agriculture requirement to make these certifications with respect to “affiliates.” Neither the government-wide suspension and debarment regulations at 2 CFR part 180 nor the Department of Agriculture’s form AD-1047 (“Certification Regarding Debarment, Suspension, and Other Responsibility Matters”) include affiliates. Second, FAS has determined that the affiliates of program participants generally do not have a relationship to the applicant’s participation in CCC export credit guarantee

programs. Third, the “affiliate” certification is burdensome on U.S. exporters, sellers, and U.S. and foreign financial institution participants that are large, and often diverse, organizations with many affiliates. This change will therefore reduce the burden on program applicants and participants.

Notice and Comment

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the Federal Register and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments, except when the rule involves a matter relating to public property, loan, grants, benefits or contracts. The Administrative Procedure Act also states notice of proposed rulemaking is not required “when the agency for good cause finds...that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” Because this rule involves two loan guarantee programs, the regulations for this program are exempt from the notice and comment provisions of 5 U.S.C. 553.

Additionally, the agency has determined that because this amendment will make the existing rules at 7 CFR part 1493 consistent with U.S. Government and Departmental certification requirements and will reduce burden on participants, notice of proposed rulemaking is unnecessary. It is in the public interest to implement these changes as soon as possible; therefore, this final rule is effective when published in the Federal Register.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental,

public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments, proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes. FAS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to the knowledge of FAS, have tribal implications that required tribal consultation under Executive Order 13175. If a tribe requests consultation, FAS will work with USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that for every new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed

and controlled through a budgeting process. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

List of Subjects in 7 CFR Part 1493

Agricultural commodities, Exports.

Accordingly, for the reasons stated in the preamble, 7 CFR part 1493 is amended as follows:

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

1. The authority citation for part 1493 continues to read as follows:

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

2. In § 1493.60, paragraphs (a)(1) through (4) are revised to read as follows:

§ 1493.60 Certifications required for program participation.

(a) * * *

(1) The applicant and any of its principals (as defined in 2 CFR 180.995) are not presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from covered transactions by any U.S. Federal department or agency;

(2) The applicant and any of its principals (as defined in 2 CFR 180.995) have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) The applicant and any of its principals (as defined in 2 CFR 180.995) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this section;

(4) The applicant and any of its principals (as defined in 2 CFR 180.995) have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default;

* * * * *

3. In § 1493.250, paragraphs (a)(1) through (4) are revised to read as follows:

§ 1493.60 Certifications required for program participation.

(a) * * *

(1) The applicant and any of its principals (as defined in 2 CFR 180.995) are not presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from covered transactions by any U.S. Federal department or agency;

(2) The applicant and any of its principals (as defined in 2 CFR 180.995) have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) The applicant and any of its principals (as defined in 2 CFR 180.995) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity

(Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this section;

(4) The applicant and any of its principals (as defined in 2 CFR 180.995) have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default;

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	<u>June 10, 2019</u>
Robert Stephenson,	Date
Executive Vice President,	
Commodity Credit Corporation.	

<u>In concurrence with:</u>	
	<u>June 7, 2019.</u>
Ken Isley,	Date
Administrator,	
Foreign Agricultural Service.	
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