

# Rules and Regulations

Federal Register

Vol. 61, No. 127

Monday, July 1, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1493

RIN 0551-AA30

#### Commodity Credit Corporation Supplier Credit Guarantee Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Commodity Credit Corporation (CCC) is issuing this interim rule which amends the regulations for the Commodity Credit Corporation's (CCC) Export Credit Guarantee Program (GSM-102) and the Intermediate Export Credit Guarantee Program (GSM-103) by adding a new subpart D, Supplier Credit Guarantee Program (SCGP). The SCGP is designed to assist exporters of U.S. agricultural commodities who wish to provide relatively short term (up to 180 days) credits to their foreign buyers. Under SCGP, CCC will guarantee payment of such credits by the foreign buyer, and the exporter may assign such guarantees to an eligible U.S. financial institution.

This program will be administered by the Office of the General Sales Manager (GSM), U.S. Department of Agriculture, on behalf of CCC.

**DATES:** The provisions of this interim rule are effective August 30, 1996; comments must be submitted on or before December 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture (USDA), Ag. Box 1035, Washington, DC 20250-1035; telephone (202) 720-6211; FAX (202) 720-2949. The 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) 820-5881 (voice) or (202) 720-7808 (TDD).

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

##### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

##### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

##### Paperwork Reduction Act

The paperwork requirements that would be imposed by this interim rule were described in the proposed rule and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The OMB-assigned number for those requirements is OMB No. 0551-0037. The public reporting burden for these collections is estimated to average 0.18 hours per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRA, Room 404-W, Washington DC 20250; and to the OMB, Paperwork Reduction Project # 0551-0037, Washington, DC 20503.

##### Executive Order 12778

This interim rule has been reviewed under the Executive Order 12778, Civil Justice Reform. The interim rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect. The interim rule requires that certain administrative remedies be exhausted before suit may be filed.

The USDA is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

##### Background

In the Federal Register of July 19, 1995 (60 FR 37025), CCC issued a proposed rule to amend the regulations for the CCC Export Credit Guarantee Programs (GSM-102/103), codified at 7 CFR part 1493, by adding a new subpart D. Subpart D establishes the terms and conditions for the Supplier Credit Guarantee Program (SCGP). The deadline for comments on the proposed rule was September 18, 1995. Comments were received from six U.S. exporters, one importer, three producer associations, seven agribusiness associations, one U.S. financial institution, and one U.S. Government agency (USDA Office of Inspector General). These nineteen parties made approximately 88 separate and significant comments regarding either the proposed rule, the Preliminary Economic Impact Analysis, or the policy issues involved in administering the SCGP.

##### Reason for Issuing an Interim Rather Than Final Rule

CCC is issuing this rule on an interim rather than a final basis because, based on comments received on the proposed rule, it has made several significant changes and is providing the public with an additional opportunity for

comment. Specifically, CCC is establishing a condition on its payment of a claim that results from a default under a guaranteed promissory note. CCC will pay claims unless it determines that the guaranteed portion of port value exceeds the prevailing U.S. market value of the agricultural commodity or product exported. The reasons for this change are discussed below under the General Comments section, Other general comments, and under the Section-by-Section Analysis of Subpart D, § 1493.450, Payment guarantee. Also, CCC has modified § 1493.510, Payment for loss, to remove the immunity of assignees from the effects of determinations by CCC not to pay claims based on the new exception. CCC is publishing this interim rule, but will establish a comment period of 120 days from the rule's effective date to permit program participants an opportunity to provide views based, if possible, on actual program experience.

#### Interim Economic Impact Analysis

Two of the commenters addressed, in part, the Preliminary Economic Impact Analysis (PEIA). One commenter felt that each program option, considered by CCC and briefly discussed in the PEIA, "should be implemented as each addresses a different need." The same commenter also questioned why the SCGP was selected as the preferred option, in that the PEIA did not discuss why the other options were ruled out. CCC concurs that the other program options considered have merit, although the reasons for selecting the SCGP option were given. CCC may, in the future, incorporate features of the other options into, the SCGP (subpart D), the GSM-102/103 programs (subpart B), or additional programs that could be developed.

Another commenter stated that CCC may want to "reassess the estimated \$3.1 million subsidy level" determined for the SCGP. The commenter felt that this estimate may be too low and enclosed a news article discussing difficulties by some U.S. exporters in collecting payments from importers. CCC by itself does not determine the methodology used in estimating the subsidy level for its export credit guarantee programs. The model for estimating the subsidy amount was developed by the Office of Management and Budget (OMB). Country risk ratings which are an important component in determining the subsidy estimate are developed by a U. S. Government interagency group which is chaired by OMB. After assessing the results of the initial phase of operating the SCGP, CCC may propose changes in the subsidy

model, or in the model inputs, to more accurately determine appropriate subsidy levels for the program.

The Interim Economic Impact Analysis of the SCGP is available upon request from Mary T. Chambliss, Deputy Administrator, Export Credits, FAS/USDA, Ag. Box 1030, Washington DC 20250-1030; telephone (202) 720-6301; FAX (202) 690-0727.

#### General Comments

Eighteen commenters commended CCC on its efforts to design a new program to promote the sale of U.S. agricultural products. They generally agreed that the program had potential for reducing export financing costs, allowing importers to enjoy the benefits of CCC credit guarantees more directly than is possible under the GSM-102/103 programs, and increasing the competitiveness of U.S. agricultural products overseas. One commenter neither supported nor opposed the program.

#### Guarantee Coverage

Eighteen respondents commented on CCC's proposal to inaugurate the program with maximum coverage of 50 percent of principal (defined as port value), with no coverage of interest. One commenter agreed that the structure of the SCGP entails certain financial risks for CCC that justify lower levels of coverage. Another commenter thought the proposed coverage may be a starting point, but adjustments would have to be made if the program is to gain wide acceptance, particularly from the banking sector. Sixteen of the commenters contended that the proposed coverage was too low to provide an incentive to exporters to use the program. One commenter asserted that the proposed coverage would be unattractive to exporters and the assignee bank, and that the added risk would increase the cost of the transaction to the importer. Two commenters suggested that CCC vary its level of coverage based on the past performance of the importer. They also suggested that the exporter be required to furnish information on the importer which, under criteria to be established, could permit a higher level of coverage. Suggestions for the level of coverage of principal ranged from 70 percent to 98 percent, depending on whether or not interest and/or freight would be included in the coverage.

After considering these comments, CCC has determined that during the initial phase of the program, CCC's coverage will normally be limited to 50 percent of principal. This level of coverage will provide an incentive to

U.S. exporters and their assignees to evaluate carefully the credit risks posed by importers while still permitting an expansion of export sales of targeted commodities and products. The suggestion that CCC vary its level of coverage based on the past performance of the importer or other information furnished by the exporter on the importer may have merit. However, CCC will be in a better position to assess this approach after gaining experience operating the program. The amount of guaranteed coverage is not specified in the regulation because CCC wishes to retain the ability to adjust coverage, as necessary, to make the program workable, efficient, and responsive to market conditions.

#### Freight Coverage

Six comments were received regarding the inclusion of freight costs in the value on which guarantee coverage is based. Five commenters argued that, with freight excluded, coverage would be too low. Two commenters felt that, with freight coverage, exporters would be more likely to use the SCGP. One commenter suggested that when freight costs are more than 20 percent of export value, the level of coverage should be increased.

CCC recognizes the validity of the concerns expressed. In cost and freight (CFR) and cost, insurance and freight (CIF) transactions where freight costs are a high percentage of total export value, CCC coverage of 50% of commodity value would result in overall coverage of substantially less than 50 percent of transaction value. CCC therefore will retain the flexibility through Program Announcements to determine whether, and to what extent, to provide coverage on a free on board (FOB), free alongside ship (FAS), CFR, or CIF basis.

#### Guarantee Fees

Thirteen respondents commented on CCC's intention to set the guarantee fee "in the midpoint of the range of insurance premiums for good risk countries charged by Eximbank" (recently about 95 cents per \$100.00 of guaranteed coverage). One commenter agreed that the benefits offered by the SCGP entail corresponding financial risks for CCC and, therefore, justify higher fees. Another thought that the proposed fee may be a starting point, but that adjustments would have to be made if the program is to gain wide acceptance. Ten commenters felt the proposed fee was too high given the proposed level of guaranteed coverage. In general, their additional comments

can be summarized as follows: (1) Fees should be at or close to the GSM-102 (subpart B) fee levels; (2) fees should be reasonable because fees add to the overall financial exposure of the exporter; and (3) high fees could be a disincentive for program participation. Two commenters suggested that CCC vary its fees based on the past performance record of the importer. They also suggested that the exporter be required to furnish information on the importer which, under criteria to be established, could permit lower fees.

One commenter stated that the Foreign Credit Insurance Association varies its fees according to where exports are shipped, how shipments occur, the payment history of customer, and the payment collection history experienced by the exporter with the importer.

CCC appreciates these comments. To avoid a possible misconception concerning the proposed fee structure for the SCGP, CCC provides the following clarification: the fee would be assessed only on the value of actual CCC coverage, (e.g., 50 percent of the port value), not on the total port value registered. CCC recognizes that the 95 cents per \$100.00 fee on covered value is high in comparison to the fees charged for credits of up to 180 days duration under the GSM-102 (subpart B) program. However, under subpart B, CCC is insuring risks of eligible foreign banks; under SCGP (subpart D), foreign buyer risk is likely to be higher. Exporters will have a greater incentive to investigate the creditworthiness of an importer if they have a larger degree of financial risk in the export sales transaction. Also, a higher fee may dissuade exporters from entering into speculative transactions because the fee will not normally be refundable if the transaction is not completed. Thus, CCC intends to initiate the SCGP with the fee policy it described in the proposed rule. Adjustments in fee schedules can be made in light of experience in operating the program.

Regarding the comment that CCC reduce its fee on transactions with importers who have a proven performance record, CCC has determined initially to have a single fee for all countries and commodities. However, a sliding fee scale based on the importer's past performance and other factors may have merit and remains an option as CCC gains experience operating the program. The level of the registration fee is not specified in the regulation, giving CCC flexibility in this matter.

#### *Clarification*

One respondent questioned what CCC meant by the statement in the background of the proposed rule that CCC does not intend to routinely conduct independent evaluations of the creditworthiness of individual importers.

Although CCC does not at this time intend to make such evaluations routinely, the proposed rule provides that CCC may request that the exporter submit information/documentation on the importer as a condition to CCC's approval of the exporter's application of a payment guarantee. Such instances will, at the outset, be determined on a case-by-case basis and will be related to the degree of experience CCC has with the parties to the transaction, or to other pertinent credit risk-related factors.

#### *Country and Commodity Selection*

Four respondents commented on the selection of countries and commodities under the SCGP. One commenter felt that it would be a mistake to direct SCGP primarily towards high value products and that the program should be available for all U.S. agricultural commodities. One commenter felt that the best way to determine where, and for what commodities, the program should be used would be to begin operation of the SCGP. The response of the financial and commodity markets would act as the "best barometer" for the size and scope of the program. Another respondent, an importer, urged CCC to include poultry to the Commonwealth of Independent States under the SCGP. The importer stated that the cost of obtaining a letter of credit in Russia was high and further required payment in full to the bank in 30 days. By using SCGP, the importer could have the certainty of financing and could proceed with plans for building a facility in Russia to process U.S. poultry. One commenter urged that country allocations for GSM-102/103 (subpart B) and the SCGP be made separately.

CCC has given careful consideration to the issues of programming countries and commodities under the SCGP. CCC intends initially to program countries and commodities and/or products which it considers may benefit from the SCGP and may not have benefitted from GSM-102. Commodity and country selections will be made separately from the GSM-102/103 (subpart B) program, but will follow the same criteria specified in 7 CFR 1493.5. CCC will retain the flexibility, through Program Announcements, to revise the SCGP country and commodity allocations, as

necessary, to ensure the most effective use of the program.

#### *Other General Comments*

One commenter, a government agency, recommended that the provisions of the Office of Management and Budget (OMB) Circular A-129, "Policies for Federal Credit Programs and Non-Tax Receivables," be applied to the SCGP. The commenter recommended that: (1) Fees should be high enough to cover the cost of making the loan guarantee, including administrative costs, default and other subsidy costs; (2) in view of budget constraints, the maximum fee permitted by law (7 U.S.C. 5641(b)(1)(B)), \$1.00 per \$100, should be charged; (3) lower fees may be justified in instances where borrowers (importers) prepay part of the shipment because the risk of default would be reduced; (4) riskier buyers should be charged more in fees than those who pose less risk; and (5) fees should be set on a sliding scale reflecting country and commercial risk factors. According to this commenter, such factors should include the strength of the country's central bank and whether or not the country subscribes to uniform commercial code agreements that govern international commerce. The commenter further suggested that CCC require exporters to certify and document that they cannot obtain credit from private sources, and that CCC determine whether the applicant is delinquent on any Federal debt, including tax debt, before approving the guarantee. This commenter also suggested that CCC should require exporters to follow due diligence in collecting past due accounts and in using litigation to enforce payment on guaranteed credits. The commenter recommended that CCC require that the export sales contract state that CCC will, in the event of nonpayment, assess interest, penalties, and administrative charges against the importer. The commenter further recommended that all accounts due CCC that are six months or more past due be turned over to a collection contractor unless CCC is involved in litigation.

Although applicable statutes do not require the CCC to apply the provisions of OMB Circular No. A-12, CCC agrees that program rules should operate not only to lower CCC's risk, but also to assure that CCC and exporters are sharing the risk of loan defaults. The proposed rule includes certain provisions, i.e. lower level of coverage and higher fees, that are intended to encourage exporters to evaluate carefully importer creditworthiness. However, the provisions of the proposed

rule may not adequately ensure that (1) the risk sharing objectives outlined in the Background section of the proposed rule (part C, How certain SCGP provision differ from GSM-102) will be achieved, or (2) CCC would be protected from paying excessive claims stemming from export transactions with prices inflated far above prevailing market levels. Therefore, CCC is establishing a condition on its payment of a claim to address these two concerns. This new provision and required related modifications are discussed below under Section-by-Section Analysis of Subpart D, Section 1493.450, Payment guarantee.

The other suggestions of the commenter have also been considered carefully and evaluated in terms of cost-effectiveness and relevance to protecting the financial interests of CCC. Many of the suggestions of the commenter could be implemented as a matter of policy under the rule as proposed. CCC has therefore determined not to incorporate the suggestions into this interim rule, but will continue to review them in light of experience gained in operating the SCGP.

Other commenters addressed issues other than the proposed regulations. CCC has determined not to discuss these unrelated comments. CCC will, however, take these additional views into consideration as they relate to CCC's other commercial export programs.

#### Section-by-Section Analysis of Subpart D

The numbering system of the interim rule differs somewhat from that of the proposed rule. One section was deleted. For the purposes of this discussion, the numbering system of the interim rule will be used, except where otherwise indicated.

#### Section 1493.400 General Statement

Two respondents commented on § 1493.400(a), *Overview*. One commenter felt that the proposed 180 day maximum terms are adequate for single transactions. However, this commenter suggested that to better coincide with existing trade practices, CCC should guarantee lines of credit, rather than single transactions. This commenter also thought that annual (or shorter) revolving credit guarantees would reduce administrative costs for the exporter, importer, and CCC without reducing the ability of CCC to manage its risk. The commenter stated that established buyers would have better procurement planning and control under a line of credit. The second commenter felt that because of small

profit margins on cotton, exporters would not find open accounts for up to 180 days a viable business practice. The commenter added that some countries under GSM-102/103 operate with strict central bank guidelines regarding foreign exchange that require letters of credit to make the import purchases. The commenter wondered how the SCGP could be successful in such countries.

CCC recognizes that the SCGP may not work effectively for all commodities in all countries. Exporters who have successfully used the GSM-102 program may continue to rely on that program.

Regarding revolving lines of credit, CCC finds this an interesting concept and will continue to assess its merits. However, at this time the budget allocation and subsidy funding for SCGP are not based on revolving lines of credit. A revolving line of credit would require fundamental changes in CCC accounting and computer database systems. CCC will not be in a position to consider implementing revolving lines of credit guarantees until these and other issues are resolved.

#### Section 1493.410 Definition of Terms

Although no public comment was received specifically regarding the definition of Importer obligation, found at § 1493.410(n), comments were received on § 1493.470, Importer obligation of the proposed rule (see Section-by-Section Analysis of Subpart D, § 1493.470 Importer Obligation). Based on those comments, CCC revised the definition to read: "A promissory note or notes that conform(s) with the requirements for such note(s) specified in the applicable country or regional Program Announcement(s)." By specifying the provisions of the promissory note(s) in the Program Announcement, CCC will retain flexibility to specify provisions for a particular country or region and, if necessary, to make changes in such provisions in light of changing circumstances. In addition to specifying the form of the promissory note in Program Announcement, CCC will refer to the particular form of promissory note in the special terms and conditions described on the face of the guarantee and attach the required form of the promissory note to the guarantee. This change requires deletion of § 1493.470 Importer Obligation, from the interim rule.

Three respondents made comments regarding § 1493.410(x), the definition of a U.S. agricultural commodity. Two commenters stated that for the SCGP to be effective and increase sales of high value or value added products, changes

would be needed regarding permissible levels of foreign-origin agricultural components in such products. One commenter stated that Congress should better define the term "U.S. origin" or provide a tolerance for foreign components.

The Department of Agriculture agrees with these comments and supports legislation to change the definition of "product of an agricultural commodity" now contained in section 102(7)(B) of the Agricultural Trade Act of 1978, as amended, (7 U.S.C. 5602)(7)(B)). Until such legislative action, the definition contained in the proposed rule must be retained.

#### Section 1493.420 Information Required for Program Participation

No public comments were received on this section. No changes have been made in this section of the interim rule.

#### Section 1493.430 Application for Payment Guarantee

Two respondents made comments regarding § 1493.430(a), which requires that a firm export sale exist before an exporter may submit an application for a payment guarantee. Both commenters suggested that this requirement be changed to allow the export sale to be contingent upon approval of the payment guarantee. The commenters advocated that an exporter and importer should agree on the terms of the sale but, if the payment guarantee is not obtained, cancellation of the sale should be allowed. One commenter recommended that CCC require a copy of the sales contract be submitted at the time the payment guarantee is requested. The commenter believed that the list of the 17 requested items could be reduced if the sales contract was provided.

The "firm" sale requirement of § 1493.430(a) does not preclude a sales contract from being contingent on approval by CCC of a payment guarantee. At a minimum, this rule requires that the exporter and importer be in agreement regarding the terms and conditions required to be reported in an application for a payment guarantee.

Regarding the comment that CCC require exporters to submit sales contracts, CCC disagrees that the suggestion would save time. Sales contracts often contain terms and conditions that CCC does not need to review. CCC does not want the burden of reviewing and safeguarding a large quantity of business confidential and sensitive private documents where that is unnecessary. CCC reserves the right to request an exporter's sales contract in reviewing applications from newly

eligible applicants, where questions of program compliance or control arise.

Three comments were received regarding § 1493.430(16). These concerned the statement that CCC would reserve the right to require exporters to submit additional information about the importer. One respondent was concerned about the nature of the information. If CCC requested proprietary information, would CCC protect the information from public disclosure? The respondent felt that exporters may be reluctant to provide importer information unless there are clear protections against its release. Another commenter felt that providing information regarding the importer could be a potential paperwork burden. The third respondent suggested that information be requested for all first-time applicants of the program. This commenter suggested that the information requested should, at a minimum, include credit rating, trade references, and bank references and should be submitted before CCC approves the payment guarantee.

As stated in the background section of the proposed rule (part C(5), Application), CCC will not routinely conduct independent evaluations of the creditworthiness of individual importers, but will reserve the right to require exporters, in the application process, to provide additional information concerning the importer. Such information may include the importer's credit and payment history with the applicant, and any credit analysis the exporter has done regarding the importer. CCC will protect any proprietary information submitted by exporters to the extent permitted by law.

Three comments were received regarding CCC's price review process established under § 1493.430(b). Two commenters asked whether the SCGP would be subject to price review. One commenter stated that elimination of price review would save time and reduce paperwork. The commenter also felt that if price review were included in the SCGP, it would make the program unattractive. Another commenter wondered how prices would be reviewed because for short term credit transactions it is a common commercial practice to build interest into the sales price. One commenter noted that the rule does not contain a detailed discussion of price review and urged CCC to be as flexible as possible in the administration of this function. The respondent noted that for fresh produce, price review must be sensitive to prices which can vary from hour to hour.

To the extent that SCGP transactions may be subject to price review, CCC

may choose to price review different commodities differently or exempt some commodities from price review.

Although CCC does not intend to provide guarantee coverage for interest risk separately, CCC realizes that, under SCGP, exporters may build interest into their sales prices. If CCC were to subject the SCGP to price review, CCC could take this into account.

Four respondents commented on § 1493.430(c), Ineligible Exporter. One commenter felt strongly that no financial or ownership connection should exist between exporter and importer. The commenter indicated that if such a connection existed, defaults would be encouraged and make the program unworkable. Another commenter felt that restrictions on relationships between importers and exporters would dissuade many potential participants. In particular it would restrict many smaller import/export companies because the U.S.-based exporter may be related to the importer. One commenter felt that CCC may be increasing its export risk, in some cases, with its prohibition against within-company and joint venture transactions. This commenter agreed that taxpayers should not finance intra-company sales. However, in some instances, particularly common-owner or joint-venture sales, such restrictions would force export sales to competing foreign suppliers. The commenter requested greater flexibility to allow CCC to choose export transactions benefiting U.S. agriculture.

The "ineligible exporter" provision is intended to avoid the situation in which CCC would receive a claim for loss from an exporter that directly or indirectly owns or controls, or is owned or controlled by, the importer responsible for the default. CCC has determined not to change this provision.

One commenter felt that any exporter who has three defaults under the program in five years should be considered ineligible for further participation. With respect to this comment, CCC does not wish to qualify exporters based upon the performance of importers. However, CCC will continue to evaluate whether program modifications may be needed to provide incentives/disincentives to exporters based on program participation experience.

#### *Section 1493.440 Certification Requirements for a Payment Guarantee*

No public comments were received on this section. No changes have been made in this section of the interim rule.

#### *Section 1493.450 Payment Guarantee*

To address the risk issues raised by comments from a government agency (see General Comments, Other general comments), CCC has revised the first sentence of § 1493.450(a) to read: "The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the importer fails to pay under the importer obligation unless CCC determines, with respect to the particular transaction and claim, that the guaranteed portion of the port value exceeded the prevailing U. S. market value for the same, or same type of, agricultural commodity or product. In making this determination, CCC will adjust the prevailing U.S. market value for estimated freight and/or insurance costs if the export sale was made on a CFR or CIF basis."

CCC recognizes that determining a prevailing U.S. market value may be difficult for some products, particularly for some high value and value added products. CCC will, therefore, utilize information from all available sources including, when appropriate, information furnished by participants to the transaction to support the validity of the claim. Exporters using normal pricing practices, i.e., pricing at or near the market without excessive markups intended to shift to CCC all risk of loss, need not be concerned that the new claim review provision will result in a denial of a claim should a default occur.

In instances where CCC has reviewed the unit price of the commodity in the process of approving an exporter's application for a payment guarantee pursuant to § 1493.430(b), and the price of the commodity reported by the exporter in the evidence of export report has not changed (§ 1493.470(a)(7)), CCC will not conduct another review of the price of the transaction as a condition for paying a claim. Although CCC may conduct some price reviews pursuant to § 1493.430(b) as it deems desirable, it does not intend to do so with respect to all exporter applications. Such price reviews will be done entirely at CCC's discretion, and nothing in the SCGP regulations provides exporters the right to demand or expect that such price reviews take place prior to issuing a payment guarantee.

This new provision is intended to ensure that there will be substantial risk sharing on the part of the exporter, and that CCC will not pay claims inflated by transaction prices far above prevailing market levels. CCC has no intention of avoiding payment of normal claims, nor does it intend to regulate or control

exporters' profit margins. CCC's sole intention is to enhance the integrity of the SCGP. CCC encourages and welcomes any comments regarding this provision.

**Section 1493.460 Guarantee Rates and Fees**

No public comments were received on this section. No changes have been made in this section of the interim rule.

**Section 1493.470 Importer Obligation (as in the Proposed Rule)**

As stated in § 1493.410, Definition of Terms, of the Section-by-Section Analysis of Subpart D, CCC has determined to delete § 1493.470. Three comments were received regarding this section. One commenter thought that the terms of the promissory note were too onerous. Another commenter felt that use of a promissory note as evidence of indebtedness was a step in the right direction. However, the commenter was concerned that not enough is known about the legal enforceability of the promissory note in countries whose commercial code is different from ours. Having a foreign bank avar or guarantee would mitigate the risk of possibly having a legally unenforceable document. The commenter also recommended that the optional provision regarding late interest under § 1493.470(d)(1), be made a requirement since it is customary business practice to charge late interest when payments are not made on the due date. The commenter felt that this would also provide CCC with a mechanism to be paid interest on outstanding claims. Another commenter felt the promissory note may need to include a "sound product provision." This commenter suggested that if there were quality problems upon arrival, it may be appropriate to be flexible in adjusting the value of the promissory note.

CCC's decision to retain flexibility in adapting the provisions of the promissory note should partially address the concerns expressed that the note contained in the proposed rule would be too onerous and may not be legally enforceable in some countries. Although CCC continues to believe that the previously proposed promissory note, or one substantially similar to it, will be the basic instrument required by most Program Announcements in the initial implementation of the SCGP, CCC will make adaptations, including adaptations specific to a particular country or region, if they appear necessary to enhance the likelihood of enforceability. Similarly, if experience demonstrates that the terms of the

proposed note are too onerous, modifications will be considered that are consistent with overall program goals and criteria.

CCC's intention to make adaptations, as necessary, in the form of the required promissory note would be compatible with the objectives stated by other commenters. For example, CCC could adopt a note permitting a foreign bank avar or a guarantee. For now, however, CCC has determined not to make this a program requirement because one of the primary intentions of the SCGP is to remove the foreign bank's mandatory involvement in the transaction. Additionally, CCC could choose to incorporate a provision regarding late interest into the importer's promissory note. Regarding a "sound product provision," value adjustments could be agreed to by exporters and importers. In the event the promissory note had already been executed prior to establishing the actual export value, a substitute promissory note might need to be executed. If the exporter had submitted an Evidence of Export (EOE) before the value adjustment is made, the exporter would have to file an amended EOE with CCC. In any event, CCC's principal coverage would be limited to the lower of the value of the export transaction established by the EOE or the principal amount of the promissory note.

**Section 1493.470 Evidence of Export**

One comment was received regarding § 1493.470(b), Time limit for submission of the EOE (of the interim rule). The respondent suggested that CCC allow a standard 60 days to submit the EOE. The respondent thought exporters would be seeking extensions of the proposed 30-day period in order to obtain a fully executed promissory note from the importer.

Under the proposed rule, EOE's must be filed in 30 days if export is by vessel, and 60 days if export is by truck or rail. Experience under the GSM-102/103 programs has not shown a need to increase the 30 day filing requirement for EOE's on vessels. However, under the proposed rule, an exporter needing additional time to file an EOE may request that the General Sales Manager extend the time limit for filing. CCC has determined not to change the time limit for filing the EOE, but to assess the need for such a change after the SCGP has been in operation. Timely submission of the EOE's will be important to permit CCC to keep accurate program data for release to the public as well as for internal program monitoring and controls.

**Section 1493.480 Certification Requirements for Evidence of Export**

No public comments were received on this section. No changes have been made in this section of the interim rule.

**Section 1493.490 Proof of Entry**

One comment was received regarding § 1493.490(b), Records of proof of entry (of the interim rule). From the viewpoint of the commenter, the requirement that exporters obtain written proof that the exported goods entered the country would be particularly problematic for fresh produce exporters. Traditionally, once the product leaves the dock the exporter ceases to have any control or liability for the goods. It is not currently a practice in the produce industry to provide proof the goods actually left the U.S. The commenter requested that CCC seek an alternate approach which will satisfy the requirements of the program, but be practical for fresh produce exporters.

CCC has determined to make no changes in this section. The requirement that exporters maintain records of an official or customary commercial nature, or other documents to verify the arrival in the foreign country of the agricultural commodity exported, is mandated by section 401(a)(1) of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5661(a)(1)). Furthermore, if a default occurred under a guaranteed transaction in which the commodity was exported by truck or rail, the entry certificate or similar document would be included when filing a claim for loss (see § 1494.500(b)). If traditional forms of entry documentation are unobtainable, § 1494.490(b) permits CCC to consider other types of documents which can be deemed acceptable by the General Sales Manager. CCC believes that these provisions are flexible enough to meet the concerns raised by the commenter.

**Section 1493.500 Notice of Default and Claims for Loss**

One comment was received regarding § 1493.500, Notice of default and claims for loss (of the interim rule). This commenter suggested that CCC pre-approve documents that are normally submitted in the claim procedure. The respondent stated that there is a need for greater certainty in the approval of documentation in case of a default, and that exporters would be willing to pay a fee to cover the cost of pre-approval.

Partly because of the added administrative burden that pre-approval of documents would place on CCC, this suggestion will not be adopted at this time. However, CCC will continue to consider this issue which is also

relevant to the GSM-102/103 (subpart B) programs.

This same commenter suggested that CCC provide an example of subrogation language in an addendum to its regulations. Since exporters are not banks, they require specific language to fulfill their responsibility in the event of a default. CCC agrees with the comment and will make available an example of language for an Instrument of Subrogation and Assignment.

#### *Section 1493.510 Payment for Loss*

Although no comments were received regarding §§ 1493.510 (b) and (e), CCC has revised these provisions to be consistent with the changes made in § 1493.450(a), CCC's obligation.

Section 1493.510(b), Amount of CCC's liability, is revised to read in part: "Subject to a determination by CCC with respect to prevailing U.S. market value pursuant to § 1493.450(a), of this part, CCC's maximum liability for any claims for loss \* \* \*."

Section 1493.510(e), Action against the assignee, is revised to read: "Notwithstanding \* \* \*. CCC will not, except pursuant to a determination under § 1493.450(a) of this part, hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge provided that:"

#### *Section 1493.520 Recovery of Losses*

No public comments were received on this section. No changes have been made in this section of the interim rule.

#### *Section 1493.530 Miscellaneous Provisions*

One comment was received regarding § 1493.530(a), Assignment (of the interim rule). The commenter suggested that greater flexibility is needed in the assignment of proceeds, including the sub-assignment to more than one party. The commenter felt this would bring the transaction in line with standard practice for similar financial instruments.

CCC has traditionally not allowed assignment of a payment guarantee to more than one party. However the proposed rule permits further assignment if " \* \* \* approved in advance by CCC." Therefore, CCC has determined it is not necessary at this time to change § 1493.530(a).

#### *List of Subjects in 7 CFR Part 1493*

Administrative practice and procedures, Agriculture, Agricultural commodities, Credits, Exports,

Guarantees, Reporting and recordkeeping requirements.

### **PART 1493—[AMENDED]**

Accordingly, part 1493 of title 7 is amended by adding and reserving subpart C and adding subpart D reading as follows:

#### **Subpart C—[Reserved]**

#### **Subpart D—CCC Supplier Credit Guarantee Program Operations**

Sec.

- 1493.400 General statement.
- 1493.410 Definition of terms.
- 1493.420 Information required for program participation.
- 1493.430 Application for a payment guarantee.
- 1493.440 Certification requirements for a payment guarantee.
- 1493.450 Payment guarantee.
- 1493.460 Guarantee rates and fees.
- 1493.470 Evidence of export.
- 1493.480 Certification requirements for the evidence of export.
- 1493.490 Proof of entry.
- 1493.500 Notice of default and claims for loss.
- 1493.510 Payment for loss.
- 1493.520 Recovery of losses.
- 1493.530 Miscellaneous provisions.

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

#### **Subpart C—[Reserved]**

#### **Subpart D—CCC Supplier Credit Guarantee Program Operations**

##### **§ 1493.400 General statement.**

(a) *Overview.* (1) This subpart contains the regulations governing the operations of the Supplier Credit Guarantee Program (SCGP). The restrictions and criteria set forth at subpart A for the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) and the Intermediate Credit Guarantee Program (GSM-103) will apply to this subpart. The SCGP was developed to expand U.S. agricultural exports by making available payment guarantees to encourage U.S. exporters to extend financing on credit terms of not more than 180 days to importers of U.S. agricultural commodities.

(2) The SCGP operates in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. exporters would be unwilling to provide financing without CCC's guarantee. The program is operated in a manner intended not to interfere with markets for cash sales. The program is targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign

exchange will be available for scheduled payments. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by this program is the SCGP payment guarantee (payment guarantee). The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter's right to proceeds, specified amounts of principal and, where applicable, interest due from, but not paid by, the importer incurring the obligation in connection with the export sale to which CCC's guarantee coverage pertains. By approving an exporter's application for a payment guarantee, CCC encourages private sector, rather than government, financing and incurs a substantial portion of the risk of default by the importer. CCC assumes this risk, in order to be able to operate the program for the purposes specified in § 1493.2.

(b) *Credit facility mechanism.* (1) For the purpose of the SCGP, CCC will consider applications for payment guarantees only in connection with export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made under an unconditional and irrevocable importer obligation to a U.S. exporter payable in U.S. dollars, as defined in § 1493.410(n).

(2) The exporter may assign the right to proceeds under the importer obligation to a U.S. bank or other financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment date(s) as set forth in the importer obligation.

(3) The SCGP payment guarantee is designed to protect the exporter or the exporter's assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the importer under the importer's obligation.

(c) *Program administration.* The SCGP will be administered pursuant to subpart A and this subpart and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this subpart. This program is under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and



telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see § 1493.410(c), "Contacts P/R").

(d) *Country allocations and program announcements.* From time to time, CCC will issue a Program Announcement to announce a SCGP allocation for a specific country. The Program Announcement for a country allocation will designate specific allocations for U.S. agricultural commodities or products thereof, will indicate the form of promissory note required by CCC, and will provide other pertinent information. Exporters may negotiate export sales to importers in that country for one of the commodities specified in the Program Announcement and seek payment guarantee coverage within the dollar amounts of specified coverage for that commodity. The Program Announcement will contain a requirement that the exporter's sales contract contain a shipping deadline within the applicable program year. The final date for a contractual shipping deadline will be stated in the Program Announcement. Program Announcements may also contain a specified "undesignated" or "unallocated" dollar amount for the purpose that if dollar amounts specified for a specific commodity for a country become fully used, an additional allocation from the "unallocated" or "undesignated" portion of the total country allocation may then be designated for a specific commodity. Program Announcements that include an "unallocated" or "undesignated" dollar amount will contain further information on the "unallocated" or "undesignated" portion of the country allocation.

#### § 1493.410 Definition of terms.

Terms set forth in this subpart and in CCC Program Announcements, Notices to Participants, and any other CCC-originated documents pertaining to the SCGP will have the following meanings:

(a) *Assignee.* A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act of 1948 (15 U.S.C. 714 et seq.), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) *Contacts P/R.* A notice issued by FAS/USDA by public press release which contains specific names,

addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the SCGP. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

(d) *Date of export.* One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the Government of the importing country.

(e) *Date of sale.* The earliest date on which a contractual obligation exists between the exporter, or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) *Discounts and allowances.* Any consideration provided directly or indirectly, by or on behalf of the exporter, or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality or weight.

(g) *Eligible interest.* The maximum amount of interest, based on the interest rate indicated in CCC's payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(h) *Exported value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the CFR or CIF value of the agricultural commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the commodity is sold on a CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the exported value.

(i) *Exporter.* A seller of U.S. agricultural commodities or products thereof that has qualified in accordance with the provisions of § 1493.420.

(j) *FAS/USDA.* The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) *GSM.* The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(l) *Guaranteed value.* The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC's payment guarantee, as indicated on the face of the payment guarantee.

(m) *Importer.* A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(n) *Importer obligation.* A promissory note or notes that conform(s) with the requirements for such note(s) specified in the applicable country or regional Program Announcement(s).



(o) *Incoterms*. The following customary terms, as defined by the International Chamber of Commerce, Incoterms © current revision):

- (1) Free Alongside Ship (FAS);
- (2) Free on Board (FOB);
- (3) Cost and Freight (CFR, or alternatively, C&F, C and F, or CNF); and
- (4) Cost Insurance and Freight (CIF).

(p) *Intervening purchaser*. A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(q) *Late interest*. Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after receipt of a claim which CCC has determined to be in good order and ending on the day on which payment is made on such claim for loss.

(r) *Notice to participants*. A notice issued by CCC by public press release which serves one or more of the following functions: to remind participants of the requirements of the program; to clarify the program requirements contained in these regulations in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter's application for such payment guarantee is approved.

(s) *Payment guarantee*. An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee (including the required form of promissory note), this subpart, and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter's assignee in the event of a default by an importer under the importer obligation.

(t) *Port value*. (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis and where the commodity was sold on CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, including the upward tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the port value.

(u) *Program announcement*. An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, the form of promissory note required for a particular country or region, and include other information and requirements.

(v) *SCGP*. The Supplier Credit Guarantee Program described by this subpart.

(w) *United States or U.S.* All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(x) *U.S. agricultural commodity*. (1) With respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and

(2) With respect to a product of an agricultural commodity:

(i) A product all of the agricultural components of which are entirely produced in the United States; or

(ii) Any other product the Secretary may designate that contains any

agricultural component that is not entirely produced in the United States if:

(A) Such component is an added, de minimis component;

(B) Such component is not commercially produced in the United States; and

(C) There is not acceptable substitute for such component that is commercially produced in the United States (For purposes of this paragraph, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters [including the territorial sea] of a foreign country).

(y) *USDA*. United States Department of Agriculture.

#### **§ 1493.420 Information required for program participation.**

Before CCC will accept an application for a payment guarantee under the SCGP, the applicant must qualify for participation in this program. Based upon the information submitted by the applicant and other publicly available sources, CCC will determine whether the applicant is eligible for participation in the program.

(a) *Submission of documentation*. In order to qualify for participation in the SCGP, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant's headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.;

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular export sale contemplated by the applicant under this subpart;

(5) A certified statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(6) A certification that: "I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in

programs administered by any U.S. Government agency. ["Principals," for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division, or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of applicant] will immediately notify CCC."

(b) *Previous qualification.* Any exporter that is qualified under subpart B, § 1493.30 is qualified under this section to submit applications for a SCGP payment guarantee, and the information provided by the exporter pursuant to § 1493.30 will be deemed to also have been provided under this section. Each application must include the statement required by § 1493.430(a)(17) incorporating the certifications of § 1493.440, including the certification in § 1493.440(e) that the information previously provided pursuant to § 1493.420 has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.

(c) *Additional submissions.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by CCC.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the SCGP if:

(1) Such applicant is currently debarred, suspended, or proposed for debarment from contracting with or participating in any program administered by a U.S. Government agency; or

(2) Such applicant is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency.

#### **§ 1493.430 Application for a payment guarantee.**

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee

may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country;  
(2) Name and address of the importer;  
(3) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country;

(4) Date of sale;  
(5) Exporter's sale number;  
(6) Delivery period as agreed between the exporter and the importer;  
(7) A full description of the commodity (including packaging, if any);

(8) Mean quantity, contract loading tolerance and, if the exporter chooses, a request for CCC to reserve coverage up to the maximum quantity permitted by the contract loading tolerance;

(9) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified;

(10) Description and value of discounts and allowances, if any;

(11) Port value (includes upward loading tolerance, if any);

(12) Guaranteed value;

(13) Guarantee fee;

(14) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale;

(15) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program. The number of the Agreement assigned by USDA under one of these programs should be included, as applicable;

(16) Other information as requested by CCC or specified in Program Announcements and Notices to Participants, as applicable; and

(17) The exporter's statement, "ALL SECTION 1493.440 CERTIFICATIONS

ARE BEING MADE IN THIS APPLICATION" which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.440.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.450(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

(c) Ineligible exporter. An exporter will be ineligible to obtain a payment guarantee if such exporter:

(1) Directly or indirectly owns or controls the importer;

(2) Is directly or indirectly owned or controlled by the importer; or

(3) Is directly or indirectly owned or controlled by a person(s) or entity(ies) which also owns or controls the importer.

#### **§ 1493.440 Certification requirements for payment guarantee.**

By providing the statement in § 1493.430(a)(17), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.430(a)(17), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a United States agricultural commodity or a product thereof, as defined in § 1493.410(x);

(b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of

any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

#### **§ 1493.450 Payment guarantee.**

(a) *CCC's obligation.* The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the importer fails to pay under the importer obligation, unless CCC determines with respect to the particular transaction and claim that the guaranteed portion of the port value exceeded the prevailing U.S. market value for the same, or same type of agricultural commodity or product. In making this determination, CCC will adjust the prevailing U.S. market value for estimated freight and/or insurance costs if the export sale was made on a CFR or CIF basis. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* The payment guarantee will apply to a credit period not exceeding 180 days beginning either on the date(s) of export(s) or from the date when interest begins to accrue whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee.

(c) *Terms of the CCC payment guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart,

which may be supplemented by any Program Announcements and/or Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) *Final date to export.* The final date to export shown on the payment guarantee will be one month, as determined by CCC, after the contractual deadline for shipping.

(e) *Reserve coverage for loading tolerances.* The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (i.e., lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) *Ineligible exports.* Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for guarantee coverage under this subpart, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) *Foreign agricultural component.* CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in § 1493.410(x). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

(h) *Additional requirements.* The payment guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the GSM. Such additional

terms, conditions or qualifications, as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(i) *Amendments.* A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period and an extension of time to export. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an increase in the guarantee fee. (Technical corrections or corrections of a clerical error which may be submitted by the exporter or the exporter's assignee are not viewed as amendments.)

#### **§ 1493.460 Guarantee rates and fees.**

(a) *Guarantee fee rates.* The current payment guarantee fee rate(s) will be available by Program Announcement.

(b) *Calculation of fee.* The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) *Payment of fee.* The exporter shall remit, with his written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter's check for the guarantee fee shall be made payable to CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) *Refunds of fee.* Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC's approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such refund will be in the best interest of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the fee remittance will be made.

#### **§ 1493.470 Evidence of export.**

(a) *Report of export.* The exporter is required to provide CCC an evidence of export report for each shipment made under the payment guarantee. This report must include the following:

- (1) Payment guarantee number;
- (2) Date of export;
- (3) Exporter's sale number;
- (4) Exported value;

(5) Quantity;  
 (6) A full description of the commodity exported;  
 (7) Unit sales price received for the commodity exported and the basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter's application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference;

(8) Description and value of discounts and allowances, if any;

(9) Number of the Agreement assigned by USDA under any other program if any portion of the export sale was also approved for participation in any of the following CCC or USDA export program: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program; and

(10) The exporter's statement, "ALL SECTION 1493.480 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT" which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.480.

(b) *Time limit for submission of evidence of export.* The exporter must provide a written report to the office specified in the Contacts P/R within 60 calendar days if the export was by rail or truck; or 30 calendar days if the export was by any other carrier. The time period for filing a report of export will commence upon each date of export of the commodity covered under a payment guarantee. If the evidence of export report is not received by CCC within the time period for filing, the payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would be likely to result, in:

- (1) Significant financial harm to CCC;
- (2) The undermining of an essential regulatory purpose of the program;
- (3) Obstruction of the fair administration of the program; or
- (4) A threat to the integrity of the program. The time limit for submission of an evidence of export report may be extended if such extension is determined by the GSM to be in the best interests of CCC.

(c) *Export sales reporting.* Exporters may have a mandatory reporting responsibility under section 602 of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5712) for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultural commodities and products thereof.

#### **§ 1493.480 Certification requirements for the evidence of export.**

By providing the statement contained in § 1493.470(a)(10), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been or will be met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter breaches or violates these certifications with respect to a SCGP payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in § 1493.470(a)(10), certifies that:

(a) The agricultural commodity or product exported under a payment guarantee is a United States agricultural commodity or product thereof, as defined in § 1493.410(x);

(b) Agricultural commodities of the grade, quality and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee;

(c) There is an importer obligation as defined in § 1493.410(n) to cover the exported value of the commodity exported;

(d) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and

(e) The information provided pursuant to § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420 and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

#### **§ 1493.490 Proof of entry.**

(a) *Diversión.* The diversion of commodities covered by a SCGP payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) *Records of proof of entry.* Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of

the agricultural commodities exported in connection with the SCGP in the country that was the intended country of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:

(1) That the agricultural commodity entered the importing country;

(2) The identification of the export carrier;

(3) The quantity of the agricultural commodity;

(4) The kind, type, grade and/or class of the agricultural commodity; and

(5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country. (Records of proof of entry need not be submitted with a claim for loss, except as may be provided in § 1493.500(b)(4)(ii).)

#### **§ 1493.500 Notice of default and claims for loss.**

(a) *Notice of default.* If the importer fails to make payment pursuant to the terms of the importer obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the importer (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

- (1) Payment guarantee number;
- (2) Name of the country;
- (3) Name of the defaulting importer;
- (4) Due date;
- (5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;
- (6) Date of importer's refusal to pay, if applicable; and
- (7) Reason for importer's refusal to pay, if known.

(b) *Filing a claim for loss.* A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

- (1) Payment guarantee number;
- (2) A certification that the scheduled payment has not been received;
- (3) A certification of the amount of accrued interest in default, the date interest began to accrue, and the interest rate on the importer obligation applicable to the claim;
- (4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:

- (i) The importer obligation;
- (ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country;
- (iii)(A) The exporter's invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or
- (B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer;

- (iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable importer obligation; and

- (v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to § 1493.470(a).

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the importer to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (b) (1), (2), and (3) of this section; an instrument of subrogation as

per paragraph (b)(4)(iv) of this section, and including the date the original claim was filed with CCC.

#### **§ 1493.510 Payment for loss.**

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.500, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any applicable supplemental Program Announcements and Notices to Participants. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* Subject to a determination by CCC with respect to prevailing U.S. market value pursuant to § 1493.450(a) of this part, CCC's maximum liability for any claims for loss submitted with respect to any payment guarantee, not including any late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

- (1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or
- (2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) *Late interest payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the day of receipt of a claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract or the importer obligation unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the

exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not, except pursuant to a determination under § 1493.450(a) of this part, hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge, provided that:

- (1) The exporter complies with the reporting requirements under §§ 1493.470 and 1493.480, excluding post-export adjustments (i.e., corrections to evidence of export reports); and

- (2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.500.

#### **§ 1493.520 Recovery of losses.**

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the importer of CCC's rights under the subrogation agreement to recover all moneys in default.

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest

calculated on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.*

Recoveries made by CCC from the importer, and recoveries received by CCC from the exporter, the exporter's assignee, or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a payment guarantee, CCC pro rates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to § 1493.520—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.*

Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by

CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under SCGP. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in §§ 1493.440(b) and 1493.480(d) or the failure of an exporter to comply with the provisions of §§ 1493.490 or 1493.530(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the importer.

Appendix A to § 1493.520—Illustration of Pro Rata Allocation of Recoveries

The following example illustrates CCC's policy, as set forth in § 1493.520(c), regarding

pro rata sharing of recoveries made for claims filed under the SCGP. A typical case might be as follows:

1. The U.S. exporter enters into a \$200,000, 180 day credit arrangement with the importer calling for two equal payments of principal and two equal payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum (basis 360 days) on overdue amounts until the overdue amount is paid. (Basis for interest calculation may be 360 or 365 days.)

2. The importer fails to make the final principal payment of \$100,000 and an interest payment of \$2,500.00 (10% per annum for 90 days on \$100,000), both due on January 31.

3. On February 10, the U.S. exporter files a claim in good order with CCC.

4. CCC's guarantee states that CCC's maximum liability is limited to 60 percent of the principal amount due (\$60,000) and interest at a rate of 8 percent per annum (basis 365 days) on 60 percent of the principal outstanding (\$1,183.56) (8% per annum for 90 days on \$60,000). (CCC's basis for interest calculation is 365 days.)

5. CCC pays the claim on February 22.

6. The average investment rate of the most recent 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (January 31) is 7 percent. (CCC's late interest rate.)

Computation of Obligations

Using the above case, CCC's payment to the holder of the payment guarantee would be computed as follows:

1. CCC's Obligation under the Payment Guarantee:	
(a) Principal coverage—(60% \$100,000) .....	\$60,000.00
(b) Interest coverage—(8% per annum for 90 days on \$60,000, basis 365 days) .....	1,183.56
	\$61,183.56
(c) Late interest due from CCC (7% per annum for 11 days on \$61,183.56, basis 365 days) .....	129.07
(d) Amount paid by CCC on February 22 .....	\$61,312.63
2. Importer's obligation under the importer obligation:	
(a) Principal due January 31 .....	\$100,000.00
Interest due January 31 .....	
(10% per annum for 90 days on \$100,000, basis 360 days) .....	2,500.00
Amount owed by importer as of January 31 .....	\$102,500.00
(b) Penalty interest due (12% per annum for 22 days on \$102,500.00, basis 360 days) .....	751.67
(c) Amount owed by importer as of February 22 .....	\$103,251.67
3. Amount of importer's obligation not covered by CCC's payment guarantee: \$41,939.04 (\$103,251.67–\$61,312.63).	

Computation of Pro Rata Sharing in Recovery of Losses

In establishing each party's respective interest in any recovery of losses, the total amount due under the importer obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the importer is \$103,251.67, CCC would be entitled to 59.38 percent (\$61,312.63 divided by \$103,251.67) and the holder of the payment guarantee would be entitled to 40.62 percent (\$41,939.04 divided by

\$103,251.67) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, § 1493.520(b) would apply.

**§ 1493.530 Miscellaneous provisions.**

(a) *Assignment.* (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover

all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

- (i) Made to one party acting for two or more parties; or
- (ii) Subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the

assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof, to the financial institution and to the exporter issued the payment guarantee, in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) *Ineligibility of financial institutions to receive an assignment.* A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(c) *Ineligibility of financial institutions to receive proceeds.* A financial institution will be ineligible to receive proceeds payable under a payment guarantee approved by CCC if such financial institution:

(1) At the time of assignment of a payment guarantee, is not in sound financial condition, as determined by the Treasurer of CCC;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(d) *Alternative satisfaction of payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, with the agreement of the exporter's assignee), establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the

exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's, or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by § 1493.490(b), and must provide access to such documentation if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of program participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants issued pursuant to this subpart. Applicants for payment guarantees are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

(g) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (i.e.,

requests for amendments), by exporters or exporters' assignees under this subpart must be signed by a principal or officer of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by: Wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order which includes the recipient's billing code for such service.

(h) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(i) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information requirements contained in this part (7 CFR part 1493, subpart D) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0037.

Signed this 25th day of June 1996 at Washington, DC.

Mary T. Chambliss,

Acting General Sales Manager, Foreign Agricultural Service and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 96-16674 Filed 6-28-96; 8:45 am]

BILLING CODE 3410-10-P