

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election;

(3) Totalling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of each type if applicable, (see section 12(c)) by the respective price election;

(5) Totalling the results in section 12(b)(4);

(6) Subtracting the results from the total in section 12(b)(5) from the results in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for the acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 12(d)); and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature safflower may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of

moisture in excess of 8 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if such production:

(i) Has a test weight below 35 pounds per bushel;

(ii) Has seed damage in excess of 25 percent; or

(iii) Contains substances or conditions that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions and that occurred within the insurance period;

(ii) The deficiencies, substances, or conditions result in a value per pound that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed to grade safflower under the authority of the Agricultural Marketing Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) Safflower production that is eligible for quality adjustment, as specified in sections 12(d)(2) and (3), will be reduced as follows:

(i) In accordance with the quality adjustment factors contained in the Special Provisions; or

(ii) If quality adjustment factors are not contained in the Special Provisions:

(A) By determining the value per pound and the local market price on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. Discounts used to establish the value per pound will be limited to those which are usual, customary, and reasonable. The value per pound will not be reduced for:

(1) Moisture content;

(2) Damage due to uninsured causes; or

(3) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of safflower. We may obtain values per pound from any buyer of our choice. If we obtain values per pound from one or more buyers located outside your local market area, we will reduce such values per pound by the additional costs required to deliver the production to those buyers.

(B) Divide the value per pound by the local market price to determine the quality adjustment factor; and

(C) Multiply the adjustment factor by the number of pounds of the damaged production remaining after any reduction due to excessive moisture to determine the net production to count.

(e) Any production harvested from other plants growing in the insured crop may be

counted as production of the insured crop on a weight basis.

3. Written Agreement

Terms of this policy which are specifically designated for the use of written agreement may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved by us, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington, D.C., on August 4, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97-20914 Filed 8-7-97; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1493

RIN 0551-AA35

CCC Facility Guarantee Program (FGP)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule provides for facility payment guarantees to be issued by the Commodity Credit Corporation (CCC). The guarantees are to be issued in connection with sales of goods or services to establish or improve agricultural-related facilities in emerging markets to expand exports of U.S. agricultural commodities or products.

DATES: *Effective date:* August 8, 1997.

Comment date: Comments due on or before October 7, 1997.

ADDRESSES: Comments must be submitted in writing to L.T. McElvain,

Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture (USDA), Stop 1035, Washington, DC 20250-1035; FAX (202) 720-2949. All comments received will be available for public inspection at the U.S. Department of Agriculture, Room 4523-S, 1400 Independence Avenue, SW, Washington, DC 20250 during regular business hours.

FOR FURTHER INFORMATION CONTACT: William S. Hawkins, Branch Chief, or Mark A. Rasmussen, Agricultural Marketing Specialist, Export Programs Survey & Review Branch, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture (USDA), Stop 1035, Washington, DC 20250-1035; telephone (202) 720-3241 or 720-1537; FAX (202) 720-0938.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule has been determined to be 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 since 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).

Environmental Evaluation

The Foreign Agricultural Service (FAS) is excluded from the requirements of preparing procedures to implement the National Environmental Policy Act and is categorically excluded from the preparation of an Environmental Assessment or Environmental Impact Statement unless the Administrator of FAS determines that an action may have a significant environmental effect. 7 CFR 1b.4(b)(7). The Administrator has made no such determination with respect to this action.

Paperwork Reduction Act

In accordance with provisions of the Paperwork Reduction Act of 1995, CCC will submit an emergency information collection request (ICR) for the

reinstatement of the Facility Guarantee Program (FGP) submission.

Title: The Facility Guarantee Program.
OMB Control Number: 0551-0032.

Type of Request: Reinstatement, with change, of previously-approved collection for which approval has expired.

Abstract: The information to be collected under the Office of Management and Budget (OMB) Number 0551-0032 is needed to enable the CCC to effectively administer the FGP. The information collection will be used by the CCC to determine the eligibility of applications. CCC considers this information to be essential to prudent eligibility determinations. Failure to make sound decisions in providing payment guarantees for the sale of goods and services may negatively impact exports of U.S. agricultural commodities and products.

The FGP information collection is similar to those for the Export Credit Guarantee (GSM-102) Program and the Intermediate Export Credit Guarantee (GSM-103) Program (OMB control number 0551-004). The information collection for the FGP differs primarily as follows:

- (1) The applicant, in order to receive a payment guarantee, provides information evidencing that the exported goods and services used to develop improved infrastructure will primarily benefit exports of U.S. agricultural commodities and products;
- (2) The applicant is required to certify that the value of non-U.S. components of goods and services is less than 50 percent of the contract value covered under the payment guarantee.

Estimate of Burden: The public reporting burden for this information collection is estimated to average 0.6 hours per response.

Respondents: Agricultural equipment manufacturers and exporters.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 11.

Estimated Total Annual Burden on Respondents: 159.

Topics for comments include: (a) Whether the collection of information is necessary for the proper performance of the functions of the CCC, including whether the information will have practical utility; (b) the accuracy of the CCC's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who

are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be submitted in accordance with the Dates section above and sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; and to L.T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture (USDA), Stop 1035, Washington, DC 20250-1035. Copies of this information collection can be obtained from Valerie Countiss, Agency Information Collection Coordinator, at telephone (202) 720-6713.

OMB is required to make a decision concerning the collection(s) of information contained in these interim regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department of Agriculture on the FGP regulations.

All responses will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Executive Order 12778

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

Summary of Benefit-Cost Analysis

The benefit-cost analysis identifies and estimates potential benefits and costs attributed to provisions of this interim rule, which has been designated as "Significant." These provisions include application requirements and program procedures. The changes in the program made by this rule are expected to have only limited economic effect and are not expected to increase administrative workload of the Federal Government. Provisions of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) which target emerging markets lower estimated subsidy costs by \$2.5 million in FY 1997. Proposed foreign content

provisions will provide participants with fewer restrictions when negotiating terms and conditions of a sales transaction.

Request for Public Comment

The need for immediate action by CCC is predicated by two of the 1996 Act's amendments to the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (1990 Act). The 1996 Act (1) expanded the field of eligible countries to include emerging markets and (2) provided the Secretary of Agriculture the authority to determine and select the emerging markets. These changes reflect the importance of CCC being able to quickly respond to fleeting opportunities for increasing U.S. agricultural exports to emerging market countries, often in volatile and unpredictable circumstances, while at the same time enhancing and helping stabilize the rural business systems of those countries whose economies are in transition.

In addition, in order to implement a program to make available such credit in a timely manner and in a manner that will provide a more uniform distribution of funds in each fiscal year, it has been determined that this rule shall become effective upon publication in the **Federal Register**. However, comments are requested with respect to the provisions of this rule and will be taken into consideration in the development of the final rule. Comments should be submitted to the person indicated in the section titled **ADDRESSES**.

Background

A. Statutory Authority

CCC provides export credit guarantees for export sales of U.S. agricultural commodities under the Export Credit Guarantee (GSM-102) program and the Intermediate Export Credit Guarantee (GSM-103) program. The programs are authorized by section 202 of the Agricultural Trade Act of 1978 as amended (1978 Act). Section 1542(a) of the 1990 Act provides that CCC make available, for fiscal years 1996 through 2002, not less than \$1 billion in direct credits or export credit guarantees for agricultural exports to emerging markets available under the 1978 Act. A portion of such credit guarantees must, in accordance with section 1542(b) of the 1990 Act, be made available for the export of goods and services for agricultural facilities. Guarantees are to be made available if the Secretary of Agriculture determines that such guarantees will primarily promote the

export of United States agricultural commodities and products thereof. Specifically, eligible projects must provide for (1) the establishment or improvement of agricultural facilities in emerging markets, or (2) for the provision of goods or services in emerging markets, by U.S. persons to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities or products in such markets. The phrase "establishment or improvement of facilities" allows for varied types of projects ranging from the sale of equipment (e.g., refrigeration, processing, transportation) and other goods needed to alleviate impediments to increasing export sales of U.S. agricultural commodities, to providing services, such as equipment installation, testing, and training to facilitate achievement of the same purposes.

Section 1542(b) further requires CCC to give priority to projects that (1) encourage the privatization of the agricultural sector in emerging markets, (2) benefit private farms or cooperatives in emerging markets, and (3) are supported by nongovernmental persons who agree to assume a relatively larger share of the costs.

Section 1542(f) of the 1990 Act defines "emerging market" as any country that the Secretary of Agriculture determines (1) is taking steps towards a market-oriented economy through food, agriculture, or rural business sectors of the economy of the country and (2) has the potential to provide a viable and significant market for United States agricultural commodities or their products.

B. Legislative History

CCC published an FGP interim rule on March 1, 1993, (58 FR 11786) in response to the 1990 Act. The 1990 Act required CCC to develop an export credit guarantee program for facilities in countries that were determined by the President to be emerging democracies. However, the FGP was not made operational before the authority expired on September 31, 1995. Congress changed the targeting of the FGP in the 1996 Act to countries determined by the Secretary of Agriculture to be emerging markets. The interim rule was deleted effective November 18, 1994 when CCC revised 7 CFR part 1493 and issued a final rule on the GSM-102 and GSM-103 programs.

C. Summary of Comments—1993 Interim Rule

The Commodity Credit Corporation (CCC) received eleven comments from eight different sources in response to the

Facility Guarantee Program (FGP) Interim Rule published March 1, 1993 in the **Federal Register**. The commenters included three equipment manufacturers, three animal health product manufacturers, the Office of the Inspector General, and a market research firm which submitted three separate responses.

Three comments were project proposals that did not comment on the regulatory aspects of the rule.

Three comments addressed the definition of "acceptable substitute." This definition was required by law in the 1990 Farm Act to be included in the FGP rule. The commenters' believed that CCC misinterpreted the intent of the law and requested that CCC change the definition of acceptable substitute. This recommendation now is unnecessary. The term acceptable substitute was deleted from the 1996 Farm Act. Accordingly, CCC has dropped the definition from the rule under consideration.

One commenter suggested that CCC explain in the preamble of the regulation how CCC arrived at defining "close geographical location of countries" to be 1,000 miles from the target country. The law states that CCC may not provide credit guarantees to projects that may primarily benefit countries in close geographical location to the target country. CCC believes this definition does not improve the program and has dropped this definition from the interim rule. The objective of the FGP is to primarily benefit U.S. agricultural exports. In meeting this objective, no country, except the U.S., without regard to geographic proximity to the targeted emerging market, may primarily benefit from a FGP project.

One commenter requested that CCC provide 100 percent guarantee coverage on principal and interest for letters of credit extended by a foreign bank. CCC disagrees. If CCC provides 100 percent coverage on principal and interest it loses the risk sharing mechanism inherent in CCC's export credit programs. Risk sharing is necessary because CCC does not have the resources required to perform project specific financial and risk analysis. Therefore, to keep CCC's default rate at acceptable levels, risk sharing is essential. CCC believes that risk sharing in the FGP results in more efficient use of its limited resources.

One commenter requested CCC provide a statement in the regulations to include grain/food processing equipment as eligible projects under the FGP. The commenter indicated that the interim rule was unclear on this point. CCC disagrees. The regulations provide

that the FGP may guarantee credit extended for sales of equipment and services that improve handling, processing, storage or distribution of imported agricultural commodities. This program purpose clearly addresses sales of grain/food processing equipment.

One commenter also suggested that CCC qualify Russian banks other than those qualified to participate under the U.S. Export Import Bank (Eximbank) programs. CCC reviews foreign banks against an established set of eligibility criteria. These criteria may include financial and economic factors similar to those reviewed by Eximbank. CCC qualifies all foreign banks expressing a desire to participate in our programs if they meet these criteria.

One commenter recommended that CCC reach out to the food processing industries and agribusiness sector in target countries to promote the use of the program. The commenter pointed out that linking agricultural equipment sales to commodity sales may benefit the U.S. equipment manufacturers and agricultural export industries. CCC agrees and will endeavor to promote the FGP to these sectors in targeted emerging markets.

One commenter suggested that CCC adopt a competitive bidding process for projects to ensure the most cost effective bidder on a project receives the guarantee. CCC disagrees. This suggestion indicates a fundamental misunderstanding of the program. CCC does not plan to solicit FGP applications for specific types of projects. FGP applicants will propose projects and CCC will determine if such projects meet the criteria of the program.

One commenter suggested that project requirements (the information requested by CCC to determine if a FGP guarantee will be approved) be published in the regulation and not the program announcement. CCC agrees and has included such requirements in the regulation (7 CFR 1493.240 and 1493.250).

One commenter suggested that CCC explain why the application fee is \$200 in the preamble of the interim rule. CCC agrees. Simply, the \$200 application fee serves as a disincentive to the submission of speculative applications, and a means to defray a portion of CCC's administrative costs.

One commenter requested the FGP application include detailed financial information on the buyer. The commenter also specifically recommended the application require plans for servicing the guaranteed loan through field inspections, obtaining periodic financial statements, a description of any liens against the

buyer, information concerning litigation against and defaults by the buyer, and the use of consultants in preparing the application. The commenter suggested further that the application require a description of planned insurance coverage (i.e. life, hazard, flood) and the names of foreign regulatory agencies that would require permits, licenses, or other clearances that would impact the facility. CCC disagrees. The commenter's concern appears to be in regard to assessing buyer or project risk. Assessing the ability of the buyer to successfully manage a facility or whether the facility will succeed financially is the role of the foreign bank. CCC's guarantee covers the risk of default of the foreign bank on the repayment obligation to the exporter or their U.S. bank assignee.

Two commenters referred to the application requirements concerning evidence of primary benefits to U.S. agricultural exports. One commenter recommended that the application requirements concerning primary benefit not overburden the applicant. The commenter recommended that CCC streamline paperwork requirements and reduce project approval lead time. The second commenter recommended that the interim rule require applicants to provide evidence of how a project proposal will benefit U.S. agricultural exports. CCC believes that the overall goal of the FGP is to promote U.S. agricultural exports. Sufficient information must be required from applicants in order for CCC to fully evaluate project proposals and the effects projects will have on U.S. agricultural exports. CCC has made many improvements in the interim rule to streamline the application process in comparison to the process outlined by the 1993 interim rule. However, CCC remains open to recommendations that specifically address how CCC may streamline the application review procedures and reduce project proposal lead time.

One commenter suggested that CCC request information from the applicant regarding the procurement funding or guarantees from sources outside of CCC. CCC agrees and has included this recommendation in the regulation (§ 1493.240(a)(22)).

One commenter recommended that the application include the names of attorneys, accountants and other parties engaged in preparing the application. CCC disagrees. Applications submitted under all CCC export programs are required to be signed by a principal of the company applying for a guarantee. CCC believes this is sufficient in addressing any concerns regarding the

veracity of the information contained in the application.

One commenter suggested CCC expand the definition of a "U.S. person" so that CCC may determine if the applicant fulfills this criteria without seeking additional information. CCC believes that program qualifications respond to the commenter's concern. CCC qualifies applicants following a review of documents such as the articles of incorporation, partnership or registration of proprietorship that may permit CCC to determine if an applicant is a legally registered U.S. business entity.

D. The FGP Addresses a Market Failure

The FGP is designed to address a specific market failure. Many emerging markets lack sufficient infrastructure to support expansion of agricultural commodity imports. The demand for capital financing in emerging markets is significant. Agri-business projects must compete with other infrastructure development for the limited capital available. The market failure that arises is that private sector financial institutions may be unwilling to provide credit to agri-business projects, at a reasonable cost. This market failure may be more pervasive for small and medium size enterprises than for larger companies. The availability of CCC's guarantee under the FGP provides an opportunity for U.S. private sector financial institutions to provide credit to a foreign bank that will, in-turn, finance infrastructure projects at a reasonable cost. Such credit extension is unlikely to occur without the benefit of CCC's credit guarantee.

The market failure that FGP addresses, particularly for small and medium size enterprises, is viewed as normally being below the threshold level for multi-lateral and the regional development banks to consider extending financing or guarantees.

E. Exporter and Project Eligibility

CCC will make export credit guarantees available in the form of facility payment guarantees. Section 1542(b) of the 1990 Act provides that an exporter must be a "U.S. person" to be eligible for a facility payment guarantee. Under this interim rule, exporters must also furnish certain information and certifications to CCC in order to be eligible to receive payment guarantees.

Eligible projects must establish or improve agriculture-related facilities in an emerging market. For CCC to approve a facility payment guarantee such projects must primarily promote the export of U.S. agricultural commodities or products. For CCC to make such a

determination, the exporter must convince CCC that the issuance of a facility payment guarantee will cause exports of U.S. agricultural commodities or products to the emerging market to increase:

- (1) To a greater degree than similar exports from other countries;
- (2) To levels significantly above those expected in the absence of providing the facility payment guarantee; and
- (3) For five years or until the facility payment guarantee expires, whichever comes first.

F. Program Implementation

The FGP will be administered by the Office of the General Sales Manager (GSM), Foreign Agricultural Service, U.S. Department of Agriculture, on behalf of CCC. Initially, CCC will consider projects of limited size in a limited number of emerging markets. The effectiveness of the program will be assessed in view of the comments received on the interim rule and after a number of facility payment guarantees have been issued. The GSM will periodically issue program announcements inviting submissions by exporters of applications for facility payment guarantees. These program announcements will identify emerging markets, indicate maximum guarantee coverage, and provide other pertinent information.

CCC will review applications and provide to the exporter a preliminary commitment letter if an application meets the standards of the regulations and appears to represent the best use of CCC's resources. CCC may also request additional information to clarify or supplement an application. CCC may reject applications that do not appear to meet program objectives or for other sufficient reasons.

Upon receiving a letter of preliminary commitment from CCC, the exporter has six months to submit a final application. Such final application must contain information confirming, updating, and supplementing information previously provided. If CCC approves the final application, it will issue a letter of final commitment requiring the exporter to pay an exposure fee before a facility payment guarantee is issued. CCC will issue a facility payment guarantee when the amount of the exposure fee has been paid in full.

G. Credit Terms and Risk Coverage

The terms of CCC's coverage will be set forth in each facility payment guarantee. These will conform to pertinent rules of the Organization for Economic Cooperation and Development (OECD) Arrangement on

Guidelines for Officially Supported Export Credits (Arrangement). Copies of the OECD Arrangement and classification of country categories are available from: The Director, Office of Trade Finance, Department of Treasury, Room 4448, 1500 Pennsylvania Avenue, NW, Washington DC 20220. The OECD Arrangement sets out the most favorable terms allowable for government credits and guarantees. For example, pursuant to the Arrangement, the exporter must oblige the importer to comply with CCC's initial payment requirement (§ 1493.230(c)). This requires the importer to pay the exporter at least 15 percent of the net contract value. The net contract value is equal to the contract value minus (a) the value of goods that are not U.S. goods; and (b) the cost of services that are not U.S. services (except those services the exporter requests CCC to determine are vital to the success of the project and approved to be included in the net contract value (§ 1493.260(b)(1))).

CCC will initially offer facility payment guarantee coverage of 95 percent of the facility base value. This value is the amount of the net contract value that remains after deducting the amount paid in accordance with the initial payment requirement, and the value of any discounts or allowances (§ 1493.260(b)(2)). CCC will also cover interest on a variable rate basis. The method of determining the variable interest rate coverage will be indicated in program announcements and in each payment guarantee. The interim rule also provides that the maximum interest rate, when determined by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

H. Guidelines for U.S. Content

CCC used certain guidelines relating to the inclusion and valuation of goods that are not U.S. goods, services that are not U.S. services, and imported components of U.S. goods in sales transactions covered under this program. The most important of these guidelines are summarized below:

1. FGP payment guarantees are derived only from that portion of an exporter's sales contract that represents (a) U.S. goods, (b) U.S. services, and (c) any services that are not U.S. services that CCC determines are vital to the success of the project and are approved by CCC for coverage. This derived value is called net contract value (§ 1493.260(b)(1)). Any other goods or services included in the exporter's contract (e.g., foreign goods that are not components of U.S. goods, goods not exported from the U.S., and foreign

services not approved by CCC) cannot be included in net contract value.

2. U.S. goods may include imported components that are assembled, processed or manufactured into goods within, and exported from, the U.S. Services that are not U.S. services (e.g., foreign flag freight (e.g., ocean, air), and related insurance, ship discharge operations, inland transportation) provided by persons who are not citizens or legal residents of the U.S. may receive guarantee coverage only if approved by CCC. Most likely CCC will approve such services if they are determined to be vital to the success of the project.

3. In addition to the above requirements, CCC will issue a facility payment guarantee only if the value of covered imported components, combined with the cost of covered services that are not U.S. services, meet the 50 percent minimum U.S. content test (§ 1493.260(d)). This means that those components and services must represent less than 50 percent of the net contract value. The 50 percent determination is made on an aggregate or cumulative basis as exports of goods and services occur, not item by item. For example, more than 50 percent of the value of a single piece of equipment may be comprised of imported components so long as the total value of covered imported components and cost of services that are not U.S. services remain less than 50 percent of net contract value for all goods and services.

To make the above 50 percent determination, imported components are valued at their declared customs value or, in the absence of specific information regarding declared customs value, the fair wholesale market value of the components in the U.S. at the time they are acquired by the exporter. The costs of services that are not U.S. services are the actual amounts paid by the exporter for the services in an arms-length transaction, or, in the absence of such a transaction, the fair market value of the services at the time the services were provided.

4. Imported raw materials (such as iron, steel, nuts, and bolts) which are processed, assembled or manufactured in the U.S. are automatically included in CCC's coverage and are not counted as imported components for the purpose of the 50 percent minimum U.S. content test (§ 1493.260(d)). CCC will rely on commercial practice and communication with participants to resolve issues that may arise regarding raw materials.

I. CCC's Payment Guarantee Mechanism and Claims Procedure

CCC guarantees the exporter, or the exporter's assignee, against defaults by a foreign bank under its irrevocable letter of credit or related obligation. In the event of such a default, the exporter or the exporter's assignee must notify CCC within a ten day period, and may file a claim with CCC within six months. CCC will pay the guaranteed amount of the claim plus eligible interest if all required claims documentation has been received, including an instrument subrogating to CCC the rights of the exporter and, if applicable, the exporter's assignee, to the amount of payment in default. Recoveries made by CCC pursuant to the subrogated rights, or from any source whatsoever, are shared between CCC and the exporter or exporter's assignee on a pro rata basis determined by their respective interests in such recoveries. In the event that monies are recovered by the exporter or the exporter's assignee from any source whatsoever, these must be paid to CCC which will include them in pro rata sharing. The Appendix to § 1493.320 contains an example of pro rata sharing of recoveries.

J. Example: Typical Transaction

A typical transaction eligible for coverage under a facility payment guarantee could be as follows: CCC issues a program announcement inviting U.S. persons to apply for facility payment guarantees in connection with eligible projects in a specified emerging market. The program announcement states that the terms of coverage will be 95 percent of the facility base value (§ 1493.260(b)(2)). An exporter responds by submitting an application for the export sale of goods and services to an importer in the emerging market. The goods and services have a contract value of \$2.2 million, of which \$200,000 represents goods that are not U.S. goods which are not further processed, assembled, or manufactured into U.S. goods and services that are not U.S. services for which no CCC coverage is sought. Those goods and services are subtracted from the contract value to provide the net contract value of \$2.0 million (§ 1493.260(b)(1)). The exporter does not expect any discounts and allowances to be provided.

The combined value or cost of covered imported components contained in U.S. goods and services that are not U.S. services for which CCC coverage is requested is \$650,000. This represents 32.5 percent of the net contract value. Because this is less than 50 percent, the sale meets the U.S.

content test (§ 1493.260(d)). The exporter indicates that the importer, in order to comply with the initial payment requirement (15 percent of the net contract value), will pay the exporter \$300,000.

The net contract value (\$2 million) minus the initial payment requirement (\$300,000), minus discounts and allowances (zero), equals the facility base value (\$1,700,000) to which CCC's rate of coverage applies. The payment guarantee would thus show a guaranteed value of 95 percent of \$1,700,000, or \$1,615,000 as shown below. The facility payment guarantee would also indicate how eligible interest would be covered on a variable rate basis, consistent with relevant program announcements.

Example

(1) Contract Value	\$2,200,000
(a) minus: Goods and services that are not U.S. goods and services and are not approved for coverage by CCC	200,000
(2) Equals: Net Contract Value	2,000,000
(a) minus: Initial Payment (15% of net contract value)	300,000
(b) minus: Discounts and Allowances	0
(3) equals: Facility Base Value	1,700,000
(4) Guaranteed Value (95 percent of \$1,700,000)	1,615,000

Exporters should recognize that the maximum liability for a claim (§ 1493.310(b)), under certain circumstances, may turn out to be less than \$1,615,000. Under § 1493.310(b), CCC's liability is limited to the lesser of: (1) The guaranteed value as provided in the facility payment guarantee, plus eligible interest, or (2) the guaranteed percentage of a value called the exported value indicated in the evidence of export report(s), plus eligible interest. The exported value is the net contract value of the goods or services exported minus (a) the initial payment and (b) the dollar amount of any discounts and allowances (§ 1493.280(a)(7)). Thus, if for any reason, the exported value decreases, the dollar amount of coverage would decrease. For example, the exported value would be less if fewer goods and services are exported; if the value of goods and services exported decreases from the value originally reported to CCC; if discounts or allowances, not foreseen at the time of application, are provided; or if payments by the importer exceed the initial payment requirement.

List of Subjects in 7 CFR Part 1493

Administrative practice and procedures, Agricultural commodities, Agriculture, Banks, Banking, Business and industry, Credit, Exports, Finance, Foreign banks, Guaranteed loans, Reporting and recordkeeping requirements.

Accordingly, Part 1493 of Title 7 is amended as follows:

PART 1493—[AMENDED]

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

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

2. By adding a new subpart C to read as follows:

Subpart C—CCC Facility Guarantee Program (FGP) Operations

Sec.	
1493.200	General statement.
1493.210	Definition of terms.
1493.220	Exporter eligibility.
1493.230	Eligible transactions.
1493.240	Initial application and letter of preliminary commitment.
1493.250	Final application and issuance of a facility payment guarantee
1493.260	Facility payment guarantee.
1493.270	Certifications.
1493.280	Evidence of export report.
1493.290	Proof of entry.
1493.300	Notice of default and claims for loss.
1493.310	Payment for loss.
1493.320	Recovery of losses.
1493.330	Miscellaneous provisions.

Subpart C—CCC Facility Guarantee Program (FGP) Operations

§ 1493.200 General statement.

This subpart governs the Commodity Credit Corporation's (CCC) Facility Guarantee Program (FGP). CCC will issue facility payment guarantees for project applications meeting the terms and conditions of the Facility Guarantee Program (FGP) and where private sector financing is otherwise not available. This subpart describes the criteria and procedures for applying for a facility payment guarantee, and contains the general terms and conditions of such a guarantee. These general terms and conditions may be supplemented by special terms and conditions specified in program announcements or notices to participants published prior to the issuance of a facility payment guarantee and, if so, will be incorporated by reference on the face of the facility payment guarantee issued by CCC.

§ 1493.210 Definition of terms.

Terms set forth in this subpart will have the following meaning:

Assignee. A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive payment under the facility payment guarantee.

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

Contacts P/R. A notice issued by Foreign Agricultural Service, U.S. Department of Agriculture (FAS/USDA) by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC. 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 facility payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

Contract value. The total negotiated dollar amount for the export sale of goods and services to emerging markets.

Date of export for goods. The on-board date of an ocean bill of lading or an airway bill, the on-board ocean carrier date of an intermodal bill of lading; 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.

Date of export for services. The date interest begins to accrue on credit extended to cover payment for services, except for freight and marine insurance where the date of export is the same date as for the goods exported.

Discounts and allowances. Any consideration provided directly or indirectly, by or on behalf of an exporter, to an importer in connection with a sale of goods or services, in excess of the value of such goods or services. Discounts or 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 obligation; or the whole or partial release of the importer from any financial or contractual obligation.

Facility. An opportunity or project that improves the handling, marketing, processing, storage, or distribution of

imported agricultural commodities or products.

GSM. The General Sales Manager, Foreign Agricultural Service, U.S. Department of Agriculture, acting in his capacity as Vice President, CCC; or his designee.

U.S. goods. Goods that are assembled, processed or manufactured in, and exported from, the United States including goods which contain imported raw materials or imported components.

U.S. services. Services performed by citizens or legal residents of the United States, including those temporarily residing outside the United States.

§ 1493.220 Exporter eligibility.

An exporter may apply for a facility payment guarantee if such exporter:

- (a) Is a citizen or legal resident of the United States or is a business organized under the laws of any state of the United States or the District of Columbia;
- (b) Has an established place of business in the United States;
- (c) Has a registered agent for service of process in the United States; and
- (d) Is not suspended or debarred, or owned or controlled by a person who is suspended or debarred, from contracting with, or participating in programs administered by, a U.S. Government agency.

§ 1493.230 Eligible transactions.

(a) **Program announcements.** From time to time CCC will issue program announcements indicating the availability of facility payment guarantees in connection with sales of goods or services to emerging markets. The announcements will specify the emerging markets, the maximum amount, in U.S. dollars, of guarantee exposure that CCC will undertake, and may specify special terms or conditions that will be applicable.

(b) **Sale requirements.** CCC will issue facility payment guarantees only in connection with projects that CCC determines will benefit primarily exports of U.S. agricultural commodities and products, and only where there is a firm contract for the sale of goods or services for the establishment or improvement of an agriculture-related facility. The contract may be contingent, however, on the issuance of a CCC facility payment guarantee.

(c) **Initial payment requirement.** The contract for sale of goods or services between the exporter and the importer shall oblige the importer to make an initial payment(s) to the exporter of at least 15 percent of the net contract value in § 1493.260(b)(1). Such initial payment(s) shall be in U.S. dollars or

instruments having a definite value in U.S. dollars, and shall be made prior to the export of the goods or services.

(d) **Required method of payment.** CCC will issue a facility payment guarantee only in connection with a sale in which payment will be made under either:

- (1) An irrevocable foreign bank letter of credit specifically stating the deferred payment terms under which the foreign bank is obligated to make payments in U.S. dollars as payments become due; or
- (2) An irrevocable foreign bank letter of credit supported by a related obligation specifically stating the deferred payment terms under which the foreign bank is obligated to make payment in U.S. dollars as such payments become due.

(e) **Form of letter of credit.** The foreign bank letter of credit referred to in paragraph (d) of this section shall be an irrevocable commercial letter of credit, subject to the revision of the International Chamber of Commerce Uniform Customs and Practices for Documentary Credits[©] in effect when the letter of credit is issued, providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign banking institution.

(f) **Form of related obligation.** The related obligation referred to in paragraph (d) of this section shall be in one of the following forms:

(1) A letter of credit including a specific promise to pay on deferred payment terms as a special instruction from the issuing bank directly to the U.S. financial institution to refinance the amounts paid by the U.S. financial institution for obligations financed according to the tenor of the letter of credit;

(2) A separate document specifically identified and referred to in the letter of credit as the agreement under which the foreign bank is obligated to repay the U.S. financial institution on deferred payment terms;

(3) A separate document setting forth the related obligation, or in a duly executed amendment thereto, as having been financed by a U.S. financial institution pursuant to, and subject to, repayment in accordance with the terms of such related obligation; or

(4) A promissory note executed by a foreign bank issuing the letter of credit in favor of the financial institution.

§ 1493.240 Initial application and letter of preliminary commitment.

(a) **Initial Application.** An exporter may apply for a facility payment guarantee by submitting the following information:

(1) A cover sheet with the title: "Application for a Facility Payment Guarantee—Preliminary Commitment";

(2) The program announcement number;

(3) The emerging market;

(4) The name, contact person, address, and telephone number and, if applicable, facsimile number and E-mail address of:

(i) The exporter;

(ii) The exporter's registered agent for service of process in the United States;

(iii) The exporter's assignee, if applicable;

(iv) The importer;

(v) The end-user of the goods or services if other than the importer;

(vi) The foreign bank expected to issue the letter of credit or related obligation; and

(vii) The financial institution in the United States expected to provide financing;

(5) A statement on letterhead from a:

(i) Foreign bank indicating an interest in guaranteeing payment, in U.S. dollars, for goods or services to be exported under the facility payment guarantee at least equal to the net contract value listed in paragraph (a)(14) of this section, less the initial payment requirement listed in paragraph (a)(15) of this section; and

(ii) Financial institution in the U.S. indicating an interest in financing the export sales of goods or services under the facility payment guarantee for an amount at least equal to the net contract value listed in paragraph (a)(14) of this section less the initial payment requirement listed in paragraph (a)(15) of this section. The financial institution must state that such financing would not otherwise be available without an FGP payment guarantee;

(6) The period for which credit is being extended to finance the sale of goods or services covered by the facility payment guarantee;

(7) The exporter's sales number pertinent to this application and a description of the status of the intended sale;

(8) A description (e.g., a process flow diagram) of the agriculture-related facility that will use the goods or services to be covered by the facility payment guarantee and an explanation of how these goods and services will be used to improve handling, marketing, processing, storage, or distribution of agricultural commodities or products;

(9) A brief description of each good or service to be covered by the facility payment guarantee including, where applicable, brand name, model number, Standard Industrial Classification (SIC) or the North American Industry

Classification System (NAICS) code, and contract specifications;

(10) The final date for export of goods or services. If applicable, include construction start date, milestones (e.g., installation), and contractual deadline for completion of project;

(11) The contract value for the sale of goods or services and the basis of sale for goods to be exported (e.g., FOB, CFR, CIF);

(12) The description and value of the goods or cost of services listed in paragraph (a)(11) of this section that are not U.S. goods or services;

(13) Identification and cost of, and justification for, those services listed in paragraph (a)(12) of this section for which the exporter requests CCC to provide coverage;

(14) The net contract value in § 1493.260(b)(1) obtained by subtracting paragraph (a)(12) of this section from paragraph (a)(11) of this section, and adding paragraph (a)(13) of this section;

(15) The amount to be paid in accordance with the initial payment requirement (§ 1493.230(c));

(16) The description and dollar amount of discounts and allowances provided in connection with the sale of goods or services covered by the facility payment guarantee;

(17) The facility base value in § 1493.260(b)(2) obtained by subtracting paragraphs (a)(15) and (a)(16) of this section from paragraph (a)(14) of this section;

(18) The maximum guaranteed value under the facility payment guarantee determined by multiplying the facility base value listed in paragraph (a)(17) of this section by the guarantee rate of coverage announced by CCC in § 1493.260(b)(3);

(19) A map or other description of the facility's location and distance from major population centers of neighboring countries;

(20) For all principal agricultural commodities or products (inputs) to be handled, marketed, processed, stored, or distributed, by the proposed project after completion, provide:

(i) A list or table identifying such principal inputs;

(ii) The likely countries of origin for each input;

(iii) Estimated annual quantities, in metric tons, of each input listed in paragraph (a)(20)(i) of this section to be used by the project for five years from the final date of export or until the expiration of the facility payment guarantee, whichever comes first; and

(iv) An analysis, including price, cost, and other assumptions (the reasons why U.S. agricultural commodities or products will be more competitive

inputs than commodities or products from other sources, and whether the projected use of U.S. agricultural commodities or products depends on the availability of U.S. export bonus or credit guarantee programs), of which inputs listed in paragraph (a)(20)(i) of this section will represent increased imports of U.S. agricultural commodities or products;

(A) To a greater degree than imports of agricultural commodities or products from other countries;

(B) To or at levels significantly above those expected in the absence of the project; and

(C) For a period of five years from the final date of export or until expiration of the facility payment guarantee, whichever comes first.

(21) If applicable, a list of agricultural outputs or final products of the proposed project and:

(i) Projected annual quantities (for five years or until the expiration of the facility payment guarantee, whichever comes first), in metric tons, of each output to be marketed;

(A) Within the emerging market; and

(B) In any other country;

(ii) Quantities, by country of origin, of products imported into the emerging market during the past year which would compete with such outputs; and

(iii) An analysis of whether products of the project will significantly displace U.S. exports of similar agricultural commodities or products in any market;

(22) If applicable, a description of any arrangements or understandings with other U.S. or foreign government agencies, or with financial institutions or entities, private or public, providing financing to the exporter in connection with this export sale, and copies of any documents relating to such arrangements;

(23) A description of the exporter's experience selling goods or providing services similar to those for which the exporter seeks to obtain facility payment guarantee coverage;

(24) A statement of how this project may encourage privatization of the agricultural sector, or benefit private farms or cooperatives, in the emerging market. Include in the statement the share of private sector ownership of the project;

(25) The exporter's signature.

(b) *Application fee.* The exporter shall pay the application fee specified in the program announcement at the time the application is submitted. An application will not be considered without payment of the specified fee. The application fee is nonrefundable.

(c) *Letter of preliminary commitment.* CCC will determine whether, in its

judgment, the project in connection with which the exporter seeks a facility payment guarantee is likely to increase exports of U.S. agricultural commodities or products to an emerging market; and whether the project is likely to benefit primarily U.S. agricultural commodities or products as opposed to commodities or products originating in other countries. If necessary, CCC may seek additional information from an applicant prior to making its determination. If CCC determines that an application meets these standards and appears to represent, in CCC's judgment, the best use of available resources, CCC will respond to the applicant with a letter of preliminary commitment indicating CCC's interest in issuing a facility payment guarantee conditioned on its approval of the exporter's final application.

§ 1493.250 Final application and issuance of facility payment guarantee.

(a) *Final application.* An exporter who has received a letter of preliminary commitment may, within six months of the date of such letter, submit a final application to CCC for a facility payment guarantee which shall include the following information:

- (1) A cover sheet with the title: "Application for a Facility Payment Guarantee—Final Commitment."
- (2) A letterhead statement from the importer's bank or other documentation confirming the importer has the financial ability to comply with the initial payment requirement in § 1493.230(c);

(3) Written evidence of a firm sale signed by the exporter and the importer, specifying at minimum, the following information: Goods or services to be exported, quantities of such items, delivery terms (e.g., FOB, CFR, CIF), delivery period(s), contract value, payment terms, and date of sale. A sales contract may be contingent upon obtaining a facility payment guarantee;

(4) A description of any changes in the information submitted in the preliminary application; and

(5) The exporter's signature;

(b) *Additional information.* CCC shall have the right to request the exporter to furnish any other information and documentation it deems pertinent to the evaluation of the exporter's final application for a final commitment. CCC may request from the exporter an independent engineering study or economic feasibility study relating to the project.

(c) *Final commitment letter.* After making a favorable determination on the exporter's submissions, CCC will issue a final commitment letter indicating the

applicable exposure fee rate and stating that CCC is prepared to issue a facility payment guarantee upon receiving full payment of the exposure fee within an allotted time. The letter will also indicate the key terms and coverage of the guarantee to be issued. CCC will also inform exporters in writing when it denies their request for a facility payment guarantee.

(d) *Exposure fee.* The exposure fee is calculated by multiplying the requested guaranteed value (up to the maximum established by CCC's final commitment letter) by the exposure fee rate. Once the facility payment guarantee is issued to the exporter, CCC will ordinarily not refund the exposure fee. If CCC does not issue a facility payment guarantee, or issues a guarantee for only part of the coverage requested, CCC will make a full or *pro rata* refund of the exposure fee, as appropriate.

(e) *Issuance of the facility payment guarantee.* Upon receipt of the exposure fee, CCC will issue a facility payment guarantee.

§ 1493.260 Facility payment guarantee.

(a) *CCC's maximum obligation.* CCC will agree to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value stipulated on the face of the facility payment guarantee, plus eligible interest, in the event that the foreign bank fails to pay under the foreign bank letter of credit or related obligation. The exact amount of CCC's liability in the event of default will be determined in accordance with § 1493.310(b).

(b) *Calculation of maximum guarantee coverage.* CCC will determine the maximum amount of its obligation under a facility payment guarantee by calculating a:

(1) Net contract value equal to the contract value minus:

(i) The value of goods that are not U.S. goods; and

(ii) The cost of services that are not U.S. services (except those services the exporter requests CCC to determine are vital to the success of the project and approved to be included in the net contract value);

(2) Facility base value equal to net contract value minus:

(i) The amount to be paid in accordance with the initial payment requirement in § 1493.230(c); and

(ii) The amount of discounts and allowances; and

(3) Maximum guaranteed value equal to:

(i) A principal amount determined by multiplying the facility base value (as determined in § 1493.260(b)(2)) by the

guaranteed percentage specified in the program announcement; and

(ii) Interest on such principal amount at the rate specified in the applicable program announcement, not to exceed the investment rate of the most recent Treasury 52-week bill auction in effect at that time.

(c) *Value and cost.* For the purposes of this section:

(1) *Value* means declared customs value of the goods; or, in the absence of specific information regarding declared customs value, the fair market wholesale value of the imported goods in the United States at the time they were acquired by the participant; and

(2) *Cost* means actual amount paid by the exporter for the services in an arms-length transaction; or in the absence of an arms-length transaction, the fair market value of the services at the time the services were provided.

(d) *U.S. content test.* (1) CCC will issue a guarantee only if the following items collectively represent less than 50 percent of the net contract value in § 1493.260(b)(1):

(i) The value of imported components (except for raw materials) that are assembled, processed, or manufactured into U.S. goods included in the net contract value;

(ii) The cost of services that are not U.S. services (including freight on foreign flag carriers and transportation insurance registered with foreign agents) that, at the request of the exporter, CCC determines are vital to the success of the project and approves their inclusion in the net contract value;

(2) For purpose of this subsection, minor or cosmetic procedures (e.g., affixing labels, cleaning, painting, polishing) do not qualify as assembling, processing or manufacturing;

(3) For purpose of this subsection, local services which involve costs for hotels, meals, transportation, and other similar services incurred in the emerging market are not U.S. services.

(e) *Period of guarantee coverage.* The payment guarantee will apply to the period beginning on the date(s) of export(s) and will continue during the credit term specified in the facility payment guarantee. For goods, the period of coverage will also apply from the date on which interest begins to accrue, if earlier than the date of export. The final payments of principal and interest by the foreign bank must come due within the period of guarantee coverage.

(f) *Terms of the CCC facility payment guarantee.* The terms of CCC's coverage will be set forth in the facility payment guarantee and will include the provisions of this subpart, which may

be supplemented by any program announcement(s) or notice(s) to participants in effect at the time the facility payment guarantee is approved by CCC.

(g) *Final date to export.* The final date to export will be stated in the facility payment guarantee.

(h) *Ineligible exports.* Goods or services with a date of export prior to the date CCC issues the facility payment guarantee are ineligible for coverage unless approved by the GSM.

(i) *Additional requirements.* The facility payment guarantee may contain such additional terms, conditions, and limitations as are deemed necessary or desirable by the GSM. Such additional terms, conditions or qualifications, as stated in the facility payment guarantee, are binding on the exporter or the exporter's assignee.

(j) *Amendments.* Exporters must notify CCC of any amendments concerning contracts covered by a facility payment guarantee. CCC will determine if the contract amendments will require amendments to the facility payment guarantee. Amending the facility payment guarantee may result in an increase to the exposure fee. Requests made by the exporter to amend the facility payment guarantee so as to change the guaranteed value must have the concurrence of the assignee when an assignment has been made.

(k) *Effective date.* The facility payment guarantee shall become effective on the date of export of the goods or services.

Appendix to Section 1493.260— Illustration of FGP Coverage of Imported Raw Materials, Components, and Services That Are Not U.S. Services

The following example illustrates CCC's regulations and policy options with regard to issuing a payment guarantee for a project which includes imported raw materials, imported components, and services that are not U.S. services:

1. Ten grain trucks and one truck scale are to be exported from the U.S. to an emerging market. The trucks will provide the ability to purchase larger quantities of grain from the U.S. The contract value totals \$2,025,000, cost, insurance and freight (CIF) basis.

2. The fenders, hoods and doors of the trucks have been manufactured and assembled in the U.S. and contain some imported raw materials (sheet metal).

3. Imported components consist of starters and alternators, with a U.S. customs valuation of \$149,000. These items are installed into the trucks in the U.S.

4. The truck scale was imported from Canada into the U.S. with a U.S. customs valuation of \$20,000.

5. A U.S. citizen, will travel on a foreign airline carrier to the emerging market (airfare

is \$1,000) to instruct mechanics in repair and maintenance of the trucks. He will be paid a salary for this service and, in addition, will be reimbursed separately for local costs in the emerging market (e.g., hotel, meals, transportation) which are estimated to be \$5,000.

6. The trucks are to be shipped on foreign flag vessels, and the marine insurance is to be placed with a foreign agent. The combined cost of these services that are not U.S. services for which the exporter seeks coverage is estimated to be \$500,000.

CCC's Approval of Services that are Not U.S. Services

CCC agrees to include in the net contract value the foreign flag freight and marine insurance (\$500,000) and the airfare (\$1,000) of the U.S. instructor (\$1493.260(b)(1)).

Calculation of Net Contract Value

CCC will calculate the net contract value by subtracting from the contract value (\$2,025,000) the U.S. customs value of the truck scale (\$20,000) in accordance with § 1493.260(b)(1)(i) and the local costs to be incurred by the U.S. instructor (\$5,000) in accordance with § 1493.260(b)(1)(ii) to equal \$2,000,000.

CCC's Determination of U.S. Content Eligibility

The imported components and services that are not U.S. services approved for coverage total \$650,000 (i.e., \$149,000 for starters and alternators, \$1,000 for airfare, \$500,000 for freight and insurance; or 32.5 percent of the net contract value of \$2,000,000 (§ 1493.260(b)(1)). Since this is less than 50 percent of the net contract value the transaction meets the U.S. content test (§ 1493.260(d)).

§ 1493.270 Certifications.

(a) *Exporter's signature.* The exporter's signature on documentation submitted to CCC under this subpart, is the exporter's certification that:

(1) There have not been and are no arrangements for any payments in violation of the Foreign Corrupt Practices Act of 1977, as amended, or other U.S. Laws;

(2) All information submitted to CCC is true and correct; and

(3) The exporter is in compliance with this subpart.

(b) *False certification.* False certifications under this subpart may result in the termination of the facility payment guarantee, suspension or debarment, or civil or criminal action.

§ 1493.280 Evidence of export report.

(a) *Report of export.* The exporter is required to provide CCC an evidence of export report for each shipment of goods or provision of services covered under the facility payment guarantee. Each report must be numbered in chronological order and contain the following information in the order prescribed below:

(1) The facility payment guarantee number;

(2) The date goods or services were exported or provided;

(3) The exporter's sale number, bill of lading numbers, or identification of other documents that may be submitted to establish the contract value of the goods or services exported or provided;

(4) The net contract value of the exported goods or services as determined in accordance with § 1493.260(b)(1);

(5) The amount paid in accordance with the initial payment requirement (§ 1493.230 (c));

(6) A description and dollar value of discounts and allowances, if any;

(7) The exported value of the shipment which is the net contract value of the goods or services exported in paragraph (a)(4) of this section minus:

(i) The initial payment requirement listed in paragraph (a)(5) of this section; and

(ii) The dollar amount of any discounts and allowances listed in paragraph (a)(6) of this section;

(8) The name of the carrier and, if applicable, the name of the vessel;

(9) The final payment schedule showing the payment due dates and amounts of principal, and payment due dates for interest accrual. If the payment schedule is unknown, the exporter must indicate in writing that: "The payment schedule will be provided in an amendment to the evidence of export report when the payment schedule has been determined;"

(10) Written statements that:

(i) The goods exported or services provided were included in the final application for a final commitment as approved by CCC for coverage under the facility payment guarantee and this subpart;

(ii) The specifications and quantity of goods or services exported conform to the information contained in the exporter's application documents for a facility payment guarantee, or if different, that CCC has approved of such changes;

(iii) A letter of credit has been opened in favor of the exporter by the foreign bank shown on the facility payment guarantee to cover the dollar amount of the sale of goods or services exported less the amount paid in accordance with the initial payment requirement and less discounts and allowances; and

(11) The exporter's signature.

(b) *Final report of export.* The final evidence of export report submitted under a facility payment guarantee must contain:

(1) A written statement that exports under the facility payment guarantee have been completed;

(2) The information requested in § 1493.280(a) for the shipment(s) included in the final report; and

(3) The combined total of all dollar amounts reported under § 1493.280 (a) and (b) for all reports.

(c) *Time limit for submission of evidence of export report.* Unless extended by CCC for good cause, the exporter must submit to CCC an evidence of export report:

(1) Within 60 days of the date goods are exported by rail or truck;

(2) Within 30 days of the date goods are exported by any other carrier; or

(3) Within 30 days of the date of export of services.

(d) *Late reports.* If the evidence of export report is not received by CCC within the time period for filing, the facility payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would likely result, in:

(1) Significant financial harm to CCC;

(2) The undermining of an essential regulatory purpose of the FGP;

(3) The obstruction of the fair administration of the FGP; or

(4) A threat to the integrity of the FGP.

§ 1493.290 Proof of entry.

(a) *Diversion.* The diversion of goods covered by a facility payment guarantee to a country other than that shown on the facility 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 goods authorized by the facility payment guarantee. 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:

(1) For goods: An original certificate, signed by a duly authorized customs or port official of the emerging market, by the importer, by an agent or representative of the vessel or ship line which delivered the goods to the emerging market, or by a private surveyor in the emerging market, or other documentation deemed acceptable by CCC:

(i) Showing that the goods entered the emerging market;

(ii) Identifying the export carrier;

(iii) Describing the goods; and

(iv) Indicating date and place the goods were unloaded in the emerging market.

§ 1493.300 Notice of default and claims for loss.

(a) *Notice of default.* If the foreign bank issuing the letter of credit fails to make payment pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than ten days after the date that payment was due from the foreign bank (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 facility 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 approved by the Controller, CCC. The notice of default must include:

(1) Facility payment guarantee number;

(2) Name of the emerging market;

(3) Name of the defaulting bank;

(4) Payment due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;

(6) Date of foreign bank's refusal to pay, if applicable; and

(7) Reason for the foreign bank'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) Facility 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 foreign bank obligation applicable to the claim; and

(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)(A) The foreign bank's letter of credit securing the export sale, and;

(B) If applicable, the document(s) evidencing the related obligation owed by the foreign bank to the assignee financial institution which is related to

the foreign bank's letter of credit issued in favor of the exporter.

(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 emerging market;

(iii) The exporter's sales invoice(s) showing the value and basis of sale (e.g., FOB, CFR, or CIF) or, if services are billed separately, documents that the exporter or its assignee relied upon in extending the credit to the issuing foreign bank;

(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. The instrument must reference the applicable foreign bank letter of credit and the related obligation, if applicable; and

(v) A copy of the evidence of export report(s) previously submitted by the exporter to CCC pursuant to § 1493.280.

(c) *Subsequent claims for defaults on installments.* The exporter or an exporter's assignee need only provide one claim which meets full documentation requirements relating to a covered transaction. For subsequent claims relating to such failures of the foreign bank to make scheduled installments on the same export, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraphs (b) (1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and the date the original claim was filed with CCC.

§ 1493.310 Payment for loss.

(a) *Determination of CCC's liability.*

Upon receipt in good order of the information and documents required under § 1493.300, CCC will determine whether or not a loss has occurred for which CCC is liable under the facility payment guarantee, this subpart, program announcement(s) and notice(s) to participants. If CCC determines that it is liable to the exporter 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.* CCC's maximum liability for any claims for loss submitted with respect to any facility 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 facility payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the facility payment guarantee) of the exported value indicated in the evidence of export report (§ 1493.280(a)(7)), 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 claim was 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 latest 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, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the best interest 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 the value of goods or services covered by a facility payment guarantee, CCC will not 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 § 1493.270 and § 1493.280 excluding post-export adjustments (i.e., corrections of evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.300.

§ 1493.320 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the foreign bank of CCC's rights under the subrogation agreement to recover all monies 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, the foreign bank 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 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 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 facility payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the facility 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 days from the date of recovery or 15 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 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 facility payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer or the foreign bank, 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 facility

payment guarantee, CCC prorates 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 to § 1493.320 provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.*

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

(e) *Good faith.* The violation by an exporter of the certifications in § 1493.270 or the failure of an exporter to comply with the provisions of § 1493.290 or § 1493.330(e) will not affect the validity of any facility 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 facility payment guarantee or at the time of assignment of the facility 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 foreign bank or the importer.

Appendix to § 1493.320—Illustration of Pro Rata Allocation of Recoveries

The following example illustrates CCC's policy, as set forth in § 1493.320, regarding pro rata sharing of recoveries made for claims filed under the FGP. For the purpose of this example only, even though CCC interest coverage is on a floating rate basis, a constant rate of interest is assumed. A typical case might be as follows:

1. The U.S. bank enters into a \$300,000 three-year credit arrangement for the export sale of goods and services with the foreign bank calling for equal semi-annual payments of principal and semi-annual payment of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum on overdue amounts until the overdue amount is paid.

2. Exported value reported to CCC equals \$300,000.

3. The foreign bank fails to make the final principal payment of \$50,000 and an interest payment of \$2,493.15, both due on January 31.

4. On February 10, the U.S. bank files a notice of default and claim in good order with CCC.

5. CCC's guarantee states that CCC's maximum liability is limited to 95 percent of the principal amount due (\$47,500) and interest at a rate of 8 percent per annum (basis 365 days) on 95 percent of the principal (\$1,894.80).

6. CCC pays the claim on February 22.

7. The latest investment rate of the 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (February 11) is 7 percent.

Computation of Obligations

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

1. CCC's Obligation under the Facility Payment Guarantee:	
(a) Principal coverage—	
$(95\% \times \$50,000)$	\$47,500.00
(b) Interest coverage— $(8\% \times \$47,500 \times 182/365)$	1,894.80
Total	49,394.80
(c) Late interest due from CCC (7% per annum for 11 days \times \$49,394.80) ...	104.20
(d) Amount paid by CCC on February 22	49,499.00
2. Foreign Bank's Obligation under the Letter of Credit or the Related Obligation:	
(a) Principal due January 31	50,000.00
Interest due January 31 $(10\% \times \$50,000 \times 182/365)$	2,493.15
Amount owed by foreign bank as of January 31	52,493.15
(b) Penalty interest due $(12\% \text{ per annum for } 22 \text{ days} \times \$50,000)$	361.64
(c) Amount owed by foreign bank as of February 22	52,854.79
3. Amount of Foreign Bank's Obligation Not Covered by CCC's Payment Guarantee: ..	3,355.79.

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 foreign bank 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 foreign bank is \$52,854.79, CCC would be entitled to 93.65 percent (\$49,499.00 divided by \$52,854.79) and the holder of the facility payment guarantee would be entitled to 6.35 percent

(\$3,355.79 divided by \$52,854.79) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim had been paid by CCC, § 1493.320(b) would apply.

§ 1493.330 Miscellaneous provisions.

(a) *Assignment.* (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a facility 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 facility payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be subject to further assignment. Any assignment may be made to one party as agent or trustee for two or more parties participating in the 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 such financial institution and to the exporter issued the facility 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 facility 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; or

(2) Is the financial institution issuing the letter of credit or a branch, agency or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

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

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

(2) Is the financial institution issuing the letter of credit or a branch, agency, or subsidiary of such institution; or

(3) Is owned or controlled by an entity that owns or controls the financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign bank issuing the letter of credit.

(d) *Alternative satisfaction of facility payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the facility payment guarantee has been assigned, with the agreement of the exporter's assignee), establish procedures, terms or conditions for the satisfaction of CCC's obligations under a facility payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the facility 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 facility 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 goods or services exported in connection with a facility payment guarantee, including those records generated and maintained by agents, 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 facility 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, or a related company's books, records, and accounts concerning transactions relating to the facility payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, manufacturing, processing, and administrative and incidental costs, both normal and unforeseen.

(2) The exporter must maintain the proof of entry required by § 1493.290(b),

and must provide access to such document 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, this subpart, program announcement(s), and notice(s) to participants relating to the FGP, as applicable. Applicants for facility payment guarantees under this program are hereby on notice that they will be bound by any terms contained in applicable program announcement(s) or notice(s) to participants issued prior to the date of approval of a facility 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:

(1) Wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and

(2) 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 this subpart 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 facility payment guarantee or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the facility payment guarantee if made with a corporation for its general benefit.

(i) *Deadlines.* (1) Where a deadline is fixed in terms of days, it means business

days and excludes Saturdays, Sundays and federal holidays.

(2) Where a deadline is fixed in terms of months, the deadline falls on the same day of the month as the day triggering the deadline period, or if there is no same day, the last day of the month; and

(3) Where a deadline would otherwise fall on a Saturday, Sunday or federal holiday, the deadline shall be the next business day.

Signed this 1st day of August, 1997 at Washington, DC.

Christopher E. Goldthwait,

General Sales Manager, Commodity Credit Corporation.

[FR Doc. 97-20761 Filed 8-7-97; 8:45 am]

BILLING CODE 3410-10-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97-007-2]

Change in Disease Status of The Netherlands Because of Hog Cholera

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by removing The Netherlands from the list of countries free from hog cholera. We took this action based on reports we have received from The Netherlands that an outbreak of hog cholera has occurred in The Netherlands. As a result of this action, there are additional restrictions on the importation of pork and pork products into the United States from The Netherlands, and the importation of swine from The Netherlands is prohibited.

EFFECTIVE DATE: The interim rule was effective on February 21, 1997.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, suite 3B05, 4700 River Road Unit 39, Riverdale, MD 20737-1231, (301) 734-3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective February 21, 1997, and published in the **Federal Register** on February 27, 1997 (62 FR

8867-8868, Docket No. 97-007-1), we amended §§ 94.9(a) and 94.10(a) of the regulations by removing The Netherlands from the list of countries declared to be free from hog cholera.

Comments on the interim rule were required to be received on or before April 28, 1997. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 94 and that was published at 62 FR 8867-8868 on February 27, 1997.

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 4th day of August 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97-20996 Filed 8-7-97; 8:45 am]

BILLING CODE 3410-34-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

General Rules and Regulations, Securities Exchange Act of 1934

CFR Correction

In title 17 of the Code of Federal Regulations, part 240 to end, revised as of April 1, 1997, on page 369, in § 240.17a-5, paragraph (g)(1) is corrected to read as follows: