

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1493

RIN 0551-AA74

#### CCC Export Credit Guarantee (GSM-102) Program

**AGENCY:** Foreign Agricultural Service and Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise and amend the regulations that administer the Export Credit Guarantee (GSM-102) Program. Changes in this proposed rule incorporate program operational changes and information from press releases and notices to participants that have been implemented since the publication of the current rule, and include other administrative revisions to enhance clarity and program integrity. These changes should increase program availability to all participants and enhance access and encourage sales for smaller U.S. exporters. The proposed rule would eliminate provisions for the Intermediate Export Credit Guarantee (GSM-103) Program, consistent with the repeal of authority to operate this program in the Food, Conservation, and Energy Act of 2008 (2008 Act).

**DATES:** Comments concerning this proposed rule must be received by September 26, 2011 to be assured consideration.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions to submit comments.

- *E-Mail:* [GSMregs@fas.usda.gov](mailto:GSMregs@fas.usda.gov).

- *Fax:* (202) 720-2495, Attention:

“GSM102 Proposed Rule Comments”.

- *Hand Delivery, Courier, or U.S.*

*Postal delivery:* Amy Slusher, Deputy Director, Credit Programs Division, c/o Public Affairs Division, Foreign

Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1004, Room 5076, Washington, DC 20250-1004.

Comments may be inspected at 1400 Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available through the Foreign Agricultural Service (FAS) homepage at: <http://www.fas.usda.gov/excredits/exp-cred-guar-new.asp>.

#### FOR FURTHER INFORMATION CONTACT:

Amy Slusher, Deputy Director, Credit Programs Division; by phone at (202) 720-6211; or by e-mail at: [Amy.Slusher@fas.usda.gov](mailto:Amy.Slusher@fas.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Commodity Credit Corporation's (CCC) Export Credit Guarantee (GSM-102) Program is administered by the Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture (USDA) on behalf of CCC, pursuant to program regulations codified at 7 CFR Part 1493 and through the issuance of “Program Announcements” and “Notices to Participants” that are consistent with this program regulation. The current regulations became effective on November 18, 1994. Since that time, CCC has implemented numerous operational changes to improve the efficiency of the program, including an automated, Internet-based system for participants and revised program controls to improve program quality, reduce costs, and protect against waste and fraud. Also since that time, agricultural trade and finance practices have evolved. This proposed rule is intended to reflect these changes and to enhance the overall clarity and integrity of the program. In addition, the 2008 Act repealed the authority to operate the GSM-103 Program, and this change is reflected in the proposed rule.

On December 17, 2008, CCC published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (73 FR 76568). This notice was intended to solicit comments on improvements and changes to be made in the implementation and operation of the GSM-102 program, with the intent of improving the GSM-102 program's effectiveness and efficiency. In addition to incorporating some of the comments received in

response to the ANPR, this proposed rule incorporates several previous operational requirements announced by FAS through notices to participants. Other supplemental notices to participants were issued as reminders of various program requirements or contained informational requirements for specific commodities. These notices are not appropriate for inclusion in the regulations for the GSM-102 program but nevertheless remain in effect.

#### Section-by-Section Analysis

The numbering system of this proposed rule differs from that in the current regulation. Several sections have been added, some sections have been deleted and others have been reordered. For the purposes of this discussion, the numbering of the proposed rule will be used, except where otherwise indicated.

#### Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

In accordance with section 202 of the Agricultural Trade Act of 1978 (7 U.S.C. 5622), as amended by section 3101 of the 2008 Act, this proposed rule would eliminate provisions for intermediate-term credit guarantees, also known as the GSM-103 program. Reference has been added to the Facility Guarantee Program (FGP), authorized by section 1542 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5622 note) (as amended), to reflect the fact that the restrictions and criteria in subpart A apply to the FGP. The regulations for the FGP are found at subpart C of 7 CFR Part 1493.

In section 1493.4, “Criteria for country and regional allocations,” CCC proposes to include regional allocations. CCC currently announces allocations by both country and region. The addition of the regional program concept to the proposed rule is therefore reflective of current program operations and appears throughout the proposed rule.

#### Subpart B—CCC Export Credit Guarantee (GSM-102) Program Operations

##### Section 1493.20 Definition of Terms

Numerous definitions are proposed to be added to this section. Certain definitions would be added to provide greater clarity to program participants, and other definitions appearing in this section have been moved from other parts of the regulation.

In section 1493.20(j), a definition of “Director” has been added. In certain sections throughout the proposed rule, “CCC” has been changed to “Director.” This change was made to provide participants transparency regarding the specific official authorized to make certain program decisions.

Section 1493.20(l) would modify the definition of “eligible interest” contained in the current rule to be consistent with the interest coverage currently specified on the payment guarantee. CCC’s coverage of interest will always be limited to the lesser of the amount calculated using the interest rate specified between the exporter or exporter’s assignee and the foreign financial institution or the amount calculated using the Treasury bill investment rate specified on the face of the payment guarantee. In addition, to clarify the various types of interest associated with CCC’s coverage, definitions have been added for “CCC late interest” (e), “ordinary interest” (dd), and “post-default interest” (gg).

A definition of the “FAS Web site” would be added in section 1493.20(p). This Web site will contain all program-related information and details on where and by what means participants must submit information required by this subpart. CCC proposes no longer to announce these details through a Notice to Participants. The “Contacts P/R” found in section 1493.20(c) of the current rule would be deleted.

Section 1493.20(r) would add a definition of a “firm export sales contract.” The current rule, at section 1493.40, requires that “a firm export sale must exist before an exporter may submit an application for a payment guarantee.” CCC proposes to add this definition to clarify to participants both what constitutes a “firm export sale” and the specific information needed to meet this requirement.

A new definition of “foreign financial institution” would be added in section 1493.20(s). A foreign financial institution is not defined in the current rule, but is referenced throughout the current rule as a “foreign bank” that is able to issue an irrevocable letter of credit. The new definition would clarify the basic requirements for foreign institutions to be eligible to apply for participation in the program, and also would permit non-bank foreign institutions to apply.

The definition of “importer” would be revised in section 1493.20(y) to require that the importer be physically located in the country or region of destination. Although not specified in the current rule, CCC now permits an importer to have a “presence of

business” in the country or region to meet the requirement that the “agricultural commodities \* \* \* be shipped from the United States to the foreign buyer.” Under this “presence of business” concept, the importer need not be located in the country or region but may contract with another party (such as an agent) in the country or region of destination to receive and sell the goods. Due to the difficulty in confirming whether an importer has a legitimate “presence of business” to act on its behalf, CCC proposes to eliminate this practice and would now require the importer to be physically located in the country or region of destination.

CCC proposes to add a definition for “letter of credit account party” in section 1493.20(aa). CCC currently permits an entity other than the importer to request the foreign financial institution letter of credit be opened, but in such cases the exporter is required to notify CCC on the application for payment guarantee. The “letter of credit account party” would now be added as a required field on the application for payment guarantee (section 1493.70(a)(3)), if this entity is other than the importer.

#### *Section 1493.30 Information Required for Exporter Participation*

An exporter seeking to participate in the GSM-102 program would be required to submit with its application for program participation, pursuant to section 1493.30(a)(ii) and (iii), its Dun and Bradstreet (DUNS) number and its Employer Identification Number (EIN) issued by the Internal Revenue Service. The DUNS number would be utilized by CCC to report on entities that are awarded federal grants, loans, contracts, and other forms of assistance as required by the Federal Funding Accountability and Transparency Act (FFATA). CCC would utilize the EIN to confirm that the exporter, as a recipient of Federal financial assistance, does not owe an outstanding Federal nontax debt that is in delinquent status, consistent with the Debt Collection Improvement Act of 1996 and the associated requirements found in 31 CFR 285.13.

Pursuant to section 1493.30(a)(4), each exporter would be required to provide a description of the exporter’s business. The exporter would also be required to advise CCC whether or not it meets the definition of a small or medium enterprise (SME), as defined on the FAS Web site. Although this information will not be utilized to determine an exporter’s eligibility for program participation, CCC will utilize it to help target specific countries, regions and commodities under the

program, and to track new-to-export businesses and the number of SMEs assisted by the program. This information will assist in justifying budgetary requests and targeting outreach efforts.

Pursuant to section 1493.30(c), exporters that have previously qualified to participate but have not submitted an application for a payment guarantee for two consecutive fiscal years would be required to resubmit all information required for participation. This requirement will assist CCC in maintaining accurate exporter records.

#### *Section 1493.40 Information Required for U.S. Financial Institution Participation and Section 1493.50 Information Required for Foreign Financial Institution Participation*

Under the proposed rule, these sections would be new provisions. Currently, requirements for U.S. and foreign financial institutions are specified on the FAS Web site; however, CCC has determined that these requirements are more appropriately addressed in the rulemaking process. Similar to the requirements for exporter participation, both U.S. and foreign financial institutions would be required to re-apply if they do not utilize the program for two consecutive fiscal years. U.S. financial institutions, like exporters, would be required to provide their DUNS and EIN numbers for purposes of compliance with FFATA and the Debt Collection Improvement Act of 1996.

#### *Section 1493.60 Certifications Required for Program Participation*

This section would revise the certifications required of all exporters and U.S. and foreign financial institution program participants, to make them consistent with U.S. Government requirements. OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement) (2 CFR 180.335) require all participants in the primary tier of a covered transaction to provide certain information to a Federal agency before entering into a transaction with that agency. Such required information would now be reflected in the certifications set forth in section 1493.60(a)(1) through (4). Proposed new certifications in section 1493.60(a)(5) through (7) would assist in meeting the requirements of 31 CFR 285.13 (“Barring delinquent debtors from obtaining Federal loans or loan insurance or guarantees”). Exporters and U.S. and foreign financial institutions would certify that they do not have any outstanding nontax debt to

the United States that is in delinquent status, nor do any persons controlling or controlled by the applicant.

Under the proposed rule, U.S. and foreign financial institutions would be required to make two additional certifications (section 1493.60(b)) asserting their compliance with all regulatory requirements and U.S. anti-money laundering and terrorist financing statutes. The purpose of these certifications is to ensure that CCC is dealing only with responsible entities that are in compliance with all relevant U.S. laws and regulations.

Exporters and U.S. and foreign financial institution program participants would also be required to re-assert these certifications when submitting documentation to CCC under this subpart.

#### *Section 1493.80 Certification Requirements for Obtaining the Payment Guarantee*

The proposed rule sets forth a new certification at section 1493.80(d) to require the exporter to confirm that the importer (and intervening purchaser, if applicable) in the transaction is not excluded or disqualified from participation in U.S. government programs through either the Excluded Parties List System (EPLS) or the Specially Designated Nationals list of the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. These lists are defined (including Web site addresses) at sections 1493.20(m) and (cc), respectively, and contain individuals and entities that are not eligible to participate in U.S. government procurement and non-procurement programs or are otherwise excluded based on applicable federal laws. Pursuant to 2 CFR 417.222(a), concerning U.S. Department of Agriculture nonprocurement debarment and suspension, “the U.S. exporter or U.S. financial institution would be prohibited from entering into, at the first lower tier, an agreement with an importer (or intervening purchaser) or foreign bank \* \* \* with an entity that appears on the EPLS as excluded or disqualified.” To meet this requirement, and to ensure that the exporter or U.S. financial institution does not enter into a transaction with a prohibited entity on the OFAC list, the exporter must certify at the time of application that neither the importer nor intervening purchaser is excluded by either list. This will necessarily require the exporter to check both the EPLS and OFAC lists to ensure these entities are not listed.

#### *Section 1493.90 Terms and Requirements of the Foreign Financial Institution Letter of Credit and Related Obligation*

Under the proposed rule, this section would be a new provision. In section 1493.90(a), CCC describes requirements applicable to the foreign financial institution letter of credit. In recent foreign financial institution defaults, CCC’s ability to recover has, on occasion, been adversely affected because GSM-102 guaranteed debt was determined, in foreign jurisdictions of certain defaulting obligors, not to be “trade finance” and therefore subject to less favorable restructuring terms. In an attempt to bolster CCC’s position in future restructurings, section 1493.90(a)(1) would now require the letter of credit to contain a specific statement describing the obligation as trade finance debt. Similar language has been adopted by export credit agencies in other countries that have faced similar treatment in recent foreign bank debt restructurings.

Additionally, it has been necessary for CCC to accelerate claims payment to U.S. financial institutions and exporters so that CCC could negotiate restructuring terms for all GSM-102 debt directly with the foreign obligors. To ensure that there is no future issue affecting CCC’s ability to accelerate claims payments, the letter of credit or related obligation would now be required to include an acceleration clause, as provided in section 1493.90(a)(2).

CCC has determined that the documents submitted for payment under the foreign financial institution letter of credit and/or related obligation should be consistent with the requirements of such foreign financial institution letter of credit and/or related obligation, to ensure that the default was not based on failure to comply with the underlying terms of the sale. CCC has added this requirement in section 1493.90(a)(3).

#### *Section 1493.100 Terms and Requirements of the Payment Guarantee*

Several modifications have been made to this section in the proposed rule. The reference to “final date to export” has been converted to a definition and now appears in section 1493.20(q). CCC proposes to eliminate the “grace period” that currently extends this date one month past the contractual shipping deadline. Over the past several years, CCC has reduced the maximum shipping period allowed in an attempt to reduce the problem of exporters over-registering immediately after allocations

are announced. By reducing the shipping period CCC hopes to maintain availability of allocations throughout the fiscal year, thus increasing program availability to all participants. In this context, CCC believes the one month grace period is unnecessary, and it would be eliminated.

In section 1493.100(d), CCC proposes to limit reserve coverage to a maximum of five (5) percent of the transaction’s port value to accommodate the upward loading tolerance. Exporters have increasingly been reserving coverage for larger amounts, which encumbers the allocation and reduces the amount available to other participants. Further, the delay in determining whether reserve coverage will be utilized or released back to the allocations creates delays in determining CCC’s exact liability under a guarantee. Therefore, in addition to capping the amount of reserve coverage that will be granted, CCC proposes to require exporters to file an amendment to the payment guarantee to utilize such coverage within 15 calendar days of the last export under the payment guarantee. If such amendment is not filed within this timeframe, CCC would automatically cancel the reserve coverage.

The proposed rule would add new section 1493.100(e) on “Prohibited transactions.” In general, these prohibitions follow the certification requirements found in section 1493.80. The purpose of this new section is to give additional legal recourse to CCC if an exporter violates any of the required certifications. CCC would specifically prohibit coverage of transactions that have already been guaranteed by CCC under another payment guarantee (section 1493.100(e)(6)). Although this prohibition is implicit in the current rule, CCC has determined to make such prohibition explicit. If a default were to occur under this scenario, CCC could receive identical claims for payment from multiple exporters or assignees. Section 1493.100(e)(6) is specifically intended to avoid this result.

Section 1493.100(f) would institute a new requirement that the foreign financial institution letter of credit be issued within 30 calendar days following the date of export under a payment guarantee. It has become an increasingly common practice under the GSM-102 Program for exporters to obtain a payment guarantee without a foreign financial institution letter of credit in place in connection with the sale for an extended period of time after exports have occurred. This is often an indication that an exporter has not confirmed that the foreign financial institution is willing to issue the letter

of credit underlying the transaction, and is instead submitting the registration to garner a portion of the allocation. CCC expects that prior to registering an export sale the exporter has worked with the importer and foreign financial institution on the details of the financing, even though the letter of credit may not be in place at that time. CCC has surveyed financial institutions on this issue and has determined that 30 calendar days from the date of export is a reasonable timeframe for issuance of the letter of credit. CCC would annul coverage for any exports where this requirement is not met.

In response to the large number of amendment requests routinely submitted to CCC, section 1493.100(h) has been modified to permit CCC to charge a fee for amendments over and above the normal guarantee fee to offset the administrative costs of processing amendments. CCC also may, at its discretion, request documentation from the exporter to justify the amendment, with a view to reducing what CCC considers unwarranted amendment requests. Additionally, consistent with the new certification requirements related to the EPLS and OFAC lists, exporters (or their assignees) will be required to resubmit these certifications any time the payment guarantee is amended to change the foreign financial institution.

#### *Section 1493.110 Guarantee Fees*

In response to the problems associated with high demand for certain GSM-102 country and region allocations, several participants have suggested that CCC implement a competitive process, akin to an auction, whereby exporters would be required to bid on coverage. CCC agrees that such a process may be an economically efficient way to allocate coverage when demand for coverage exceeds supply. Therefore, proposed section 1493.110(a)(2) would include this option for determining fees. If operational, details of this process would be made available on the FAS Web site. CCC could implement this option at its discretion and would notify participants via the FAS Web site if it chose to apply this optional method.

CCC also proposes to modify its policy on fee refunds. Currently, once CCC advises an exporter of acceptance of its application(s) (prior to processing the applications and providing the exporter a GSM number), the exporter can determine not to utilize the coverage and CCC will refund the exporter's fees. It has become increasingly common for exporters to apply for coverage and then

subsequently cancel large portions of their submitted applications. In such instances this coverage could have been utilized by other exporters, and CCC loses the opportunity to support additional export sales. In an attempt to curtail this practice, once CCC has notified an exporter that its application has been accepted, CCC will not refund the fees on such application if the exporter elects to withdraw it.

#### *Section 1493.120 Assignment of the Payment Guarantee*

Under section 1493.120(c), assignees would now be required to make two certifications when submitting the notice of assignment: (1) The foreign financial institution is not excluded or otherwise disqualified from program participation, and (2) the information provided to CCC at the time of qualification as an assignee has not changed. The certification on the foreign financial institution found in section 1493.120(c)(1) is consistent with the requirement of the exporter to make a similar certification related to the importer (see discussion of section 1493.80). Further, as is the case with the requirement for exporters, CCC believes it is appropriate that the U.S. financial institution certify with each assignment that the information and certifications provided to CCC at time of approval for participation are accurate.

CCC proposes to modify some of the bases for a determination that a U.S. financial institution may be ineligible to receive assignment of a payment guarantee. The proposed rule would delete the current provision of section 1493.140(b)(1) that requires the financial institution to be in sound financial condition. The underlying statutory requirement imposing such ineligibility was repealed in the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127). CCC proposes to make a U.S. financial institution ineligible to receive an assignment if it does not meet the qualification requirements found in section 1493.40(a) and certified in 1493.120(c)(2) at the time of the assignment.

At the request of U.S. financial institution participants, CCC proposes to add a provision to allow the assignee (or exporter, if the payment guarantee is unassigned) to include obligations guaranteed by CCC in a repurchase agreement (section 1493.120(f) and as defined in section 1493.20(kk)). Permitting the sale of these obligations as part of a repurchase agreement would allow the assignee to temporarily improve its liquidity position and thus increase the amount of credit available

for the assignee to support additional U.S. exports. Although CCC will not approve repurchase agreements, the assignee (or exporter) must notify CCC when CCC-guaranteed obligations are included in a repurchase agreement by supplying the information specified in section 1493.120(f)(2). Failure of the assignee (or exporter) to comply with the requirements in section 1493.120(f) will result in CCC annulling coverage under the payment guarantee.

#### *Section 1493.130 Evidence of Export*

CCC proposes to make several modifications to the requirements for evidence of export (EOE) reports. Several items that are currently contained in notices to participants have been incorporated into section 1493.130(a). CCC also proposes to add "destination country" as required information in the EOE. Collection of this information will provide CCC data on the specific countries to which GSM-102 commodities are shipped under regional programs, thus assisting in targeting of programming and prioritizing of CCC activities.

The time limit for submission of EOE reports would be modified, and CCC proposes to add new rules regarding failure to submit EOE reports on time. It has become increasingly important for CCC to receive EOE reports in a timely manner for both budgetary and policy purposes. However, it has also become increasingly common for exporters to fail to submit EOE reports within the timeframe specified in the current regulations. Therefore, CCC would now require that all EOE reports be submitted to CCC within 10 calendar days of the date of export (section 1493.130(b)(1)). CCC also proposes to add a requirement that the exporter must notify CCC no later than the final date to export if the exporter determines not to make any shipments under the payment guarantee (section 1493.130(b)(2)). Because there are sometimes legitimate circumstances that prevent an exporter from meeting these filing deadlines, CCC proposes in section 1493.130(b)(3) to allow the exporter to request an extension of the filing deadline. Any extension must be requested prior to the filing deadline and must be accompanied by an explanation as to why the extension is needed.

Given the importance of CCC receiving EOE reports in a timely manner, CCC proposes to impose new consequences for failure to submit EOE reports within the required timeframe. Under section 1493.130(c), exporters who do not submit EOE reports as required would be prohibited from receiving any new payment guarantees until they are fully

in compliance with the requirements of section 1493.130(b).

*Section 1493.140 Certification Requirements for the Evidence of Export*

CCC proposes several changes to the certifications required with submission of the evidence of export report (EOE). The certification found in section 1493.90(b) of the current regulation, to attest that “agricultural commodities of the grade, quality and quantity called for in the exporter’s contract with the importer have been exported to the country specified on the payment guarantee” would be removed, and as noted in the explanation of section 1493.90, a requirement added that the commodity grade and quality specified in the foreign financial institution letter of credit be consistent with the commodity grade and quality specified in the firm export sales contract. CCC would also eliminate the certification currently in section 1493.90(c) specifying that “a letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported.” This certification often keeps exporters from submitting EOE’s on time, if the letter of credit has not been opened and therefore the exporter cannot make this certification. CCC has removed this certification to avoid delays in submitting EOE reports. As explained previously, CCC proposes no longer to provide coverage of any exports where the foreign financial institution letter of credit is issued more than 30 calendar days after the date of export (section 1493.100(f)(3)). Given this new requirement, the certification related to the letter of credit would no longer be necessary.

CCC proposes to add a new certification in section 1493.140(c): if the payment guarantee has not been assigned to an approved U.S. financial institution by the time of submission of the EOE, the exporter would be required to certify that the foreign financial institution issuing the letter of credit is not excluded or disqualified from participation in U.S. government programs through either the EPLS or OFAC Specially Designated Nationals (SDN) lists. There is no requirement for an exporter to assign the payment guarantee. Because this certification is required of the U.S. financial institution when submitting the notice of assignment, including it with the EOE certifications will ensure that this certification is made even when the exporter determines not to assign the payment guarantee.

*Section 1493.160 Notice of Default*

CCC proposes to change the timeframe for the exporter or exporter’s assignee to submit a notice of default (NOD) to CCC, reducing it from the current ten (10) calendar days to five (5) business days. By reducing this timeframe CCC hopes to mitigate the impact of any defaults, as the primary purpose of the NOD is to allow CCC to immediately prohibit additional transactions with the foreign financial institution in default. CCC also proposes to require two additional pieces of information with the notice of default: (1) A copy of the foreign financial institution’s repayment schedule (section 1493.160(a)(5)) and (2) any correspondence with the foreign financial institution regarding the default (section 1493.160(a)(7)). The repayment schedule will give CCC an accurate accounting of when future payments are coming due (and hence, when additional defaults may be expected), and the correspondence may provide CCC additional information that is helpful in restructuring the debt with the defaulting institution.

Under the proposed rule, CCC would add new section 1493.160(c), “Impact of a default on other existing payment guarantees.” The existing regulation is silent on potential CCC actions related to outstanding payment guarantees once a foreign financial institution defaults. As a result, exporters may obtain a letter of credit or continue to export under an existing guarantee even after the foreign financial institution issuing the letter of credit has defaulted, thus potentially increasing CCC’s exposure. The proposed rule therefore would prescribe a specific policy that CCC will notify the impacted exporters and withdraw coverage of any shipments that occur after the exporter receives this notification where the letter of credit has been or will be issued by the defaulting foreign financial institution. The exporter will be given the option to find another foreign financial institution to issue a letter of credit for the balance of the guarantee, or CCC would cancel that portion of the guarantee allocable to unshipped amounts and refund that portion of the guarantee fee to the exporter.

*Section 1493.170 Claims for Default*

As would similarly be required in conjunction with a notice of default, CCC also proposes to require, under section 1493.170(a)(3), a copy of the foreign financial institution’s repayment schedule as a claims document. Under section 1493.170(a)(4), CCC would also require the claimant to provide a

description of any payments received prior to claim and any insurance proceeds, securities or collateral arrangements that may be realized upon that are in any way associated with the debt with respect to which the claim is filed. Because any such payments or instruments are deemed recoveries and must be remitted to CCC for pro-rata sharing, CCC proposes to require them to be declared concurrently with submission of any claim.

Proof of entry, as defined in section 1493.150, would be added as a required claims document. Although CCC already has the authority to request proof of entry documentation from the exporter, the proliferation of regional programs under GSM-102 has raised concerns as to the entry point of the commodities covered by the payment guarantee. Rather than request this documentation from exporters on an ad hoc basis, CCC proposes to require it with all submitted claims. Failure to demonstrate proof of entry into the country or region specified on the payment guarantee would result in denial of the claim by CCC.

CCC also proposes to add new section 1493.170(b), “Additional documents.” At times, the required claims documents may not provide sufficient information for CCC to determine that a claim is in “good order,” and the claim may therefore be denied. This provision would give the exporter or the exporter’s assignee the right to submit additional documentation to CCC to support a claim if the claim has been denied.

*Section 1493.180 Payment for Default*

In section 1493.180(b), CCC would clarify that its liability with respect to any defaulted payments will be reduced by any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the exporter or the exporter’s assignee. Although this is inherent under the current terms of the guarantee, it is not specifically stated in the current regulation.

In section 1493.180(c), CCC proposes to modify the time requirement for making claims payments. The proposed rule would allow CCC 15 business days (from the date of receiving a claim in good order) to make a claim payment before late interest would begin to accrue in favor of the exporter or the exporter’s assignee. Upon receipt of a claim, CCC must review all of the claims documents to ensure they are compliant with the program regulations; enter the claims data into CCC’s GSM System; provide final claims documents to a CCC Certifying Officer for review and

certification; and disburse the payment to the claimant. It is not possible for CCC to complete all of these tasks within the one day currently required in the regulations—resulting in payment of late interest by CCC on every claim. The U.S. Office of Management and Budget's final rule on, and codification of, Prompt Payment Act regulations (5 CFR Part 1315), only requires, unless otherwise specified, Federal agencies to pay their bills within 30 days of the date of receipt of a proper invoice.

CCC proposes to modify the provision on accelerated payments in section 1493.180(d). In order for CCC to accelerate a claim payment to the exporter or assignee, the exporter or assignee must accelerate the payments due from the foreign financial institution and file all claims documents required in section 1493.170(a). Although this is currently understood and practiced by claimants, CCC believes it is appropriate to specify these requirements as part of the regulation.

#### *Section 1493.190 Recovery of Defaulted Payments*

In section 1493.190(b), CCC proposes to exclude from the meaning of the term “recoveries” the transfer of funds between CCC, the exporter and the exporter's assignee. Under certain circumstances, the U.S. financial institution taking assignment of the GSM-102 payment guarantee may be unwilling to take risk on the uncovered portion of the transaction. As a result, under such circumstances, the exporter may retain this risk. The current regulation, by use of the phrase “or any source whatsoever,” dictates that the flow of funds between the exporter and the assignee under such an arrangement must occur prior to a default, because any transfer of funds after a default is considered a “recovery.”

CCC's primary interest is in maintaining a risk-share partner in the GSM-102 transaction such that either the exporter or exporter's assignee carries the risk for the uncovered portion of the export sale. It is irrelevant to CCC when any proceeds are shared between these parties. Therefore, CCC proposes to add a clarification that payments between CCC, the exporter, or the exporter's assignee are not considered recoveries and therefore need not be paid to CCC. This change would allow the exporter and the assignee greater flexibility in structuring the transaction between themselves in instances where the assignee does not wish to take risk on the uncovered portion of the transaction.

Consistent with the proposed new section 1493.170(a)(4), which would require the claimant to provide a description of any payments received prior to claim or any insurance, securities or collateral arrangements that may be realized upon that are in any way associated with the debt with respect to which the claim is filed. CCC proposes to clarify in section 1493.190(b)(1) that any monies derived through payments of insurance or the liquidation of any securities or collateral are also considered recoveries and must be paid to CCC.

CCC has added examples of what actions by the exporter or the exporter's assignee constitute “cooperation” in recoveries in section 1493.190(f). Although these actions are not precluded under the current regulation, they have been added in the proposed rule to provide exporters and assignees an illustration of possible cooperative efforts that may be required of participants in the course of recoveries.

#### *Section 1493.200 Dispute Resolution and Appeals*

CCC proposes to add this new section. As previously noted, the proposed rule would clarify instances throughout the regulation in which the Director of the Credit Programs Division, FAS, is authorized to make determinations with respect to the GSM-102 program. In conjunction with this change, CCC proposes to add specific procedures pursuant to which program participants may appeal decisions made by the Director. In addition to affording specific appeal rights to participants, this section also specifies certain responsibilities of participants during and after the appeal process. The addition of these procedures will provide clarity to participants regarding their rights to appeal adverse decisions.

#### **Executive Order 12866**

This proposed rule is issued in conformance with Executive Order 12866. It has been determined to be not significant for the purposes of Executive Order 12866 and was not reviewed by OMB. A cost-benefit assessment of this rule was not completed.

#### **Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988. This rule would not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, the appeal provisions of 7 CFR 1493.200

would need to be exhausted. This rule would not be retroactive.

#### **Executive Order 12372**

This program is not subject to 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).

#### **Executive Order 13132**

This proposed rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this proposed rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, nor does this proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### **Executive Order 13175**

The United States has a unique relationship with Indian Tribes as provided in the Constitution of the United States, treaties, and Federal statutes. On November 5, 2009, President Obama signed a Memorandum emphasizing his commitment to “regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175.” This proposed rule has been reviewed for compliance with E.O. 13175 and CCC worked directly with the Office of Tribal Relations in the rule's development. The policies contained in this proposed rule do not have tribal implications that preempt tribal law.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### **Environmental Assessment**

CCC has determined that this proposed rule does not constitute a major State or Federal action that would significantly affect the human or natural environment. Consistent with the National Environmental Policy Act (NEPA), 40 CFR 1502.4, “Major Federal Actions Requiring the Preparation of Environmental Impact Statements” and

the regulations of the Council on Environmental Quality, 40 CFR Parts 1500–1508, no environmental assessment or environmental impact statement will be prepared.

#### Unfunded Mandates

This proposed rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA). Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, CCC is requesting comments from all interested individuals and organizations on a proposed revision to the currently approved information collection for this program. This revision includes the proposed change in information collection activities related to the regulatory changes in this proposed rule.

*Title:* CCC Export Credit Guarantee Program (GSM–102).

*OMB Control Number:* 0551–0004.

*Type of Request:* Revision of a currently approved information collection.

*Abstract:* This information collection is required to support the existing regulations and proposed changes to 7 CFR Part 1493, subpart B, “CCC Export Credit Guarantee (GSM–102) Program Operations,” which establishes the requirements for participation in CCC’s GSM-102 program. This revised collection incorporates the additional estimated burden to program participants as a result of certain new requirements in this proposed rule for (1) Exporter, U.S. and foreign financial institution qualification; (2) applications for payment guarantees; (3) notices of assignment; (4) repurchase agreements; (5) evidence of export reports; (6) submission of claims for default; and (7) appeals. This revision also reflects an increase in program activity since the last approval. This information collection is necessary for CCC to manage, plan and evaluate the program and to ensure the proper and judicious use of government resources.

*Estimate of Burden:* The public reporting burden for this collection of information is estimated to average 0.47 hours per response.

*Respondents:* U.S. exporters, U.S. financial institutions, and foreign financial institutions.

*Estimated Number of Respondents:* 180 per year.

*Estimated Number of Responses per Respondent:* 40 per year.

*Estimated Total Annual Burden on Respondents:* 3,377 hours.

Comments on this information collection may be submitted to CCC in accordance with the instructions for submitting comments to this proposed rule. All comments received in response to this notice will be a matter of public record.

#### E-Government Act Compliance

CCC is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services and for other purposes. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at: <http://www.fas.usda.gov>.

#### Title 7—Agriculture

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

Agricultural commodities, Exports.

For the reasons stated in the preamble, CCC proposes to amend 7 CFR Part 1493 as follows:

#### PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

1. The authority citation for 7 CFR Part 1493 continues to read as follows:

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

2. Subpart A is revised to read as follows:

##### Subpart A—Restrictions and Criteria for Export Credit Guarantee Program

Sec.

1493.1 General statement.

1493.2 Purposes of programs.

1493.3 Restrictions on programs and cargo preference statement.

1493.4 Criteria for country and regional allocations.

1493.5 Criteria for agricultural commodity allocations.

##### Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

###### § 1493.1 General statement.

This subpart sets forth the restrictions that apply to the issuance and use of payment guarantees under the Commodity Credit Corporation (CCC) Export Credit Guarantee (GSM–102) Program and Facility Guarantee Program (FGP), the criteria considered by CCC in determining the annual allocations of payment guarantees to be made available with respect to each participating country and region, and

the criteria considered by CCC in the review and approval of proposed allocation levels for specific U.S. agricultural commodities to these countries and regions.

#### § 1493.2 Purposes of programs.

CCC may use payment guarantees:

(a) To increase exports of U.S. agricultural commodities and expand access to trade finance;

(b) To compete against foreign agricultural exports;

(c) To assist countries, particularly developing countries and emerging markets, in meeting their food and fiber needs;

(d) To establish or improve facilities and infrastructure in emerging markets to expand exports of U.S. agricultural commodities; and

(e) For such other purposes as the Secretary of Agriculture determines appropriate.

#### § 1493.3 Restrictions on programs and cargo preference statement.

(a) *Restrictions on use of payment guarantees.* (1) Payment guarantees authorized under these regulations shall not be used for foreign aid, foreign policy, or debt rescheduling purposes.

(2) CCC shall not make payment guarantees available in connection with sales of agricultural commodities to any country that the Secretary determines cannot adequately service the debt associated with such sales.

(b) *Cargo preference laws.* The provisions of the cargo preference laws do not apply to export sales with respect to which payment guarantees are issued under this program.

#### § 1493.4 Criteria for country and regional allocations.

The criteria considered by CCC in reviewing proposals for country and regional allocations will include, but not be limited to, the following:

(a) Potential benefits that the extension of payment guarantees would provide for the development, expansion, or maintenance of the market for particular U.S. agricultural commodities in the importing country;

(b) Financial and economic ability and/or willingness of the country whose financial institution obligation is guaranteed by CCC (“country of obligation”) to adequately service CCC guaranteed debt;

(c) Financial status of participating financial institutions in the country of obligation as it would affect their ability to adequately service CCC guaranteed debt;

(d) Political stability of the country of obligation as it would affect its ability



and/or willingness to adequately service CCC guaranteed debt; and

(e) Current status of debt either owed by the country of obligation or by the participating foreign financial institutions to CCC or to lenders protected by CCC's guarantees.

#### **§ 1493.5 Criteria for agricultural commodity allocations.**

The criteria considered by CCC in determining U.S. commodity allocations within a specific country or regional allocation will include, but not be limited to, the following:

(a) Potential benefits that the extension of payment guarantees would provide for the development, expansion or maintenance of the market in the importing country for the particular U.S. agricultural commodity under consideration;

(b) The best use to be made of the payment guarantees in assisting the importing country in meeting its particular needs for food and fiber, as may be determined through consultations with private buyers and/or representatives of the government of the importing country;

(c) Evaluation, in terms of program purposes, of the relative benefits of providing payment guarantee coverage for sales of the U.S. agricultural commodity under consideration compared to providing coverage for sales of other U.S. agricultural commodities.

3. Subpart B is revised to read as follows:

#### **Subpart B—CCC Export Credit Guarantee (GSM-102) Program Operations**

Sec.

- 1493.10 General statement.
- 1493.20 Definition of terms.
- 1493.30 Information required for exporter participation.
- 1493.40 Information required for U.S. financial institution participation.
- 1493.50 Information required for foreign financial institution participation.
- 1493.60 Certification requirements for program participation.
- 1493.70 Application for payment guarantee.
- 1493.80 Certification requirements for obtaining payment guarantee.
- 1493.90 Terms and requirements of the foreign financial institution letter of credit and related obligation.
- 1493.100 Terms and requirements of the payment guarantee.
- 1493.110 Guarantee fees.
- 1493.120 Assignment of the payment guarantee.
- 1493.130 Evidence of export.
- 1493.140 Certification requirements for the evidence of export.
- 1493.150 Proof of entry.
- 1493.160 Notice of default.
- 1493.170 Claims for default.
- 1493.180 Payment for default.

- 1493.190 Recovery of defaulted payments.
- 1493.192 Dispute resolution and appeals.
- 1493.195 Miscellaneous provisions.

#### **Subpart B—CCC Export Credit Guarantee Program (GSM-102) Operations**

##### **§ 1493.10 General statement.**

(a) *Overview.* This subpart contains the regulations governing the operations of the Export Credit Guarantee (GSM-102) Program. The GSM-102 program of the Commodity Credit Corporation (CCC) was developed to expand U.S. agricultural exports by making available payment guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. The payment guarantee issued under GSM-102 is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the payment guarantee, specified amounts of principal and interest in case of default by the foreign financial institution that issued the letter of credit for the export sale covered by the payment guarantee. Under GSM-102, payment guarantees are issued for terms of up to three years. The program operates in a manner intended not to interfere with markets for cash sales and is targeted toward those countries that have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this program, CCC seeks to expand and/or maintain market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(b) *Program administration.* The GSM-102 program will be administered under the direction of the General Sales Manager and Vice President, CCC, pursuant to this part and any Program Announcements issued by CCC pursuant to, and not inconsistent with, this part. From time to time, CCC may issue a Notice to Participants on the FAS Web site reminding participants of the requirements of this subpart, or clarifying provisions of this subpart. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be available on the Foreign Agricultural Service (FAS) Web site.

(c) *Country and regional program announcements.* From time to time, CCC will issue a Program Announcement on the FAS Web site to announce a GSM-102 program for a specific country or region. The Program Announcement for a country or region will designate specific U.S. agricultural

commodities or products thereof, or designate that all eligible commodities are available under the announcement. The Program Announcement will contain any requirements applicable to that country or region as determined by CCC.

##### **§ 1493.20 Definition of terms.**

Terms set forth in this part, on the FAS Web site (including in Program Announcements and Notices to Participants), and in any CCC-originated documents pertaining to the GSM-102 program will have the following meanings:

(a) *Affiliate.* Entities or persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. Control may include, but is not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or a business entity which has been organized following the exclusion of a person from eligibility to enter into certain procurement or non-procurement transactions with the U.S. Government that has the same or similar management, ownership, or principal employees as the excluded person.

(b) *Assignee.* A U.S. financial institution that has obtained the legal right to make claim and receive the payment of proceeds under the payment guarantee.

(c) *Business day.* Days during which employees of the U.S. Department of Agriculture in the Washington, DC., metropolitan area are on official duty during normal business hours.

(d) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), further specifically authorized to carry out the GSM-102 Program pursuant to section 202 of the Agricultural Trade Act of 1978, as amended, and subject to the general supervision and direction of the Secretary of Agriculture.

(e) *CCC late interest.* Interest payable by CCC pursuant to § 1493.180(c).

(f) *Cost and Freight (CFR).* A customary trade term, as defined by the International Chamber of Commerce, Incoterms (current revision), indicating that the seller delivers when the goods pass the ship's rail in the port of shipment, and the seller pays the cost and freight necessary to bring the goods to the named port of destination.



(g) *Cost Insurance and Freight (CIF)*. A customary trade term, as defined by the International Chamber of Commerce, Incoterms (current revision), indicating that the seller delivers when the goods pass the ship's rail in the port of shipment, and the seller pays the cost and freight necessary to bring the goods to the named port of destination, as well as the marine insurance.

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

(i) *Date of sale*. The earliest date on which a firm export sales contract exists between the exporter, or an intervening purchaser, if applicable, and the importer.

(j) *Director*. The Director, Credit Programs Division, Office of Trade Programs, Foreign Agricultural Service, or designee.

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

(l) *Eligible interest*. The amount of interest that CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for default of ordinary interest. Such amount of interest that CCC agrees to pay equals the lesser of:

(1) The amount calculated using the interest rate specified between the exporter or exporter's assignee and the foreign financial institution; or

(2) The amount calculated using the specified percentage of the Treasury bill investment rate set forth on the face of the payment guarantee.

(m) *EPLS (Excluded Parties List System)*. The electronic version of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs, which identifies those parties excluded throughout the U.S.

Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and excluded from certain types of Federal financial and nonfinancial assistance and benefits. The EPLS can be found at [www.epls.gov](http://www.epls.gov).

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

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

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

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

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

(o) *Exporter*. A seller of U.S. agricultural commodities or products thereof that is both qualified in accordance with the provisions of § 1493.30 and the applicant for the payment guarantee.

(p) *FAS Web site*. Location of information related to the GSM-102 program, including program announcements, press releases, notices to participants, program contact information, eligible U.S. and foreign financial institutions, eligible

commodities, etc. The Web site also provides details on where and by what method participants may submit documentation required by this subpart. The current Web site is <http://www.fas.usda.gov/excredits/exp-cred-guar-new.asp>.

(q) *Final date to export*. The final allowable date to export as shown on the payment guarantee.

(r) *Firm export sales contract*. The written sales contract entered into between the exporter and the importer (or, if applicable, the written sales contracts between the exporter and the intervening purchaser and the intervening purchaser and the importer) which sets forth the terms and conditions of a sale of the eligible commodity from the exporter to the importer (or, if applicable, the sale of the eligible commodity from the exporter to the intervening purchaser and the intervening purchaser and the importer). Written evidence of a sale may be in the form of a signed sales contract, a written offer and acceptance between parties, or other documentary evidence of sale. The written evidence of sale for the purposes of the GSM-102 program must, at a minimum, document the following information: The eligible commodity, quantity, quality specifications, delivery terms (FOB, C&F, etc.) to the eligible country or region, delivery period, unit price, payment terms, date of sale, and evidence of agreement between buyer and seller. The sales contract between the exporter and the importer (or, if applicable, between the exporter and the intervening purchaser and between the intervening purchaser and the importer) may be conditioned upon CCC's approval of the exporter's payment guarantee application.

(s) *Foreign financial institution*. A financial institution:

(1) Organized under the laws of a jurisdiction outside the United States;

(2) Not domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority of a foreign jurisdiction.

(t) *Foreign financial institution letter of credit*. An irrevocable documentary letter of credit, subject to the current revision of the Uniform Customs and Practices for Documentary Credits (International Chamber of Commerce Publication No. 600, or latest revision), providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign financial institution. For the purpose of the GSM-102 program, CCC will consider applications for payment guarantees to finance

export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made in one of the two following ways:

(1) An irrevocable documentary letter of credit issued by a foreign financial institution specifically stating the deferred payment terms under which the foreign financial institution is obligated to make payments to the exporter, or the exporter's assignee, in U.S. dollars as such payments become due; or

(2) An irrevocable documentary letter of credit issued by a foreign financial institution that is supported by a related obligation specifically stating the deferred payment terms under which the foreign financial institution is obligated to make payment to the exporter, or the exporter's assignee, in U.S. dollars as such payments become due.

(u) *Free Alongside Ship (FAS)*. A customary trade term, as defined by the International Chamber of Commerce, Incoterms (current revision), indicating that the seller delivers when the goods are placed alongside the vessel at the named port of shipment, and the buyer bears all costs and risks of loss of or damage to the goods from that moment.

(v) *Free on Board (FOB)*. A customary trade term, as defined by the International Chamber of Commerce, Incoterms (current revision), indicating that the seller delivers when the goods pass the ship's rail at the named port of shipment, and the buyer bears all costs and risks of loss of or damage to the goods from that moment.

(w) *GSM*. The General Sales Manager, Foreign Agricultural Service (FAS), USDA, acting in his or her capacity as Vice President, CCC, or designee.

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

(y) *Importer*. A foreign buyer, physically located in the country or region of destination specified in the payment guarantee that enters into a firm export sales contract with an exporter or with an intervening purchaser for an export sale of agricultural commodities to be shipped from the United States to the foreign buyer. A foreign buyer that is not physically located in the country or region of destination but has an agent or other entity in the country or region of destination to act on the foreign buyer's behalf does not satisfy the criteria of this definition.

(z) *Intervening purchaser*. A party that is not located in the country or region

of destination specified in the payment guarantee and that enters into a firm export sales contract to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(aa) *Letter of credit account party*. An entity on whose behalf a foreign financial institution letter of credit is opened in favor of the exporter.

(bb) *Notice to participants*. A notice issued by CCC on the FAS Web site to remind participants of the requirements of the program or to clarify the program requirements contained in these regulations in a manner not inconsistent with this subpart.

(cc) *OFAC*. The Office of Foreign Assets Control of the U.S. Department of Treasury, which administers and enforces economic sanctions programs primarily against countries and groups of individuals such as terrorists and narcotics traffickers. OFAC's Specially Designated National's list can be found at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.shtml>.

(dd) *Ordinary interest*. Interest charged on the principal amount identified in the foreign financial institution's letter of credit or related obligation, other than post default interest.

(ee) *Payment guarantee*. An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee, this subpart, and any applicable Program Announcements, agrees to pay the exporter or the exporter's assignee in the event of a default by a foreign financial institution on its payment obligation under the foreign financial institution letter of credit issued in connection with a guaranteed sale or under the foreign financial institution's related obligation.

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

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

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward loading tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean

freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

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

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

(gg) *Post default interest*. Interest charged on amounts in default, as specified in the foreign financial institution letter of credit or related obligation that begins to accrue upon default of payment.

(hh) *Principal*. An officer, director, owner of five percent or more of stock, partner, or person having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division, or business segment).

(ii) *Program announcement*. An announcement issued by CCC on the FAS Web site that provides information on specific country and regional programs and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, and other information.

(jj) *Related obligation*. A contractual commitment by the foreign financial institution issuing the letter of credit in connection with an export sale to make payment(s) on principal amount(s), plus any ordinary and post-default interest, in U.S. dollars, to an exporter or U.S. financial institution on deferred payment terms consistent with those permitted under CCC's payment guarantee. The U.S. financial institution (or exporter) is entitled to such payments because it has financed the obligation arising under such letter of credit.

(kk) *Repurchase agreement*. A written agreement under which the holder of CCC's payment guarantee, either the exporter or exporter's assignee,

whichever is applicable, may from time to time enter into transactions in which the exporter or exporter's assignee agrees to sell to another party foreign financial institution letter(s) of credit and/or related obligation(s) secured by CCC's payment guarantee, and repurchase the same foreign financial institution letter(s) of credit and/or related obligation(s) secured by CCC's payment guarantee, on demand or date certain at an agreed upon price.

(ll) *United States or U.S.* Each of the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(mm) *U.S. agricultural commodity.*

(1)(i) An agricultural commodity or product entirely produced in the United States; or

(ii) A product of an agricultural commodity—

(A) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(B) That the Secretary determines to be a high value agricultural product.

(2) For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

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

(oo) *U.S. financial institution.* A financial institution:

(1) Organized under the laws of a jurisdiction within the United States;

(2) Domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority jurisdiction within the United States.

#### **§ 1493.30 Information required for exporter participation.**

Before CCC will accept an application for a payment guarantee under the GSM-102 program, the applicant must qualify for participation in this program.

(a) *Qualification requirements.* To qualify for participation in the GSM-102 program, an applicant must submit the following information to CCC in the manner specified on the FAS Web site:

(1) The applicant:

(i) The name and full U.S. address (including the full 9-digit zip code) of the applicant's office, along with an indication of whether the address is a business or private residence. A post office box is not an acceptable address. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the

GSM-102 export sales contemplated by the applicant;

(ii) Dun and Bradstreet (DUNS) number;

(iii) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(iv) Telephone and fax numbers;

(v) E-mail address (if applicable);

(vi) Business Web site (if applicable);

(vii) Contact name;

(viii) Statement indicating whether the applicant is a U.S. domestic entity or a foreign entity domiciled in the United States; and

(ix) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc. and the place of incorporation or State where legally registered or, if not registered, the address of legal residence. Upon request by CCC, the applicant must provide documentation showing its registration or licensing in the State where incorporated or established as a business entity.

(2) For the applicant's headquarters office:

(i) The name and full address of the applicant's headquarters office. A post office box is not an acceptable address;

(ii) Telephone and fax numbers.

(3) For the applicant's agent for the service of process:

(i) The name and full U.S. address of the applicant's agent's office, along with an indication of whether the address is a business or private residence;

(ii) Telephone and fax numbers;

(iii) E-mail address (if applicable); and

(iv) Contact name.

(4) A description of the applicant's business. Applicants must provide the following information:

(i) Nature of the applicant's business (i.e., agricultural producer, commodity trader, consulting firm, etc.);

(ii) Explanation of the applicant's experience/history with agricultural commodities or products for the preceding three years, including description of commodities;

(iii) Explanation of the applicant's experience/history exporting U.S. agricultural commodities, including number of years involved in exporting, types of products exported, and destination of exports for the preceding three years;

(iv) Whether or not the applicant is a "small or medium enterprise" (SME) as defined on the FAS Web site;

(5) A listing of any related companies (e.g., affiliates, subsidiaries, or companies otherwise related through common ownership) currently qualified to participate in CCC export programs;

(6) A statement describing the applicant's participation, if any, during

the past three years in U.S. Government programs, contracts or agreements; and

(7) A statement that: "All section 1493.60(a) certifications are being made in this application" which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.60(a). The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any exporter not submitting an application for a GSM-102 payment guarantee for two consecutive fiscal years must resubmit a qualification application to CCC. If at any time the information required by paragraph (a) of this section changes, the exporter must promptly contact CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) has not changed.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the GSM-102 program at time of application or any time thereafter if such applicant cannot provide all of the information and certifications required in § 1493.30(a).

#### **§ 1493.40 Information required for U.S. financial institution participation.**

Before CCC will permit a U.S. financial institution to participate under the GSM-102 program, the U.S. financial institution must qualify for participation in this program.

(a) *Qualification requirements.* In order to qualify for participation in the GSM-102 program, a U.S. financial institution must submit the following information to CCC in the manner specified on the FAS Web site:

(1) Legal name and address of the applicant;

(2) Dun and Bradstreet (DUNS) number;

(3) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(4) Year end audited financial statements for the applicant's most recent fiscal year; and

(5) Breakdown of the U.S. financial institution's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(6) Organizational structure (independent, or a subsidiary, affiliate, or branch of another financial institution);

(7) Documentation from the applicable United States Federal or State agency demonstrating that the applicant is either licensed or chartered to do business in the United States;

(8) Name of the agency that regulates the applicant and the name and telephone number of the primary contact for such regulator; and

(9) A statement that: "All § 1493.60 certifications are being made in this application" which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.60. The U.S. financial institution will be required to provide further explanation or documentation with regard to applications that do not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any U.S. financial institution not participating in the GSM-102 program for two consecutive fiscal years must resubmit the information and certifications requested by paragraph (a) of this section to CCC. If at any time the information required by paragraph (a) of this section changes, the U.S. financial institution must promptly notify CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) has not changed.

(d) *Ineligibility for program participation.* A U.S. financial institution may be ineligible to participate in the GSM-102 program at time of application or any time thereafter if such applicant cannot provide all of the information and certifications required in 1493.40(a).

#### **§ 1493.50 Information required for foreign financial institution participation.**

Before CCC will permit a foreign financial institution to participate under the GSM-102 program, the foreign financial institution must qualify for participation in this program.

(a) *Qualification requirements.* In order to qualify for participation in the GSM-102 program, a foreign financial institution must submit the following information to CCC in the manner specified on the FAS Web site:

(1) Legal name and address of the applicant;

(2) Year end, audited financial statements for the applicant's three most recent fiscal years;

(3) Breakdown of applicant's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(4) Organizational structure (independent, or a subsidiary, affiliate, or branch of another legal entity);

(5) Name of foreign government agency that regulates the applicant; and

(6) A statement that: "All § 1493.60 certifications are being made in this application" which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.60. The foreign financial institution will be required to provide further explanation or documentation with regard to applications that do not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Participation limit.* If, after review of the information submitted and other publicly available information, CCC determines that the foreign financial institution is eligible for participation, CCC will establish a dollar participation limit for the institution. This limit will be the maximum amount of exposure CCC agrees to undertake with respect to this foreign financial institution at any point in time. CCC may change or cancel this dollar participation limit at any time based on any information

submitted or any publicly available information.

(d) *Previous qualification and submission of annual financial statements.* Each qualified foreign financial institution shall submit annually to CCC its audited fiscal year-end financial statements so that CCC may determine the continued ability of the foreign financial institution to adequately service CCC guaranteed debt. Failure to submit this information annually may cause CCC to decrease or cancel the foreign financial institution's dollar participation limit. Additionally, if at any time the information required by paragraph (a) of this section changes, the foreign financial institution must promptly contact CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) has not changed.

(e) *Ineligibility for program participation.* A foreign financial institution may be ineligible to participate in the GSM-102 program at time of application or any time thereafter if:

(1) Such applicant cannot provide all of the information and certifications required in § 1493.50(a); or

(2) Based upon information submitted by the applicant or other publicly available sources, CCC determines that the applicant cannot adequately service the debt associated with the payment guarantees issued by CCC.

#### **§ 1493.60 Certifications required for program participation.**

(a) When making the statement required by §§ 1493.30(a)(7), 1493.40(a)(9), or 1493.50(a)(6), each exporter, U.S. financial institution and foreign financial institution applicant for program participation is certifying that, to the best of its knowledge and belief:

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

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

making false statements, or receiving stolen property;

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

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

(5) The applicant does not have any outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13;

(6) The applicant is not controlled by a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (e.g., a corporation is not controlled by an officer, director, or shareholder who owes a debt); and

(7) The applicant does not control a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (e.g., a corporation does not control a wholly-owned or partially-owned subsidiary which owes a debt).

(b) *Additional certifications for U.S. and foreign financial institution applicants.* When making the statement required by § 1493.40(a)(9) or § 1493.50(a)(6), each U.S. and foreign financial institution applicant for program participation is certifying that, to the best of its knowledge and belief:

(1) The applicant and any of its principals are in compliance with all requirements, restrictions and guidelines as established by the applicant's regulators; and

(2) All U.S. operations of the applicant and any of its U.S. principals are in compliance with U.S. anti-money laundering and terrorist financing statutes including, but not limited to, the USA Patriot Act of 2001.

#### **§ 1493.70 Application for payment guarantee.**

(a) A firm export sales contract must exist before an exporter may submit an application for a payment guarantee. Upon request by CCC, the exporter must provide evidence of a firm export sales contract. An application for a payment guarantee must be submitted in writing to CCC in the manner specified on the FAS Web site. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country or region.

(2) Name and address of the importer.

(3) Name and address of the letter of credit account party, if other than the importer.

(4) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country or region.

(5) Date of sale.

(6) Exporter's sale number.

(7) Delivery period as agreed between the exporter and the importer.

(8) A full description of the commodity (including packaging, if any).

(9) Mean quantity, contract loading tolerance and, if necessary, a request for CCC to reserve coverage up to the maximum quantity permitted.

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

(11) Description and value of discounts and allowances, if any.

(12) Port value (includes upward loading tolerance, if any).

(13) Guaranteed value.

(14) Guarantee fee, either as announced on the Web site per § 1493.110(a)(1), or the competitive fee bid per § 1493.110(a)(2), depending on the type of fee charged by CCC for the country or region.

(15) Name and location of the foreign financial institution issuing the letter of credit and, upon request by CCC, written evidence that the foreign financial institution has agreed to issue the letter of credit.

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

(17) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in USDA's Dairy Export Incentive Program (DEIP). The number of the Agreement assigned by USDA under the DEIP should be included, as applicable.

(18) The exporter's statement, "ALL § 1493.80 CERTIFICATIONS ARE BEING MADE IN THIS APPLICATION" which, when included in the

application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.80.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the Director. In the event that the application is approved, the Director will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.100(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

#### **§ 1493.80 Certification requirements for obtaining payment guarantee.**

By providing the statement in § 1493.70(a)(18), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. If the exporter makes false certifications with respect to a GSM-102 payment guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to revoke guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.70(a)(18), certifies that:

(a) The agricultural commodity or product covered by the payment guarantee is a U.S. agricultural commodity;

(b) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) At the time of submission of the application for payment guarantee, the importer and the intervening purchaser, if applicable, are not excluded or disqualified from participation in U.S. government programs through either the EPLS or OFAC Specially Designated Nationals (SDN) lists; and

(e) The information provided pursuant to § 1493.30 has not changed and the exporter still meets all of the qualification requirements of § 1493.30.

**§ 1493.90 Terms and requirements of the foreign financial institution letter of credit and related obligation.**

(a) *Foreign financial institution letter of credit.* (1) The foreign financial institution letter of credit must contain the following language: "Issuer acknowledges that issuer has arranged funding for the purpose of financing the trade transaction covered by this Letter of Credit. Issuer confirms the underlying transaction is a bona fide trade transaction and, consequently, this Letter of Credit will be booked by issuer as trade finance debt."

(2) The foreign financial institution letter of credit or related obligation must also contain a provision permitting the exporter and the exporter's assignee, if any, to declare all or any part of the debt, including accrued interest, immediately due and payable, in the event a payment default occurs under the obligation to which the payment guarantee(s) applies.

(3) The commodity grade and quality specified in the foreign financial institution letter of credit must be consistent with the commodity grade and quality specified in the firm export sales contract.

(b) *Related obligation.* The related obligation must be demonstrated in one of the following ways:

(1) The related obligation, including a specific promise to pay on deferred payment terms, may be contained in the letter of credit as a special instruction from the issuing financial institution 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; or

(2) The related obligation may be memorialized in a separate document(s) specifically identified and referred to in the letter of credit as the agreement under which the foreign financial institution is obliged to repay the exporter or U.S. financial institution on deferred payment terms; or

(3) The foreign financial institution letter of credit payment obligations may be specifically identified in a separate document(s) setting forth the related

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

(4) The related obligation may be memorialized in the form of a promissory note executed by the foreign financial institution issuing the foreign financial institution letter of credit in favor of the U.S. financial institution.

**§ 1493.100 Terms and requirements of the payment guarantee.**

(a) *CCC's obligation.* The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the foreign financial institution fails to pay under the foreign financial institution letter of credit or the related obligation. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* The payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee. The payment guarantee will apply to the period beginning with the date(s) of export(s) and will continue during the credit term specified in the payment guarantee or amendments thereto.

(c) *Terms of the CCC payment guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) *Reserve coverage for loading tolerances.* The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. The amount of coverage that can be reserved to accommodate the upward loading tolerance is limited to five (5) percent of the port value of the sale. If such additional guarantee coverage is available at the time of application and the Director determines to make such reservation, CCC will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (*i.e.*, lower loading tolerance), it may obtain the additional

coverage from CCC, up to the amount of the upward loading tolerance, by filing for an application for amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such application for an amendment to the payment guarantee is not filed with CCC by the exporter or the additional fee not received by CCC within 15 calendar days after the date of the last export against the sales contract, CCC will cancel the reserve coverage originally set aside for the exporter.

(e) *Prohibited transactions.* An export transaction is ineligible for GSM-102 coverage if at any time it is determined that:

(1) The commodity is not a U.S. agricultural commodity; or

(2) The export sale includes corrupt payments or extra sales or services or other items extraneous to the transactions provided, financed, or guaranteed in connection with the transaction; or

(3) The export sale does not comply with applicable U.S. law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures; or

(4) If the agricultural commodity is vegetable oil or a vegetable oil product, any of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product; or

(5) Either the importer or the intervening purchaser, if applicable, is excluded or disqualified from participation in U.S. government programs; or

(6) The export transaction has been guaranteed by CCC under another payment guarantee.

(f) *Ineligible exports.* The following exports are ineligible for GSM-102 guarantee coverage except where it is determined by the Director to be in the best interest of CCC to provide guarantee coverage on such commodities:

(1) Commodities with a date of export prior to the date of receipt by CCC of the exporter's written application for a payment guarantee;

(2) Commodities with a date of export made after the final date to export shown on the payment guarantee or any amendments thereof; or

(3) Commodities where the date of issuance of a foreign financial institution letter of credit is more than 30 calendar days after the date of export.

(g) *Additional requirements.* The payment guarantee may contain such additional terms, conditions, and

limitations as deemed necessary or desirable by the Director. Such additional terms, conditions or qualifications as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(h) *Amendments.* A request for an amendment of a payment guarantee may be submitted only by the exporter, with the written concurrence of the assignee, if any. The Director will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and sufficient budget authority exists. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an increase in the guarantee fee. CCC reserves the right to request additional information from the exporter to justify the request and to charge a fee for amendment requests. Such fees will be announced and available on the FAS Web site. Any amendment to the foreign financial institution will require that the exporter or the exporter's assignee, if applicable, resubmit to CCC the certifications in § 1493.120(c)(1) or § 1493.140(c).

#### **§ 1493.110 Guarantee fees.**

(a) *Guarantee fee rates.* Payment guarantee fee rates charged may be one of the following two types:

(1) Those that are announced on the FAS Web site and are based upon the length of the payment terms provided for in the export sale contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors which CCC determines appropriate for consideration.

(2) Those where exporters are invited to submit a competitive bid for coverage. If CCC determines to offer coverage on a competitive fee bid basis, instructions for bidding, and minimum fee rates, if applicable, will be made available on the FAS Web site. Under a competitive bidding process, the final guarantee fee rate will be determined by CCC and will be advised to the exporter.

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

(c) *Payment of fee.* The exporter shall remit, with his application, the full amount of the guarantee fee. Applications will not be accepted until the guarantee fee has been received by CCC. The exporter's wire transfer or check for the guarantee fee shall be made payable to CCC and be submitted in the manner specified on the FAS Web site.

(d) *Refunds of fee.* Guarantee fees paid in connection with applications that are accepted by CCC will ordinarily not be refundable. Once CCC notifies an exporter of acceptance of an application, the fee for that application will not be refunded unless the Director determines that such refund will be in the best interest of CCC, even if the exporter withdraws the application prior to CCC's issuance of the payment guarantee. If CCC does not accept an application for a payment guarantee or accepts only part of the guarantee coverage requested, a full or pro rata refund of the fee will be made.

#### **§ 1493.120 Assignment of the payment guarantee.**

(a) *Requirements for assignment.* The exporter may assign the payment guarantee only to a U.S. financial institution approved for participation by CCC. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

(1) Made to one party acting for two or more parties, or

(2) Subject to further assignment to another U.S. financial institution approved by CCC.

(b) *Submission of assignment.* A notice of assignment signed by the parties thereto must be filed by the assignee with CCC in the manner specified on the FAS Web site. The name and address of the assignee must be included on the written notice of assignment.

(c) *Required certifications.* (1) The U.S. financial institution must include the following certification on the notice of assignment: "I certify, to the best of my knowledge and belief, that:

(i) [Name of assignee] has verified that the foreign financial institution, at the time of submission of the notice of assignment, is not excluded or disqualified from participation in U.S. government programs through either the EPLS or OFAC Specially Designated Nationals (SDN) lists; and

(ii) The information provided pursuant to § 1493.40 has not changed and [name of assignee] still meets all of the qualification requirements of § 1493.40."

(2) If the assignee makes false certifications with respect to a GSM-102 payment guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to revoke the assignment and/or to proceed against the assignee.

(d) *Notice of eligibility to receive assignment.* In cases where a U.S. financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (e) of this section, CCC will provide notice thereof to the U.S. financial institution and to the exporter issued the payment guarantee.

(e) *Ineligibility of U.S. financial institutions to receive an assignment and proceeds.* A U.S. financial institution will be ineligible to receive an assignment of a payment guarantee or the proceeds payable under a payment guarantee approved by CCC if such U.S. financial institution:

(1) At the time of assignment of a payment guarantee, is not in compliance with all requirements of 1493.40(a); or

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

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

(4) Is the U.S. parent of the foreign financial institution issuing the letter of credit; or

(5) Is owned or controlled by the government of a foreign country and the payment guarantee has been issued in connection with export sales of agricultural commodities to importers located in such foreign country.

(f) *Repurchase agreements.* An exporter who holds a CCC payment guarantee or an assignee may enter into a repurchase agreement.

(1) The exporter or exporter's assignee in the repurchase agreement must comply with the following:

(i) Any repurchase under a repurchase agreement by the exporter or exporter's assignee must be for the entirety of outstanding balance under the GSM-102 related foreign financial institution letter of credit and/or related obligation;

(ii) In the event of default with respect to the obligation subject to a repurchase agreement, the exporter or exporter's assignee, as applicable, must immediately effect such repurchase;

(iii) The exporter or exporter's assignee must maintain full servicing of the foreign financial institution letter of credit and/or related obligation covered by the CCC payment guarantee at all times; and

(iv) The exporter or exporter's assignee must file all documentation required by § 1493.160 and 1493.170 in case of default by the foreign financial institution under the payment guarantee; and

(v) The exporter or exporter's assignee must include the following clause in the repurchase agreement: "If during the



tenor of this repurchase agreement the foreign financial institution issuing the underlying letter of credit in the GSM-102 transaction fails to make payment pursuant to the terms of such letter of credit and/or related obligation, [Name of exporter or exporter's assignee, whichever is applicable] shall repurchase the same letter of credit and/or related obligation transferred to [name of other party to the repurchase agreement] under this repurchase agreement prior to filing a notice of default to the Commodity Credit Corporation, pursuant to 7 CFR part 1493.160."

(2) An exporter who holds a CCC payment guarantee or an assignee shall, within five business days of execution of the repurchase agreement, notify CCC of the repurchase agreement in writing in the manner specified on the FAS Web site. Such notification must include the following information:

(i) Name and address of the other party to the repurchase agreement; and  
(ii) A statement indicating whether the repurchase agreement is for a fixed tenor or if it is terminable upon demand. If fixed, provide the purchase date and repurchase date agreed to in the repurchase agreement. If terminable on demand, provide the purchase date only; and

(iii) The following written certification: "[Name of exporter or assignee] has entered into a repurchase agreement that meets the provisions of 7 CFR 1493.120(f)(1) and, prior to entering into this agreement, verified that [name of other party to the repurchase agreement] is not excluded or disqualified from participation in U.S. government programs through either the EPLS or OFAC Specially Designated Nationals (SDN) lists."

(3) Failure of the exporter or assignee to comply with any of the provisions of § 1493.120(f) will result in CCC annulling coverage on the foreign financial institution letter of credit and/or related obligation covered by the payment guarantee.

#### § 1493.130 Evidence of export.

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

(1) Payment guarantee number;  
(2) Evidence of export report number (e.g., Report 1, Report 2) reflecting the report's chronological order of submission under the particular payment guarantee;  
(3) Date of export;

(4) Destination country. If the sale was registered under a regional program, indicate the specific country within the region to which the goods were shipped;

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

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

(11) Number of the Agreement assigned by USDA under the Dairy Export Incentive Program (DEIP) if any portion of the export sale was also approved for participation in the DEIP;

(12) The exporter's statement, "ALL § 1493.140 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT" which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.140; and

(13) In addition to all of the above information, the final evidence of export report for the payment guarantee must include the following:

(i) The statement "Exports under the payment guarantee have been completed."

(ii) A statement summarizing the total quantity and value of the commodity exported under the payment guarantee (i.e., the cumulative totals on all numbered evidence of export reports).

(b) *Time limit for submission of evidence of export.* (1) The exporter must provide a written report to the CCC in the manner specified on the FAS Web site within 10 calendar days from the date of export.

(2) If at any time the exporter determines that no shipments are to be made under a payment guarantee, the exporter is required to notify CCC in writing no later than the final date to export specified on the payment guarantee by furnishing the payment guarantee number and stating "no exports will be made under the payment guarantee."

(3) Requests for an extension of the time limit for submitting an evidence of export report must be submitted in writing by the exporter to the Director and must include an explanation of why the extension is needed. An extension of the time limit may be granted only if such extension is requested prior to the

expiration of the time limit for filing and is determined by the Director to be in the best interests of CCC.

(c) *Failure to comply with time limits for submission.* CCC will not accept any new applications for payment guarantees from an exporter under § 1493.70 until the exporter is fully in compliance with the requirements of § 1493.130(b) for all existing payment guarantees issued to that exporter or has requested and been granted an extension per § 1493.130(b)(3).

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

#### § 1493.140 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.130(a)(12), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter makes false certifications with respect to a GSM-102 payment guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in § 1493.130(a)(12), certifies that:

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity;

(b) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(c) If the exporter has not assigned the payment guarantee to a U.S. financial institution, the exporter has verified that the foreign financial institution, at the time of submission of the evidence of export report, is not excluded or disqualified from participation in U.S. government programs through either the EPLS or OFAC Specially Designated Nationals (SDN) lists; and

(d) The information provided pursuant to § 1493.30 and § 1493.70 has not changed (except as agreed to and amended by CCC) and the exporter still meets all of the qualification requirements of § 1493.30.

#### **§ 1493.150 Proof of entry.**

(a) *Diversion.* The diversion of commodities covered by a GSM-102 payment guarantee to a country or region other than that shown on the payment guarantee is prohibited, unless expressly authorized by the Director.

(b) *Records of proof of entry.* (1) Exporters must obtain and maintain records of an official or customary commercial nature that demonstrate the arrival of the agricultural commodities exported in connection with the GSM-102 program in the country or region that was the intended country or region of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by an agent or representative of the vessel or shipline that delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the Director showing:

- (i) That the agricultural commodity entered the importing country or region;
- (ii) The identification of the export carrier;
- (iii) The quantity of the agricultural commodity;
- (iv) The kind, type, grade and/or class of the agricultural commodity; and
- (v) The date(s) and place(s) of unloading of the agricultural commodity in the importing country or region.

(2) Where shipping documents (e.g., bills of lading) clearly demonstrate that the agricultural commodities were shipped to the destination country or region, proof of entry verification may be provided by the importer.

#### **§ 1493.160 Notice of default.**

(a) *Notice of default.* If the foreign financial institution issuing the letter of credit fails to make payment pursuant to the terms of the foreign financial institution 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 5 business days after the date that payment was due from the foreign financial institution (the due date). A notice of default must be submitted in

writing to CCC in the manner specified on the FAS Web site and must include the following information:

- (1) Payment guarantee number;
- (2) Name of the country or region as shown on the payment guarantee;
- (3) Name of the defaulting foreign financial institution;
- (4) Payment due date;
- (5) Total amount of the defaulted payment due, indicating separately the amounts for principal and ordinary interest, and including a copy of the repayment schedule with due dates, principal amounts and ordinary interest rates for each installment;
- (6) Date of foreign financial institution's refusal to pay, if applicable;
- (7) Reason for foreign financial institution's refusal to pay, if known, and copies of any correspondence with the foreign financial institution regarding the default.

(b) *Failure to comply with time limit for submission.* If the exporter or the exporter's assignee fails to notify CCC of a default within 5 business days, CCC may deny the claim for that default.

(c) *Impact of a default on other existing payment guarantees.* (1) If a foreign financial institution defaults under a CCC payment guarantee, upon receipt of notice by the exporter from CCC, CCC will immediately withdraw coverage of any shipments where:

- (i) The foreign financial institution letter of credit has been or will be issued by the foreign financial institution in default, and
- (ii) The date of export is to be later than the date of receipt of CCC's notification to the exporter.

(2) If CCC withdraws coverage for any such shipments, CCC will permit the exporter (with concurrence of the assignee, if any) to utilize another approved foreign financial institution for the balance of the transaction covered by the payment guarantee. If no alternate foreign financial institution can be found, CCC will cancel the portion of the payment guarantee corresponding to any unshipped amounts plus any shipped amounts with a date of export later than the date of the first default by the foreign financial institution and refund the guarantee fees corresponding to these amounts.

#### **§ 1493.170 Claims for default.**

(a) *Filing a claim.* A claim by the exporter or the exporter's assignee for a defaulted payment will not be paid if it is made later than 180 calendar days from the due date of the defaulted payment. A claim must be submitted in writing to CCC in the manner specified on the FAS Web site. The claim must

include the following information and documents:

- (1) Payment guarantee number;
- (2) A certification that the scheduled payment has not been received;
- (3) A certification of the total amount of the defaulted payment due, indicating separately the amounts for principal and ordinary interest, and including a copy of the repayment schedule with due dates, principal amounts and ordinary interest rates for each installment;
- (4) A description of:
  - (i) Any payments from or on behalf of the defaulting party or otherwise related to the defaulted payment that were received by the exporter or the exporter's assignee prior to submission of the claim (excluding scheduled payments received under the letter of credit and/or related obligation prior to the initial default); and
  - (ii) Any security, insurance, or collateral arrangements, whether or not any payment has been realized from such security, insurance, or collateral arrangement as of the time of claim, from or on behalf of the defaulting party or otherwise related to the defaulted payment.

(5) 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 all documents are true and correct copies:

- (i)(A) the foreign financial institution letter of credit securing the export sale; and

(B) If applicable, the document(s) evidencing the related obligation owed by the foreign financial institution to the exporter or the exporter's assignee.

(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 bill of lading and the entry certificate or similar document signed by an official of the importing country;

(iii) Proof of entry documentation as required by § 1493.150;

(iv)(A) the exporter's invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or

(B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer;

(v) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable

export sale. The instrument must reference the applicable foreign financial institution letter of credit and the related obligation, if applicable; and

(vi) A copy of the evidence of export report(s) previously submitted by the exporter to CCC pursuant to § 1493.130(a), or evidence that the report was submitted to CCC electronically.

(b) *Additional documents.* If a claim is denied by CCC, the exporter or exporter's assignee may provide further documentation to CCC to establish that the claim is in good order.

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the foreign financial institution to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (a)(1), (2), and (3) of this section; an instrument of subrogation as per paragraph (a)(5)(v) of this section, and including the date the original claim was filed with CCC.

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

#### **§ 1493.180 Payment for default.**

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.170, CCC will determine whether or not a default has occurred for which CCC is liable under the applicable payment guarantee. Such determination shall include, but not be limited to, CCC's determination that all documentation conforms to the specific requirements contained in this subpart, and that all documents submitted for payment conform to the requirements of the letter of credit and/or related obligation. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* CCC's maximum liability for any claims submitted with respect to any payment guarantee, not including any CCC late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the payment guarantee, plus eligible interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the exporter or the exporter's assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the exporter or the exporter's assignee); or

(2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the exporter or the exporter's assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the exporter or the exporter's assignee).

(c) *CCC late interest.* If CCC does not pay a claim within 15 business days of receiving the claim in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the sixteenth business day after the day of receipt of a complete and valid claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. 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 at a rate equal to the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date. If there has been no 91-day auction within 90 calendar days of the date CCC late interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the FAS Web site.

(d) *Accelerated payments.* CCC will pay claims only 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 financial institution's letter of credit, or any obligation owed by the foreign financial institution to the exporter and/or the exporter's assignee which is related to the foreign financial institution's letter of credit issued in favor of the exporter, unless it is determined to be in the best interests of CCC. Notwithstanding the foregoing, CCC at its option may declare

up to the entire amount of the unpaid balance, plus accrued ordinary interest, in default, require the U.S. financial institution (or exporter) to invoke the acceleration provision in the foreign financial institution letter of credit, require submission of all claims documents specified in § 1493.170, and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not 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 § 1493.130 and § 1493.140, excluding post-export adjustments (*i.e.*, corrections to evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.160 and § 1493.170.

#### **§ 1493.190 Recovery of defaulted payments.**

(a) *Notification.* Upon claim payment to the exporter or the exporter's assignee, CCC will notify the foreign financial institution of CCC's rights under the subrogation agreement to recover all monies in default.

(b) *Receipt of monies.* (1) In the event that monies related to the obligation in default are recovered by the exporter or the exporter's assignee from or on behalf of the defaulting party, the importer, or any source whatsoever (excluding payments between CCC, the exporter and the exporter's assignee), such monies shall be immediately paid to CCC. Any monies derived from insurance or through the liquidation of any security or collateral after the claim is filed with CCC shall be deemed recoveries that must be paid to CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter

or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery. If there has been no 91-day auction within 90 calendar days of the date interest begins to accrue, will apply an alternative rate in a manner to be described on the FAS Web site.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer or the foreign financial institution, and recoveries received by CCC from the exporter, the exporter's assignee, or any source whatsoever that are related to the obligation in default 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 GSM-102 payment guarantee, CCC pro rates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full.

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, under the following circumstances the exporter or the exporter's assignee will be liable to CCC for any amounts paid by CCC under the payment guarantee:

(1) The exporter will be liable to CCC when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment

guarantee or for fulfilling obligations under GSM-102;

(2) The exporter's assignee will be liable to CCC when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The willful violation by an exporter of the certifications in § 1493.80(b) and § 1493.140(b) or the failure of an exporter to comply with the provisions of § 1493.150 or § 1493.210(a) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to affect recoveries from the foreign financial institution and/or the importer. Cooperation may include, but is not limited to, submission of documents to the foreign financial institution (or its representative) to establish a claim; participation in discussions with CCC regarding the appropriate course of action with respect to a default; actions related to accelerated payments as specified in § 1493.180(d); and other actions that do not increase the obligation of the exporter or exporter's assignee under the payment guarantee.

#### **§ 1493.192 Dispute resolution and appeals.**

(a) *Dispute resolution.* (1) The Director and the exporter or the exporter's assignee will attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the GSM-102 program, this subpart, the applicable Program Announcements and Notices to Participants, or the payment guarantee.

(2) The exporter or the exporter's assignee may seek reconsideration of a determination by the Director by submitting a letter requesting reconsideration to the Director within 30 calendar days of the date of the determination. For the purposes of this section, the date of a determination will be the date of the letter or other means of notification to the exporter or the exporter's assignee of the determination. The exporter or the exporter's assignee may include with the letter requesting reconsideration any additional information that it wishes the Director to consider in reviewing its request. The Director will respond to the request for reconsideration within 30 calendar days of the date on which the request or the

final documentary evidence submitted by the exporter or the exporter's assignee is received by him or her, whichever is later, unless the Director extends the time permitted for response. If the exporter or the exporter's assignee fails to request reconsideration of a determination by the Director, then the determination of the Director is final.

(3) If the exporter or the exporter's assignee requested reconsideration of a determination by the Director pursuant to subparagraph (a)(2) of this section, and the Director upheld the original determination, then the exporter or the exporter's assignee may appeal the Director's final determination to the GSM in accordance with the procedures set forth in paragraph (b) of this section. If the exporter or the exporter's assignee fails to appeal the Director's final determination within 30 calendar days, as provided in section 1493.200(b)(1), then the Director's decision becomes the final determination of CCC.

(b) *Appeal procedures.* (1) An exporter or exporter's assignee that has exhausted the procedures set forth in paragraph (a) of this section may appeal to the GSM a determination of the Director. An appeal to the GSM must be in writing and filed with the office of the GSM no later than 30 calendar days following the date of the final determination by the Director. If the exporter or the exporter's assignee requests an administrative hearing in its appeal letter, it shall be entitled to a hearing before the GSM or the GSM's designee.

(2) If the exporter or the exporter's assignee does not request an administrative hearing, the exporter or the exporter's assignee must indicate in its appeal letter whether or not it will submit any additional written information or documentation for the GSM to consider in acting upon its appeal. This information or documentation must be submitted to the GSM within 30 calendar days of the date of the appeal letter to the GSM. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will endeavor to issue his or her written decision within 60 calendar days of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the exporter or the exporter's assignee to the GSM, whichever is later.

(3) If the exporter or the exporter's assignee has requested an administrative hearing, the GSM will set a date and time for the hearing that is mutually convenient for the GSM and the exporter or the exporter's assignee. This date will ordinarily be within 60

calendar days of the date on which the GSM receives the request for a hearing. The hearing will be an informal procedure. The exporter or the exporter's assignee and/or its counsel may present any relevant testimony or documentary evidence to the GSM. A transcript of the hearing will not ordinarily be prepared unless the exporter or the exporter's assignee bears the costs involved in preparing the transcript, although the GSM may decide to have a transcript prepared at the expense of the Government. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will endeavor to issue his or her written decision within 60 calendar days of the date of the hearing or the date of receipt of the transcript, if one is to be prepared, whichever is later.

(4) The decision of the GSM will be the final determination of CCC. The exporter or the exporter's assignee will be entitled to no further administrative appellate rights.

(c) *Failure to comply with determination.* If the exporter or the exporter's assignee has violated the terms of this subpart or the payment guarantee by failing to comply with a determination made under this section, and the exporter or the exporter's assignee has exhausted its rights under this section or has failed to exercise such rights, then CCC will have the right to take any measures available to CCC under applicable law.

(d) *Exporter's obligation to perform.* The exporter will continue to have an obligation to perform pursuant to the provisions of these regulations and the terms of the payment guarantee pending the conclusion of all procedures under this section.

#### **§ 1493.195 Miscellaneous provisions.**

(a) *Maintenance of records and access to premises.* For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a GSM-102 payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as

applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the Director, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(b) *Responsibility of program participants.* It is the responsibility of all exporters, U.S. and foreign financial institutions to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants relating to the GSM-102 program, as applicable. All exporters, U.S. and foreign financial institutions participating in this program are hereby on notice that they will be bound by this subpart and any terms contained in the payment guarantee and in applicable Program Announcements.

(c) *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 of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal, the signature must be accompanied by: wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits.

(d) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise there from, but this provision

shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(e) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information collection requirements contained in this part (7 CFR Part 1493) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0004.

Dated: June 24, 2011.

**Suzanne E. Heinen,**

*Acting Executive Vice President, Commodity Credit Corporation and Acting Administrator, Foreign Agricultural Service.*

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## **DEPARTMENT OF AGRICULTURE**

### **Food Safety and Inspection Service**

#### **9 CFR Parts 319 and 381**

[Docket No. FSIS-2010-0012]

**RIN 0583-AD41**

### **Common or Usual Name for Raw Meat and Poultry Products Containing Added Solutions**

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is proposing to amend its regulations to establish a common or usual name for raw meat and poultry products that do not meet standard of identity regulations and to which solutions have been added. Products with added solutions are sometimes referred to as "enhanced products." The Agency is proposing that the common or usual name for such products include an accurate description of the raw meat or poultry component, the percentage of added solution incorporated into the raw meat or poultry product, and the individual ingredients or multi-ingredient components in the solution listed in the descending order of predominance by weight. FSIS is also proposing that the print for all words in the common or usual name appear in a single font size, color, and style of print and that the name appear on a single-color contrasting background. In addition, the Agency is proposing to remove the standard of identity regulation for "ready-to-cook poultry products to which solutions are added."