

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****7 CFR Part 1493**

RIN 0551-AA74

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

**AGENCY:** Foreign Agricultural Service and Commodity Credit Corporation (CCC), 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. This proposed rule also incorporates certain changes as suggested in comments received in response to the initial publication of the proposed rule on July 27, 2011. These changes should increase program availability to all program participants and enhance access and encourage sales for smaller U.S. exporters. Changes are also intended to improve CCC's financial management of the program. 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 January 27, 2014 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.

- *Email:* [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, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Stop 1025, Room 5509, Washington, DC 20250-1025.

Comments may be inspected at 1400 Independence Avenue SW.,

Washington, DC, between 8:00 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 email 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 July 27, 2011, CCC published a Proposed Rule in the **Federal Register** (Vol. 76, No. 144, pages 44836-44855) revising and amending the regulations that administer the Export Credit Guarantee (GSM-102) Program. Changes in this proposed rule incorporated program operational changes and information from press releases and notices to participants that have been implemented since the publication of the current rule, and included other revisions to enhance clarity and program integrity. The deadline for comments on the proposed rule was October 26, 2011 (extended from the initial deadline of September 26, 2011, at the request of interested commenters). CCC received comments on the proposed rule from 20 parties, including U.S. exporters, U.S. cooperator groups, U.S. banks, foreign banks, foreign importer associations, and individuals (including one set of comments

submitted jointly by a group of 12 interested parties).

**Reason for Reissuing a Proposed Rule**

CCC is reissuing this rule as a proposed rule instead of a final rule because, based on comments received on the initial proposed rule, it has made several significant changes and is providing the public with an additional opportunity for comment. Comments received and changes made by CCC are discussed below in the Section-by-Section Analysis. CCC is publishing this proposed rule with a comment period of 30 days from date of publication.

**General Comments**

Ten respondents provided general comments on the proposed rule. Three commenters indicated that there were a number of improvements to the proposed rule and that the proposed changes reflect the evolution of agricultural trade and finance practices and will enhance program clarity and integrity.

Three respondents expressed general concerns regarding the potential negative impact of the proposed changes on the GSM-102 program. One commenter suggested that the proposed rules on fees and tightened requirements for exporters would increase the cost of the program to exporters, who will pass on these costs to importers, negatively impacting the ability of the program to promote trade. One respondent expressed the need for modifications to ensure the program reflects commercial realities and facilitates trade. One respondent expressed concern that under the proposed rule, U.S. financial institutions could be caught in a situation where a guarantee is withdrawn without the assignee's knowledge.

Comments received from two respondents indicated that the proposed changes would render the GSM-102 program inoperable because: (1) The changes are inconsistent with international banking practices and procedures for letters of credit, making it less likely banks will participate; and (2) the program would become more cumbersome and costly for participants and discourage small business participation. These results would contradict the requirements of Section 202(k)(2) of the Agricultural Trade Act of 1978, specifically the requirements to maximize the export guarantees made available and used each year and to maximize the export sales of agricultural commodities.

CCC recognizes the validity of these concerns and is proposing changes to

make the rule more consistent with standard international finance practices and to reduce the burden on participants. These changes are discussed in detail in the Section-by-Section Analysis and are open for additional public comment to ensure CCC has met these objectives. As CCC noted in the initial proposed rule; however, many of the proposed changes are designed to protect the integrity of the program—specifically to increase program controls, mitigate against waste and fraud, and improve CCC's chances of recoveries in cases of default (which will benefit not only the program by reducing costs in the long term, but also benefit CCC's risk share partners and U.S. taxpayers). CCC is attempting to balance program integrity concerns with maintaining a viable program that supports U.S. agricultural exports, recognizing that the result may be certain program modifications that increase the burden on both participants and CCC.

One respondent indicated that the GSM-102 program is losing competitiveness versus commercial financing because: (1) Shifts have occurred in long- and short-term interest rates; (2) companies are penalized if they repay a loan midway through the repayment period; and (3) program fees are too high. This respondent also commented that the country risk classification for South Korea is too high (i.e., risky), and questioned whether the purpose of the proposed changes was to make the program more attractive to small and medium-sized enterprises (SMEs) at the expense of major exporters.

CCC does not control interest rates or the repayment arrangements between the importer and the foreign financial institution. With respect to program fees, CCC is subject to both statutory and trade policy requirements. While CCC acknowledges that program fees have increased since 2009, program use has remained strong (and consistent with historical use) during those years. However, CCC is open to receiving specific comments on how fees can be adjusted, within current program confines, to better promote program utilization. Country risk classifications are based on a U.S. Government interagency country risk assessment system and are updated every one to three years. CCC notes that participants continue utilizing the program to support sales to South Korea despite the current country rating and fee rates. While certain proposed changes are designed to improve the access of SMEs to the program, CCC does not intend for this improved access to be at the

expense of major exporters. CCC's goal is a set of program rules that attempt to provide equity to all participants.

One commenter expressed concern that the proposed rule does not permit U.S. financial institutions to apply directly for GSM-102 payment guarantees, a practice that would allow the GSM-102 program to support additional U.S. exports. The commenter noted that other export credit agencies allow both exporters and banks to apply for coverage under their programs. CCC agrees that allowing U.S. financial institutions to apply for coverage is a change that should be considered for the GSM-102 program. It is also a significant change that would have numerous operational ramifications and would impact other program participants. As such, it needs to be carefully considered, and CCC was not prepared to implement this change in this proposed rule. CCC will continue to consider this idea going forward in the context of future regulatory changes.

One respondent asked if the proposed rule would go into effect during fiscal year 2012. The timing of implementation is uncertain until comments are received on the reissued proposed rule and additional comments considered.

#### **Section-by-Section Analysis**

The section-by-section discussions below include a summary of comments received on the proposed rule, CCC's responses to those comments, and a discussion of any additional changes made by CCC. In some instances, the numbering systems differ between the new and initial proposed rules. For purposes of this discussion, the numbering system of the new proposed rule will be used, except where otherwise indicated.

No comments were received on Subpart A, Restrictions and Criteria for Export Credit Guarantee Programs. CCC added § 1493.3(a)(3) to reflect that, in addition to consideration of country risk, CCC will not issue guarantees in connection with sales financed by foreign financial institutions that CCC determines cannot adequately service the debt.

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

##### *Section 1493.10 General Statement*

One commenter asked, with respect to language in paragraph (a) that GSM-102 guarantees are issued for terms up to three years, whether CCC envisions extending maximum tenor to three years for better risk countries within the near

future. CCC cannot predict whether tenor will be extended to three years in the future, as maximum tenor is a function of both risk and policy considerations. CCC has eliminated the specific reference to three years in this paragraph.

##### *Section 1493.20 Definition of Terms*

CCC made a number of proposed revisions to this section based on comments received, and also removed the numbering within this section to allow it to be governed by alphabetical order. All defined terms have been capitalized throughout the proposed rule.

##### **Affiliate**

No comments were received on this definition. However, CCC revised this term to reflect its varied usage within the proposed rule. The term "affiliate" refers to: (1) An entity's organizational structure; and (2) related entities to which certain required certifications apply, specifically related to government-wide suspension and debarment. The original definition, taken from government-wide suspension and debarment regulations at 2 CFR Part 180, was too detailed with respect to general questions of organizational structure. Therefore, CCC has more generically defined "affiliate" for purposes of collecting organizational information. In cases where the term "affiliate" relates to suspension and debarment certifications, the reference to 2 CFR 180.905 has been added to clarify the definition that applies.

Definitions of Incoterms (Cost and Freight (CFR), Cost, Insurance and Freight (CIF), Free Alongside Ship (FAS), Free Carrier (FCA), Free on Board (FOB))

CCC received several comments related to Incoterms definitions in the proposed rule. Two respondents noted that the definitions did not reflect the 2010 version of Incoterms, effective January 1, 2011. One respondent indicated that the trading terms CFR, CIF, FAS, and FOB cover only the movement of goods by sea and inland waterway transport, and that the proposed rule contained no terms related to air, rail or truck shipments.

CCC agrees with these comments and has updated these definitions to reflect that all terms are as defined by Incoterms 2010, or as superseded. The definitions for CFR, CIF, FAS, and FOB have been updated to reflect that they apply only to sea and inland waterway transport, and Free Carrier (FCA) has been added for air, rail and truck shipments. Throughout the proposed

rule, references to Incoterms have been amended to include FCA. Additionally, CCC included a definition of “Incoterms” for clarity.

One respondent requested that CCC include a provision that requires all sales contracts to be subject to Incoterms. The definition of “Firm Export Sales Contract” in this section includes a requirement for delivery terms (FOB, C&F, FCA, etc.). CCC does not believe any changes are necessary in response to this comment.

#### Eligible Export Sale

This definition has been added to the proposed rule. CCC believes that a practice for some exporters has become to identify export transactions that occur outside of the GSM-102 program but nevertheless to register such exports under a GSM-102 payment guarantee. Under such practice, there is no expansion of U.S. exports, because the goods covered by the payment guarantee are shipped and paid for wholly apart from the benefit of the CCC guarantee. CCC believes this practice is inconsistent with the purpose of the GSM-102 program to increase exports of U.S. agricultural commodities. In these cases, there is no increase in U.S. agricultural exports, because the export sale would have occurred without the GSM-102 program. These sales improperly utilize program allocation that otherwise could be used to support exports that would not occur in the absence of the payment guarantee. Furthermore, these transactions create a liability for CCC for which there is no corresponding benefit to U.S. agricultural exports. In response to these concerns, which have been echoed by some program participants, CCC has added a definition of “eligible export sale” with the intent of prohibiting these types of transactions. CCC believes that this will help ensure that financing is coupled with an actual exporter movement of a U.S. agricultural commodity.

#### FAS Web Site

Although no comments were received, this definition has been deleted from the proposed rule because the Web site location is subject to change. The current Web site is <http://www.fas.usda.gov/excredits/ecgp.asp>. To avoid confusion with the term “Free Alongside Ship (FAS),” references to the FAS Web site were changed to “USDA Web site.”

#### Final Date To Export

CCC received two comments on the definition of “final date to export.” Because these comments relate

specifically to § 1493.100 (*Terms and requirements of the Payment Guarantee*), these comments are discussed in that section. This definition was unnecessary and has been deleted.

#### Firm Export Sales Contract

One comment was received on the “Firm Export Sales Contract” definition, indicating that allowing an export sale to be contingent upon the CCC guarantee is contradictory to having a firm contract.

No changes were made to this definition. CCC does not believe there is any inconsistency between a “firm” contract and one that is contingent upon CCC’s approval of a payment guarantee. The purpose of the GSM-102 program, as specified in § 1493.10(a), is to “expand U.S. Agricultural Commodity exports.” An agricultural sale that will occur only with the presence of a GSM-102 payment guarantee is consistent with this goal and also allows flexibility for U.S. exporters. This definition specifies that the exporter and importer must be in agreement regarding the terms and conditions of the sale, thus requiring the details of the sales contract to have been worked out in advance of the exporter’s application for the payment guarantee.

#### Foreign Financial Institution

Although no comments were received, CCC determined that the original definition unintentionally excluded multilateral and sovereign institutions. CCC revised it to specifically include these institutions as eligible, and also added a clarification that this definition encompasses foreign branches of U.S. financial institutions.

#### Foreign Financial Institution Letter of Credit (or Letter of Credit)

Two comments were received on this definition, which was not modified in the initial proposed rule. One commenter indicated that it is unclear whether the current definition covers the standard GSM-102 repayment mechanism, the sight letter of credit. The commenter suggested the definition be re-written to specifically cover the sight letter of credit and exclude the reference to a related obligation. A second commenter asked whether “related obligation” refers to a bank-to-bank agreement outside of the letter of credit.

CCC revised this definition, moving a portion of it to § 1493.90 (*Special requirements of the Foreign Financial Institution Letter of Credit and Terms and Conditions Document, if applicable*), and modifying the two

options listed in the prior definition in an attempt to add clarity. The term “related obligation” has been changed to “Repayment Obligation” as noted below and refers to a commitment of the foreign financial institution to pay the exporter or the U.S. financial institution on deferred payment terms. Section 1493.90(a) specifies acceptable methods for documenting the repayment obligation. CCC believes these changes will clarify this term.

#### Holder of the Payment Guarantee

This definition has been added to the new proposed rule. Although no comments were received, CCC was concerned about potential confusion regarding the phrase “exporter or exporter’s assignee” that appeared throughout the rule. This phrase typically is used to indicate CCC’s risk-share partner in the transaction and the party responsible for filing notices of default and claims. To clarify in certain instances that CCC is referring to one specific party, CCC created the term “Holder of the Payment Guarantee.” The new proposed rule has been updated throughout with this term where applicable.

#### Importer and Importer’s Representative

Three comments were received on the definition of an importer, which required the importer to be physically located in the country or region of destination specified on the payment guarantee. One commenter explained that this may not always be possible due to unique local transit trade regulations, loan regulations, or tax consequences, and recommended instead that CCC add the term “presence of business” with defined requirements. A second commenter noted that requiring the importer to be physically located in the country is counter to free trade practices. The importer’s location should not be of concern to CCC provided the goods arrive at the intended destination. Three commenters felt this change would have a negative impact on program utilization.

CCC agrees with these comments and modified the definition of “Importer” accordingly. The term “Importer’s Representative” was added to the new proposed rule (in lieu of the term “presence of business”), along with additional requirements that are explained in the relevant section(s).

#### Intervening Purchaser

CCC received one comment asking if an intervening purchaser can be located in the United States. CCC does permit the intervening purchaser to be located

in the United States. No change is necessary to this definition.

#### Letter of Credit Account Party

One respondent suggested the term of “Letter of Credit Account Party” be changed to “Letter of Credit Applicant” and that the term “entity” in the definition be changed to “party” to be consistent with international banking practice and the Uniform Customs and Practice for Documentary Credits (UCP 600). CCC agrees that this term should be defined consistently with UCP 600; however, because it is used only once in the proposed rule, it has been deleted from the *Definitions of Terms* section. The UCP 600 definition is now referenced in § 1493.70(a)(4).

#### Notice to Participants

No comments were received on this definition, but it was deleted because the concept is explained in § 1493.10(b).

#### Principal

One respondent suggested the definition of “Principal” is too broad and requested that it be limited to the entity providing the relevant certifications, rather than applying to an array of individuals within the participating entity.

The term “principal” is used throughout the proposed rule to refer to: (1) Individuals who must submit documents under the program; and (2) individuals to whom certain required certifications apply, specifically related to government-wide suspension and debarment rules. Although CCC does not agree with the suggestion to apply this term only to the entity making the certifications, CCC acknowledges that the original definition, taken from government-wide suspension and debarment regulations at 2 C.F.R Part 180, was too detailed with respect to submission of documents under the program. Therefore, CCC more generically defined “Principal” for purposes of document submission. In cases where the term “principal” relates to the certifications for suspension and debarment, the reference to 2 CFR 180.995 was added to clarify the definition that applies.

#### Repayment Obligation

Although no comments were received on this definition, CCC changed the term “related obligation” to “Repayment Obligation.” CCC believes the new terminology more accurately reflects that this term refers to a contractual commitment, rather than a particular document. Although the definition did not change, CCC added clarification that the repayment

obligation must be documented using one of the methods described in § 1493.90.

#### System for Award Management (SAM)

Since publication of the initial proposed rule, the U.S. Government implemented the System for Award Management (SAM), a combined federal procurement and federal domestic assistance system. The Excluded Parties List System (EPLS) that participants must check for suspension and debarment purposes has been included in SAM; therefore, participants will now be required to check SAM. All references to EPLS in the new proposed rule were replaced with SAM. The current Web site is [www.sam.gov](http://www.sam.gov). Any future updates will be provided on the USDA Web site.

#### Terms and Conditions Document

CCC added this definition to the proposed rule in response to comments received on § 1493.90 indicating that certain requirements were inappropriate for the letter of credit. CCC added flexibility for participants to use a separate document linked to the foreign financial institution letter of credit and stating the terms and conditions required by CCC. This concept is addressed in more detail in the discussion of § 1493.90.

#### U.S. Financial Institution

Although no comments were received on this definition, CCC determined that it may have unintentionally excluded U.S. branches of foreign financial institutions. CCC revised the definition to specifically include these institutions as eligible U.S. financial institutions.

#### Weighted Average Export Date

This term was added to the new proposed rule. CCC received requests from participants to allow the holder of the payment guarantee to bundle certain exports and utilize a credit period starting point other than the date of export of each individual shipment. CCC agrees with these requests and included this concept in § 1493.100(b). This option is described in further detail in the discussion of changes to § 1493.100.

#### Section 1493.30 Information Required for Exporter Participation

CCC received two comments on this section. One respondent asked how a determination of exporter ineligibility (paragraph (d)) would affect existing guarantees with that exporter. The commenter noted there is no specific provision for CCC to notify the assignee if an exporter is deemed ineligible. A

second respondent suggested that currently qualified exporters be required to submit a description of their business activities and related information to prove that the exporter is a “true” exporter, even if the exporter has submitted an application within the past two years.

CCC made no changes in response to these comments. CCC determines at the time of application for the payment guarantee whether an exporter is currently eligible. If the exporter is ineligible at that time, no guarantee is issued. However, if a guarantee is issued and the exporter is subsequently deemed ineligible, there is no impact on the existing guarantee; therefore, there is no need for CCC to notify the assignee in this case.

In response to the second comment, CCC notes that the commenter provided no definition of “true” exporter. CCC has authority to collect the new information in § 1493.30 from current exporters based on paragraph (d), which states that an applicant may be deemed ineligible if the applicant cannot provide the information required in § 1493.30. Following publication of the final rule, CCC will determine whether, when and how to collect this information from currently approved exporters.

#### Section 1493.40 Information Required for U.S. Financial Institution Participation

CCC received one comment requesting clarification of whether submission of an annual report or 10-K is acceptable to meet the requirement for year-end audited financial statements in paragraph (a)(4). CCC confirms that the 10-K annual report submitted to the Securities and Exchange Commission is acceptable to meet CCC’s requirement for year-end audited financial statements. The “annual report to shareholders” (sent to shareholders prior to annual shareholders’ meetings) can be submitted for informational purposes but does not meet the requirement for year-end audited financial statements, as the report generally does not include sufficient financial detail. No changes were needed in response to this comment.

#### Section 1493.50 Information Required for Foreign Financial Institution Participation

CCC received one comment requesting clarification of the impact on existing guarantees if CCC reduces or cancels a foreign financial institution’s (FFI) participation limit (per paragraph (c) or (d)) or if the FFI is otherwise

deemed ineligible for participation (per paragraph (e)) after a guarantee has been assigned to a U.S. financial institution. The respondent also asked whether the U.S. financial institution would be notified whether the FFI is within its participation limit at the time a guarantee is assigned.

CCC determines prior to issuing a payment guarantee whether the foreign financial institution is eligible and has a sufficient participation limit for that guarantee. Except in cases of default as provided in § 1493.160(c), a change in the eligibility or participation limit of an FFI has no impact on existing payment guarantees. CCC will not notify a U.S. financial institution regarding changes in an FFI's participation limit, as there is no impact of such changes on existing guarantees. CCC considers an FFI's participation limit confidential; any questions regarding that limit should be directed to the FFI.

Although CCC deems that no changes are needed in response to these comments, two modifications were made to this section in the new proposed rule. In paragraph (a)(2), CCC clarified that applicants must provide year-end, audited financial statements in English, in accordance with the accounting standards established by the applicant's regulators. CCC does not have the resources to translate such information for review. Multilateral institutions not subject to local regulations in their country of domicile must provide financial statements in accordance with prevailing accounting standards. Paragraph (d) was modified to clarify that CCC has the right to cancel a foreign financial institution's limit if the FFI does not participate in the GSM-102 program for two consecutive fiscal years. CCC must review all foreign financial institutions annually to ensure their continued ability to repay debt guaranteed by CCC. Given the number of FFIs in the program, CCC must focus its limited resources on those institutions that participate. Those that choose not to participate for this length of time may be removed from eligibility, but may resubmit all information required under § 1493.50 for reconsideration. CCC also added requirements for annual year-end financial statements consistent with the changes made in paragraph (a)(2) of this section.

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

Three comments were received related to this section. One respondent requested clarity on how U.S. and foreign financial institutions should document they are in compliance with

all regulatory requirements and U.S. anti-money laundering and terrorist financing statutes.

CCC does not require that evidence of compliance be provided when submitting an application. As part of the application review process, CCC contacts the U.S. bank's regulator to verify compliance with regulatory requirements and can conduct follow up reviews at any time. CCC can verify compliance with U.S. anti-money laundering and terrorist financing statutes with the Office of Foreign Assets Control (OFAC).

A second respondent requested CCC limit the certifications to the U.S. financial institution and exclude company principals or, if not possible, then limit the term "principals" to bank shareholders. This respondent also requested that the regulation allow the Director to permit qualifications to the certifications, and requested the wording in paragraph (b) be changed from "are in compliance with" to "comply with." The commenter noted that the state of being in compliance with the regulation is a broader and more absolute concept than the act of complying with the regulation. The act of complying generally carries with it a good faith standard of knowing what the rules are on having mechanisms in place to ensure, to the extent possible, that the bank complies with them.

As noted in the discussion on *Definition of Terms* (§ 1493.20), the terms "principal" and "affiliate" have multiple uses in the program. With respect to the certifications found in § 1493.60(a), these terms have the specific meaning found in government-wide suspension and debarment regulations. Therefore, CCC has revised § 1493.60(a) to clarify that these certifications employ "principal" and "affiliate" as defined in 2 CFR 180.995 and 2 CFR 180.905, respectively. Because the GSM-102 program must comply with government-wide suspension and debarment rules, CCC made no changes to narrow the definition of "principal" and made no changes specifically in response to this comment. All applicants for participation must make the certifications required in § 1493.60 with respect to both the applicant and its principals, where required. For the same reason, CCC does not include a provision to allow the Director flexibility to change the certifications. However, in accordance with § 1493.40(a)(9), a U.S. financial institution must provide an explanation or documentation if it cannot include the certifications in its application. Further, paragraph (b) of § 1493.40

permits the Director to consider additional information from the applicant if the applicant fails to qualify.

CCC does not agree with the request to change the wording in the certifications in paragraph (b)(1) from "are in compliance with" to "comply with." The phrase "are in compliance with" means that the applicant is certifying to these statements at the time the certification is made. This is CCC's intent, and therefore, this wording remains.

A third respondent asked if CCC would provide specific wording for the certification statements. CCC notes that required wording has already been provided in § 1493.40(a)(9) and § 1493.50(a)(6) for U.S. and foreign financial institutions, respectively. These are general certification statements that, when made on a qualification application, encompass all of the certifications in § 1493.60. No changes were needed in response to this comment.

CCC modified § 1493.60(b)(2) in the new proposed rule, adding to this certification a requirement that relevant applicants be in compliance with the Foreign Corrupt Practices Act of 1977. CCC has previously reminded all program participants in a notice to participants that they are required to be in compliance with this Act. Exporters are required to certify that each GSM-102 transaction is compliant with this Act, and because it also applies to financial institutions doing business in foreign markets, CCC determined it was appropriate for financial institutions to make this certification as well.

#### *Section 1493.70 Application for Payment Guarantee*

CCC received three comments related to the requirement in paragraph (a)(16) that, upon request by CCC, the exporter must provide written evidence that the foreign financial institution specified in the application for payment guarantee has agreed to issue the letter of credit. Two commenters requested more detail about the type of written evidence CCC will require, the timeframe for providing it to CCC, and the consequence to the exporter if the information is not provided or the foreign financial institution letter of credit is never issued. Two respondents noted that it could be difficult and time-consuming to obtain such documentation, and therefore, one respondent requested that it only be required in cases where multiple exporters register under the same foreign financial institution's available line of credit. One respondent requested this provision be deleted or

that CCC obtain such evidence directly when needed.

CCC made no revisions in response to these comments. In certain country and regional allocations, multiple exporters register under a single, limited foreign financial institution (FFI) participation limit. This situation delays issuance of payment guarantees. CCC made past attempts to contact exporters and FFIs to determine which application is acceptable to the FFI. Different situations required different methods to obtain this information most efficiently. For this reason, CCC has chosen not to set a specific requirement, but instead will request documentation on a case-by-case basis to minimize burden. Under certain circumstances, CCC agrees that it may be appropriate for CCC to obtain this information independently of the exporter. In these cases, CCC will obtain the information; otherwise, it will be the exporter's responsibility.

CCC agrees that documentation is needed only under limited circumstances and intends to utilize this provision specifically in those circumstances. CCC will provide the exporter with a reasonable timeframe to obtain this information. If CCC determines, based on the documentation received, that an exporter has registered against an FFI's limit without the bank's knowledge or approval, that exporter will be required to modify or cancel its application for payment guarantee. However, there will be no consequence to the exporter if an FFI later determines not to issue the letter of credit, as CCC acknowledges that this situation can legitimately occur.

CCC made several changes to this section in the new proposed rule. In paragraph (a), CCC clarified that a firm export sales contract for an "Eligible Export Sale" must exist before an exporter submits an application for a payment guarantee. This change is consistent with the new prohibition in § 1493.100(f)(7) on transactions not meeting the definition of "Eligible Export Sale." A definition of this term was added to § 1493.20.

In paragraph (a)(1), CCC added that if the export sale is being registered under a regional allocation, the exporter must indicate the country or countries within the region to which the commodities will be exported. This will permit CCC to better track the destination of commodities under the program, although CCC recognizes that such information may not be final until reported in the evidence of export report.

In paragraph (a)(2), CCC proposes additional requirements if the importer

is not located in the country or region of destination, but is instead utilizing an "Importer's Representative" in the country or region. As noted in the *Definition of Terms* discussion, allowance of this concept is in response to comments received to the initial proposed rule. Specifically, CCC proposes to require the name and address of the importer's representative that will be taking receipt of the commodities exported under the payment guarantee. CCC will routinely check these entities against the SAM and OFAC lists to ensure unauthorized parties are not serving this function in GSM-guaranteed export sales. CCC also modified the required statement regarding direct shipment of the registered commodities to the importer to allow for direct shipment to the importer's representative. This statement was previously found in paragraph (a)(5), but was moved to paragraph (a)(3) to clarify that it is required on all applications for payment guarantees, not simply those utilizing an intervening purchaser.

In paragraph (a)(4) of this section, CCC deleted the term "letter of credit account party" in response to the comment received on the definition in § 1493.20 and instead utilizes the definition of "applicant" directly from the UCP 600.

In paragraph (a)(9) of this section, CCC added that the commodity grade and quality specified in the application for the payment guarantee must be consistent with that specified in the firm export sales contract and foreign financial institution letter of credit. As noted in the discussion below on § 1493.90(a), CCC agrees with comments that this requirement should not be contained in the letter of credit and that the exporter should be responsible for ensuring this requirement is met. Therefore, this language has been added to the application for payment guarantee section. The exporter may be held liable if CCC pays a claim for default and determines that the cause of the default was a discrepancy, specifically related to this requirement, between the firm export sales contract and the foreign financial institution letter of credit.

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

Three comments were received regarding the practicality of having the exporter confirm that the importer is excluded from participation by the Excluded Parties List System (EPLS) or Office of Foreign Assets Control (OFAC) lists as required by paragraph (d) of this section. The respondents noted that

both of these lists have standard disclaimers regarding potential errors and omissions. Because of these disclaimers, exporters can only certify that the importer or intervening purchaser is not on the list at the time of application. They cannot certify that the importer is not suspended, debarred or otherwise precluded. CCC agrees with these comments and modified the language in § 1493.80(d) to require the exporter to certify that neither the importer nor the intervening purchaser are present on these lists at the time of application for the payment guarantee. As discussed in the *Definition of Terms* section, references to EPLS were changed to SAM.

CCC made several additional changes to the certifications in the new proposed rule. A reference to the Foreign Corrupt Practices Act of 1977 was added to paragraph (b), consistent with this addition to the certification found at 1493.60(b). CCC also added a new certification in paragraph (f) of this section. The exporter will be required to certify that it is in compliance with the requirements for submitting evidence of export (EOE) reports for all existing payment guarantees. CCC faces continual issues with exporters not submitting these reports in a timely manner. In response, a new provision was added at 1493.130(c) in the initial proposed rule that will preclude acceptance of new payment guarantee applications if an exporter is not in compliance with EOE submission timelines. CCC determined it is appropriate to require exporters to certify in each application for payment guarantee that they are compliant with this requirement with respect to other existing payment guarantees. CCC hopes this certification will prompt exporters to be more vigilant about meeting EOE requirements.

#### *Section 1493.90 Special Requirements of the Foreign Financial Institution Letter of Credit and the Terms and Conditions Document, if Applicable*

Thirteen respondents submitted comments on § 1493.90. Overall, respondents indicated that many of the changes proposed by CCC are inconsistent with international banking practices and accepted guidelines for letters of credit as found in the Uniform Customs and Practice for Documentary Credits (UCP 600). They noted that requiring specific language will increase the time, costs, and risks associated with issuing the letter of credit and jeopardize the willingness of both U.S. and foreign financial institutions to participate. Several respondents suggested CCC provide a standardized

template for the letter of credit requirements to ensure participants comply with the provisions of this section, and allow such requirements to be contained in the special instructions of the letter of credit or in a separate document, such as a loan agreement. One respondent commented that CCC should enter a framework agreement with each approved foreign financial institution to cover the terms and conditions of this section so they are not required in every letter of credit.

In response to these comments CCC modified § 1493.90 and removed the requirement that the specified terms and conditions be contained in the foreign financial institution letter of credit. Instead, CCC added the concept of a “Terms and Conditions Document” that may accompany the letter of credit. This change will allow participants the flexibility of having the required language in either the letter of credit or a separate document. CCC also clarified in § 1493.90(a) that such terms and conditions may be contained in the letter of credit as a special instruction, but eliminated the option of a promissory note because of lack of use of this mechanism. Although CCC considered the option of developing a framework agreement for each approved foreign financial institution, some institutions preferred that the required terms be contained in the letter of credit or related document rather than a separate framework agreement.

Paragraphs (a) and (b) of this section were re-ordered in the new proposed rule: Paragraph (a) describes the option to use either the letter of credit or terms and conditions document to contain the special requirements found in paragraph (b). CCC added a proposed requirement in paragraph (a) that the letter of credit stipulate presentation of at least one original clean on-board bill of lading as a required document. A number of program participants have suggested this provision as a means of preventing non-eligible export sales. CCC would not require an original bill of lading be submitted at time of a claim, but would ensure that the letter of credit contained this provision.

Section 1493.90(b) now includes a listing of requirements of the letter of credit or terms and conditions document, which CCC believes eliminates the need for a standardized template. As noted in the *Definition of Terms* discussion, “related obligation” has been replaced with the term “Repayment Obligation.” Two new requirements were added: Jurisdictional language in case of legal action (§ 1493.90(b)(2)) and a requirement to specify post-default interest terms

(§ 1493.90(b)(4)). The language specifying legal jurisdiction was added to protect the interests of both CCC and its risk share partner in case of default, in hopes of increasing chances of recoveries if CCC takes legal action. CCC does not require a specific post default interest rate under the letter of credit, and this information is often omitted. Requiring the letter of credit to specify such interest terms (even if the rate is zero) will add clarity in cases where CCC has been subrogated the rights to recovery.

Seven comments were received on the requirement that the letter of credit specify the transaction is a bona fide trade transaction (§ 1493.90(a)(1) in the initial proposed rule). Three respondents indicated this language is not applicable to all GSM-102 transactions; therefore, in certain cases participants would be unable to comply. Two respondents suggested revised wording they believe would cover all GSM-102 guaranteed transactions. Three respondents requested that CCC define the terms “bona fide trade transaction” and “trade finance debt,” while one respondent indicated this language may be confusing to foreign financial institutions because the documentary letter of credit is the internationally accepted mechanism for financing “bona fide” trade. One respondent pointed to the need for CCC to allow the Director to approve modifications to this language on a case-by-case basis to respond to an issuing bank’s interpretation of the wording. One respondent requested that CCC permit refunds of guarantee fees if the foreign financial institution is unable to comply with this requirement, and another suggested this requirement be included as part of the foreign financial institution’s initial qualification for the program. CCC agrees with the concerns expressed by participants and eliminated this requirement in the new proposed rule.

Five respondents provided comments on the requirement that the letter of credit contain an acceleration clause (§ 1493.90(b)(3)). One commenter indicated that acceleration clauses are not normally contained in letters of credit, and two commenters suggested this language be included in a framework agreement between the U.S. and foreign financial institution or in the special instructions in the letter of credit. Three commenters requested that CCC provide specific language to meet this requirement to ensure compliance, with one respondent requesting that the Director have the flexibility to allow modifications to this language.

As previously noted, CCC modified § 1493.90 to permit the requirements of this section, including the acceleration clause, to be contained in the special instructions of the letter of credit or in a separate terms and conditions document. CCC did not add specific required language for this clause, as CCC believes the requirement described in the regulation is sufficient. Past experience indicates that such clauses are not uncommon in letters of credit and that exporters and financial institutions have utilized them in the past; therefore, specific language is not necessary, nor is flexibility for the Director to allow language modifications.

Six respondents provided comments on the requirement that the commodity grade and quality specified in the sales contract be consistent with the commodity grade and quality in the letter of credit (§ 1493.90(a)(3) in the initial proposed rule). Most commenters indicated that this requirement is inconsistent with international banking standards found in the UCP 600. The letter of credit is a separate transaction from the sales contract and the payment obligation under the letter of credit is based on meeting documentary conditions, not upon performance of the underlying contract. Two respondents requested this provision be deleted. One respondent indicated that adding the commodity quality and grade to the letter of credit should not be problematic because this information is contained in the bill of lading and invoice, and another commenter suggested attaching the invoice to the letter of credit to convey this information. One commenter stated that it should be the responsibility of the exporter to certify this requirement.

CCC agrees with the comments that this language should not be part of the letter of credit and that the U.S. financial institution should not be responsible for verification and removed this language from § 1493.90 in the new proposed rule. However, CCC continues to believe this requirement is important to avoid defaults based on failure to comply with the underlying terms of the sale; therefore, changes in § 1493.70 (*Application for Payment Guarantee*) clarify that the exporter is responsible for ensuring this requirement is met.

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

Although CCC received no formal comments on § 1493.100(b), *Period of guarantee coverage*, CCC is proposing modifications in this section in an attempt to facilitate container shipments under the program. The small dollar

value of individual container shipments often make the use of separate letters of credit for each shipment too costly, and the extended delivery period over which these shipments occur may require a long validity period for the letter of credit, increasing its costs. CCC hopes to mitigate these factors by giving participants the option to utilize either the date of export or a weighted average export date as the start of the credit period. By using a weighted average export date, the exporter and assignee can “bundle” all shipments having dates of export within a 30 calendar day period and have the credit period begin on the average date of these shipments, weighted by the guaranteed portion of the exported value of each shipment. Participants would be permitted to bundle all shipments within a 30 calendar day period, with the first 30 calendar day period beginning on the first date of export under the payment guarantee, the second 30 calendar day period beginning 31 calendar days after the first date of export, and so on until the final date to export specified on the payment guarantee.

For example, assume an exporter has three shipments as follows within a 30 calendar day period:

March 1 (first) shipment: \$500,000 in guaranteed value  
 March 10 (second) shipment: \$400,000 in guaranteed value  
 March 25 (third) shipment: \$800,000 in guaranteed value

The weighted average export date would be calculated as follows:

$$[\sum (\text{day of the month}) \times (\text{guaranteed value for that day})] / [\sum (\text{total guaranteed value})]$$

In this example, the first shipment date would be the first day of the month; therefore, March 1 would be “1.” The calculation is:

$$[(1 \times 500,000) + (10 \times 400,000) + (25 \times 800,000)] / (500,000 + 400,000 + 800,000) = 24,500,000 / 1,700,000 = 14.4, \text{ or March 14.}$$

If the exporter chooses to bundle these shipments, the weighted average export date would be March 14. The credit period for this bundle of shipments would, therefore, commence on March 14.

CCC also included the option for payment guarantee coverage to begin when ordinary interest begins to accrue, if such interest begins to accrue prior to the first date of export. This provision is found in the current regulation, but was inadvertently deleted in the initial proposed rule. It is CCC's policy to permit coverage of interest accrued prior to the date of export, although the payment guarantee does not become effective until the date of export. Interest may begin to accrue prior to the date of export in export sales made on

the basis of FOB, U.S. interior points of loading, such as sales to Mexico shipped in trucks or railcars. The provisions of § 1493.100(b) indicate that the credit period can begin either upon the date of export or on the date that interest begins to accrue, whichever is earlier. A provision has been added to allow for the weighted average date when interest begins to accrue at the option of the holder of the payment guarantee.

Seven respondents submitted comments on § 1493.100. Three respondents disagreed with the elimination of the 30-day grace period found in the current regulation at § 1493.60(d). Two commenters noted that issues outside of the exporter's control, such as transportation delays, lack of container availability, and weather problems, may delay shipments. One commenter noted that the elimination of the grace period will impact both small and large businesses and is counter to the goals of the National Export Initiative, the Paperwork Reduction Act, and the intent of the proposed rule. One respondent commented that with a new cotton crop becoming available each August and September, the grace period provides the exporter additional time to work out shipping problems. During 2009/2010, the grace period was particularly helpful due to the transportation congestion and backlogs that occurred. One commenter stated that the 30-day grace period should be reinstated to match commercial realities, and that otherwise CCC should allow for guarantee fee refunds in cases where the exporter cannot make shipments within the designated time period. CCC agrees with these concerns and reinstated the 30-day grace period in § 1493.100(d) of the new proposed rule.

Three respondents provided comments on CCC's proposed changes to § 1493.100(e), *Reserve coverage for loading tolerances*. Two commenters noted that the most common tolerance in bulk agricultural contracts is plus or minus 10 percent and that CCC's guarantee should reflect that reality. CCC agrees and revised the proposed rule to allow for an upward loading tolerance of 10 percent. CCC will require exporters to pay the guarantee fee based on the mean loading tolerance (instead of the lower loading tolerance). Because reserve coverage ties up both country and foreign bank limits, CCC hopes that requiring exporters to pay the fee based on the mean loading tolerance will ensure that exporters are serious about the need for such coverage at time of application. One respondent asked if

an exporter was entitled to a refund of the fee paid for reserve coverage if this coverage is not utilized. Although an exporter is not *entitled* to a fee refund for unutilized reserve coverage, CCC will consider such requests from exporters on a case-by-case basis if the exporter's inability to utilize such coverage was outside of the exporter's control. Exporters may be required to submit documentation to CCC to support such a request.

One comment was received on the requirement that the exporter file for a payment guarantee amendment within 15 calendar days of the final export date or CCC will cancel the exporter's reserve coverage. With bulk agricultural shipments, the exporter may be unable to determine the allocation of the shipped commodity across multiple registrations until the vessel reaches its final destination, which could be 30 to 40 days from the loading date. The respondent requested CCC allow the exporter 45 days from the date of export to file the amendment to utilize reserve coverage.

CCC does not agree with the suggestion to allow the exporter 45 days to file an amendment for reserve coverage. Reserve coverage allows exporters to hold program allocation that may not be utilized and could be made available to other exporters. However, CCC recognizes that exporters may need time past the final date to export to compile relevant documents and determine the final amount of coverage. Therefore, CCC increased this timeframe to 21 calendar days after the final export date. This timeframe is consistent with the evidence of export (EOE) reporting requirements, because the exporter will know by the submission of the final EOE what level of reserve coverage is needed.

CCC received four comments on § 1493.100(f), now titled *Certain export sales are ineligible for GSM-102 Payment Guarantees*. One commenter noted that the U.S. financial institution may be unable to determine at the time of taking assignment of a payment guarantee whether a transaction is prohibited. This respondent requested clarification on whether a prohibited transaction could be deemed ineligible for coverage after assignment. Two respondents requested similar clarification with respect to § 1493.100(f)(6), which prohibits coverage of a transaction that has been guaranteed by CCC under another payment guarantee. Specifically, these respondents requested assurance that CCC would not revoke coverage or take action against the assignee in this case.

CCC agrees that an assignee may not know that a transaction registered under the GSM-102 program is prohibited. Section 1493.180(e), *Action against the assignee*, states in part that 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.” If a prohibited transaction were registered under a payment guarantee, CCC would take action against the exporter, if warranted, but not against the assignee, provided the assignee had no knowledge that the transaction was prohibited. CCC believes that § 1493.180(e) protects the assignee in such cases and that no additional changes are needed in the proposed rule.

Two commenters proposed methods by which CCC could determine which individual or entity is the valid exporter if a transaction is registered under multiple payment guarantees, which is prohibited by § 1493.100(f)(6). One respondent noted that an exporter is unlikely to know if a second entity acquires its bills of lading and uses them to register export transactions under another guarantee. This commenter suggested that CCC detail in the regulations that the “valid” registrant should be either (1) the actual shipper of the goods (i.e., the exporter who arranges and pays to have the goods loaded onto the vessel); or (2) the exporter whose contract with its supplier indicates that neither the supplier, its affiliates, nor any third party has registered the goods under any U.S. government program. A second respondent suggested that the exporter of record should determine which entity holds the valid payment guarantee. A third respondent recommended that CCC require the exporter to make a certification with respect to § 1493.100(f)(6) in both its application for payment guarantee and evidence of export report.

CCC made no changes in response to these comments. Based on CCC’s recent experience, there is not a single, most appropriate method for determining which exporter has the eligible export sale when an export sale is registered under more than one payment guarantee. By definition, only one eligible export sale can exist. This determination could involve contacting both exporters who registered the export sale; requesting and reviewing documents, such as bills of lading and/or bank and payment records; and contacting suppliers, importers or agents associated with the export sale. It is not possible for CCC to dictate in the

rule all possible methods of making this determination. It also is unclear what is meant by “exporter of record” or how CCC could be assured that this entity validly holds a payment guarantee. Finally, CCC does not believe an exporter could certify that a transaction has not been registered by another entity under another payment guarantee, as the exporter may not know this was occurring. Therefore, CCC will review these transactions on a case-by-case basis to determine when a specific transaction is prohibited.

To further clarify this requirement, CCC added a prohibition on any transaction that is not an “Eligible Export Sale” in § 1493.100(f)(7). An explanation is found in the discussion of this term’s definition in § 1493.20.

Three respondents commented on the proposed prohibition on coverage where the issuance of the foreign financial institution letter of credit is more than 30 calendar days after the date of export. Two respondents noted that the timing of letter of credit issuance is often outside of the exporter’s control and legitimate factors exist that could delay issuance beyond 30 days, including delays in receiving bills of lading and approvals required by the foreign financial institution. Additionally, the exporter, foreign financial institution and applicant for the letter of credit may not develop the exact requirements of the letter of credit until after the exporter registers the sale with CCC. A third respondent noted that although most letters of credit meet the 30-day criteria, this requirement will negatively impact small- and medium-sized exporters, whose customers and issuing banks are slow in issuing letters of credit.

Although the proposed rule would allow the Director to make exceptions to this provision on a case-by-case basis, one commenter noted that such extension requests will add paperwork and delays and will, therefore, reduce the advantages of the GSM-102 program. One commenter stated that U.S. financial institutions would require proof that CCC had granted such an extension, which could delay payment to the exporter. One respondent noted that U.S. financial institutions would be required to implement a procedure at the time of examination of documents to verify the letter of credit issuance date. Such a process is not covered by the UCP 600, nor is it a standard international banking practice for the examination of documents. Further, the foreign financial institution would not know at the time of receiving the letter of credit application whether the letter of credit will be eligible, because the

date of export is unknown at that time. One of the commenters indicated that CCC’s transaction risk begins at the bill of lading date and that the letter of credit issuance should not affect CCC’s risk profile. Two of the commenters requested this provision be deleted because it is inconsistent with standard banking practice and will hurt program utilization.

CCC made no changes in response to these comments. In the preamble to the initial proposed rule, CCC noted that it is increasingly common for exporters to obtain a payment guarantee and not have the required foreign financial institution letter of credit in place for an extended period of time after the export date. In some cases, the letter of credit is never issued and the transaction is cancelled by the exporter. The “cost” of such cancellations is that other exporters who may have utilized the allocation are unable to do so. This provision is not related to CCC’s risk profile, nor is it intended to reduce CCC’s risk. It is intended to ensure that exporters who register sales have legitimately worked with the importer (or other letter of credit applicant) and the foreign financial institution prior to registering for coverage and are not simply “rushing in” to garner a portion of the announced allocation, a practice that negatively affects other exporters (including small- and medium-sized exporters) by reducing their access to the program. Given that exporters typically have 90 days from the date of registration to export, a 30-day shipment grace period (which as noted previously, is being reinstated by CCC), and 30 days from shipment to issue the letter of credit, participants have up to 150 days, or five months, to accomplish issuance of the letter of credit after the sale is registered with CCC. CCC believes this timeframe should be sufficient. CCC has, however, modified this provision to allow for issuance of the letter of credit up to 30 days after the weighted average export date, if this is the date utilized by the holder of the payment guarantee for the starting point of the credit term.

CCC acknowledges there may be an additional burden in requesting extensions to this provision, but will develop internal procedures for handling these requests to minimize paperwork and delays, including notifying assignees. CCC also acknowledges that verification of the issuance date of the letter of credit may not be a standard practice covered by UCP 600. However, the letter of credit issuance date is required in all letters of credit, and CCC does not consider comparison of this date against a bill of

lading date to be an undue burden on assignees.

Three respondents commented on the proposal to allow CCC to charge a fee for payment guarantee amendments (§ 1493.100(i)). One respondent noted that fees are intended to offset the transaction risk undertaken by CCC, and that fees for amendments could make a transaction unviable and are inconsistent with other export credit agency programs. Further, it would be time-consuming for CCC and the exporter to track these additional fees. This respondent requested the provision be eliminated. A second respondent asked for clarification on the elements of the payment guarantee that can be amended and the cost for each type of amendment. A third respondent suggested that exporters be permitted one free amendment with a \$500 fee assessed thereafter.

CCC made no changes in response to these comments. Under the statute governing the program, CCC must work to ensure “to the maximum extent practicable, that risk-based fees associated with the guarantees cover, but do not exceed, the operating costs and losses over the long term.” Processing payment guarantees and amendments incurs a cost that should be offset by fee revenue. CCC is routinely faced with a large number of amendment requests and views such fees as an option to offset the costs associated with amendments. Additionally, the proposed rule does not implement such a fee but simply gives CCC the right to charge a fee. No such fee rates have been developed, and CCC does not intend to modify the types of amendments that exporters can currently request. If CCC determines that such fees should be implemented, comments received from participants will be considered in developing these fees, and they will be posted on the USDA Web site.

#### *Section 1493.110 Guarantee Fees*

Five respondents commented on the provision in the proposed rule to determine guarantee fees through a competitive bidding process. Three respondents stated that an auction process would benefit larger exporters with the most information and financial resources to the detriment of small- and medium-sized exporters—counter to CCC’s intent to increase program access for all U.S. exporters. One respondent noted that an auction process would create uncertainty in prices (as fees are often included in the exporter’s sales quote), which could cause exporters to lose sales. Two respondents noted that the proposed rule did not contain

specific parameters of an auction. One commenter stated that an auction would require establishment of minimum base fees, but in some cases current fees already exceed the market, making utilization cost-prohibitive. For an auction to work, these fees would need to be reduced. One respondent did not support the concept of an auction if it is intended only to garner increased fees for oversubscribed allocations. However, if CCC were willing to accept lower fees for underutilized allocations, the auction process could prompt program activity in underutilized markets and demonstrate that prices are truly market-based.

No changes were made in response to these comments. CCC has not determined whether to implement a competitive bidding process for fees and acknowledges that additional research is needed before this step could be taken. The proposed rule does not dictate such a process, but simply allows for it. As noted, any information or instructions under a competitive bidding process would be made public on the USDA Web site. However, CCC will consider these comments in deciding whether to utilize an auction process in the future.

Four respondents commented on paragraph (d), *Refunds of fees*. One commenter agreed that CCC should not refund fees under an auction scenario, as this would allow exporters to overbid with no consequence. This respondent also agreed that refunds should not be permitted when programs are oversubscribed, as otherwise, exporters can “over-apply” with no consequence. Because unutilized amounts are generally not returned to the allocations, this practice can prohibit full program use. However, two respondents noted that, given the changes in the proposed rule, CCC should permit fee refunds when circumstances outside of the exporter’s control prohibit the exporter from utilizing the guarantee—particularly if the inability to get a letter of credit in place is outside of the exporter’s control. If CCC cancels a guarantee, CCC should not be paid for risks not assumed. One respondent suggested that if an exporter receives anything less than 90 percent of its requested registration, CCC should refund the fee because any lesser amount prohibits the exporter from exercising the firm sales contract.

CCC made no changes in response to these comments. Given the myriad of potential scenarios, it is impossible to specify in the regulation all circumstances in which CCC would grant a fee refund. The general rule is that fees are non-refundable. However, CCC retained the caveat that the

Director may grant a refund that he/she determines is in the best interest of CCC. CCC acknowledges that there will be cases when an exporter is unable to utilize a guarantee, including instances where a letter of credit is not issued, that will be outside an exporter’s control. CCC will consider requests for refunds on a case-by-case basis. However, CCC fully expects that all parties to the transaction are familiar with the program regulations and have discussed a given transaction prior to the exporter’s submission of an application for payment guarantee. Therefore, CCC expects fee refunds to be granted only on an exceptional basis. Participants are reminded that guarantee fees, in accordance with the program statute, are intended to cover not only CCC’s risk but also its administrative costs. An application that is subsequently canceled by the exporter incurs an administrative cost.

One respondent asked for clarification regarding the types of refunds CCC has permitted in recent years. This respondent also requested that CCC return to its previous system of letting an exporter pay the guarantee fee after CCC accepts the exporter’s application, as requiring the fee with the application has not solved oversubscription problems.

CCC allows refunds of fees only in exceptional circumstances. For example, if an importer decides post-shipment not to utilize the payment guarantee, CCC may refund the fee if the exporter submits relevant shipping documents with an explanation. Additionally, CCC has granted fee refunds post-shipment when the importing country implemented sanitary-phytosanitary restrictions prohibiting entry of the goods. CCC does not agree with the suggestion to allow submission of the guarantee fee after CCC accepts the exporter’s application. CCC has had past problems with exporters not submitting guarantee fees in a timely manner. This creates a burden on CCC to repeatedly contact exporters to collect fees and ties up allocations that could be utilized by another exporter. Therefore, CCC is maintaining the requirement that fees be submitted with the exporter’s application.

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

One respondent commented on this section, stating that although the bank will complete required OFAC checks prior to engaging in a GSM-102 transaction, it should be CCC’s responsibility to determine whether the foreign financial institution is excluded

from participation via the EPLS (now SAM) prior to issuing the payment guarantee.

CCC made no changes in response to this comment (although consistent with the previously described definition change, EPLS has been changed to SAM). Prior to issuance of a payment guarantee, CCC checks all participants in the transaction against both OFAC and SAM. However, USDA suspension and debarment regulations at 2 CFR 417.215(b) require primary tier participants under the export credit guarantee programs to check the EPLS (SAM) prior to entering a transaction at the first lower tier. The regulations at 2 CFR 417.222(a) state that “a transaction at the first lower tier might be a payment obligation of a foreign bank under an instrument, such as a loan agreement or letter of credit, to the U.S. financial institution assigned the guarantee . . .” The U.S. financial institution is a primary tier participant under the GSM-102 program and is, therefore, required to make this check against SAM.

In paragraph (b) of this section, CCC added that notices of assignment should be received by CCC within 30 calendar days of the date of assignment. It is important for CCC to know who the holder of the payment guarantee is for each guarantee, particularly when a default occurs. Some U.S. financial institutions delay submitting notices of assignment to CCC. This provision is a reminder that these notices should be submitted timely.

In response to comments discussed in § 1493.80, CCC modified the language in § 1493.120(c)(i) to require the U.S. financial institution to certify that the foreign financial institution is not present on the SAM or OFAC lists at time of acceptance of the notice of assignment. CCC made a similar change in paragraph (f) of this section, and also incorporated the newly defined terms “Holder of the Payment Guarantee” and “Terms and Conditions Document” where applicable.

No comments were received regarding § 1493.120(f); however, CCC made several clarifications to this language in the new proposed rule. Additionally, CCC determined that the required clauses in paragraph (f)(1)(iii) and (f)(1)(v) of this section in the initial proposed rule were unnecessary; both have been deleted.

#### *Section 1493.130 Evidence of Export*

Four respondents commented on this section. Two respondents requested that CCC reinstate the 30-day timeframe for filing the evidence of export report (EOE). Three commenters noted that it

will be difficult for exporters to submit EOE within ten days. An exporter may not receive bills of lading until well after loading and; therefore, may be unable to determine within ten days which shipment parcels apply to certain guarantees. One commenter explained that the 10-day timeframe will be problematic for container shipments of high value products. Hundreds of such containers can comprise a GSM-102 guaranteed sale and associated letter of credit, and the bills of lading for these shipments are often bundled over several months. A 10-day submission requirement for EOE would, therefore, stop container shipments of high-value products under the program.

CCC acknowledges these concerns and increased the timeframe for EOE submission to 21 calendar days in the new proposed rule. The proposed rule permits requests for extension of this timeframe, which CCC will consider on a case-by-case basis. Further, the proposed rule does not call for cancelation of a guarantee where the exporter is unable to meet this timeframe. Instead, pursuant to paragraph (c) of this section, failure to meet the timeframe or receive an approved extension means that the exporter will be unable to submit applications for new payment guarantees until EOE submissions are current. CCC does not believe this consequence is tantamount to stopping an entire category of shipments under the program.

Two commenters stated that the current 30-day EOE submission requirement historically has not been enforced by CCC and that exporters have been instructed not to submit extension requests due to the burden this creates on CCC. Further, one respondent suggested that the budget and policy issues requiring timely EOE only correspond to the middle and end of the fiscal year; therefore, CCC should consider enforcing this deadline only at those times, or at other critical dates as determined by CCC. Another commenter stated that the 10-day requirement places a priority on CCC's internal process over commercial realities.

CCC acknowledges that the 30-day submission requirement has not been enforced. This is because, under § 1493.80(b) of the current rule, CCC's recourse for late EOE is to nullify the guarantee. This can only be done if CCC can demonstrate one of the consequences specified in § 1493.80(b). CCC has determined that, in most cases, late EOE do not cause sufficient harm to CCC to warrant nullifying the associated guarantees. As a result, there

effectively has been no recourse available to CCC for late EOE and no purpose to requiring requests for extensions to the filing deadline.

Proposed changes to this section are specifically intended to provide CCC such recourse, and CCC fully intends to enforce the new requirement, including responding to requests for extensions. CCC does not agree that this requirement should only be enforced at the middle and end of a program (fiscal) year. Lack of timely EOE negatively affects CCC's ability to accurately report on the GSM-102 program in its financial statements. Additionally, receipt of EOE allows CCC to reduce usage against foreign bank and country limits to the extent that exporters do not export the full value of the guarantee. Absent EOE, exporters may unnecessarily restrict utilization of foreign bank and country limits. Program availability is an issue throughout the year, not only at the middle and end of the fiscal year.

One respondent asked what CCC would consider a “legitimate circumstance” warranting a request for an EOE filing extension. There could be multiple reasons why CCC would permit an extension to the filing deadline. CCC cannot predict in advance what these circumstances will be. Approvals will be granted case-by-case, based on the explanation (and corresponding documentation, if any) provided by the exporter at the time of request.

One respondent stated that U.S. financial institutions are unable to determine whether an exporter has submitted an EOE on time, as CCC's on-line system does not contain an EOE submission date. Further, if CCC implements the shortened timeframe, assignees will require evidence that EOE for assigned guarantees are submitted within the required timeframe.

CCC does not agree that the U.S. financial institution must be advised whether EOE are submitted within the required timeframe or if CCC has granted an extension to this timeframe. The consequence of failure to comply with this requirement is that the exporter cannot submit applications for new payment guarantees per § 1493.130(c). There is no impact on the relevant guarantee if the EOE is late, no consideration of the timeliness of the EOE at the time of claim and, therefore, no impact on the assignee. However, CCC is willing to share this information with assignees upon request. CCC will consider adding this information to the GSM web-based system so that it is readily available to assignees.

### *Section 1493.140 Certification Requirements for the Evidence of Export*

CCC received one comment on this section, with the respondent agreeing with CCC's proposal to remove the certification found at § 1493.90(c) in the current rule (which requires the exporter to certify that the letter of credit has been opened). No changes were needed in response to this comment. Consistent with changes made with respect to the SAM and OFAC certifications, CCC modified the certification at § 1493.140(d).

CCC added two certifications to the new proposed rule. In § 1493.140(b), CCC proposes to require the exporter to certify that the commodities under the payment guarantee were shipped directly to the importer (or to the importer's representative) in the destination country or region. This certification is intended to enhance compliance with the new requirements related to the importer's representative and to ensure the goods are shipped consistent with the information provided in the exporter's application for payment guarantee. When making this certification, an exporter is certifying that either the importer on the payment guarantee or the importer's representative, as specified in the application for the payment guarantee, is taking receipt of the goods in the destination country or region. If CCC determines that the agricultural commodities exported under a payment guarantee are shipped to an entity other than the importer or the importer's representative, the exporter will be in violation of the requirements of this sub-part and the certification statement made on the EOE. At § 1493.140(e), CCC added a certification that the transaction reported in the EOE is an "Eligible Export Sale." The meaning of this term is found in the discussion of § 1493.20. Because CCC will prohibit coverage of any transaction that does not meet the definition of "Eligible Export Sale," CCC will require exporters to certify that the transaction reported under the evidence of export report meets this requirement.

### *Section 1493.150 Proof of Entry*

CCC received one comment on this section, noting that requiring proof of entry documentation with a claim for default (found in § 1493.170) would slow payments from the U.S. financial institution and negatively affect exporters' cash flows, as the proof of entry document is often outside of the exporter's control. Further, these cash flow problems will most notably affect small businesses.

CCC agrees with this comment, as well as additional comments received on this issue under § 1493.170. In response, CCC removed the requirement to provide proof of entry as a claims document. CCC added a statement to § 1493.150(b)(1) reminding exporters they must submit proof of entry documentation to CCC at the Director's request. Exporters are advised that CCC may request this documentation following submission of a claim for default by the holder of the payment guarantee. Assignees are reminded that pursuant to § 1493.191(d), *Misstatements or noncompliance by Exporter may lead to rescission of Payment Guarantee*, the assignee is held harmless for the exporter's failure to comply with proof of entry requirements provided that the assignee had no knowledge of the exporter's noncompliance at the time of taking assignment of the payment guarantee.

### *Section 1493.160 Notice of Default*

Three respondents commented on CCC's proposal to change the notice of default submission timeframe from ten calendar days to five business days after the date payment is due from the foreign financial institution. Two respondents requested CCC retain the current timeframe, noting that the reduced timeframe poses an operational risk to the exporter or assignee and a reputational risk to the foreign financial institution. Specifically, the shorter time period does not allow sufficient time to resolve operational errors and oversights or to detect or reconcile missed payments. One respondent requested that the timeframe be extended to 60 days, due to possible discrepancies in presentation of documents under the letter of credit.

No changes were made in response to these comments. It is CCC's responsibility in a default to avoid jeopardizing additional taxpayer resources. CCC can only uphold this responsibility if it is notified immediately of a default and prevents issuance of additional guarantees with the defaulting institution. CCC does not believe this change poses undue risk upon the exporter or assignee. The timeframe is clear; if the holder of the payment guarantee knows that a payment has not been made, or cannot verify whether the payment has been made, the holder should submit the notice of default within the prescribed timeframe to protect its rights under the guarantee. CCC acknowledges the possibility of "technical" defaults that are due to oversight and quickly resolved. As the notice of default requires a reason for refusal to pay, this

possibility will be conveyed to CCC on the notice of default. CCC will work with all parties to minimize any reputational risk to the foreign financial institution.

One respondent requested clarification on the meaning of the due date of the payment and what CCC considers to be a payment default. These clarifications can be found in paragraph (a) of this section. The "due date" is "the date that payment was due from the Foreign Financial Institution." A default is any case where "the Foreign Financial Institution issuing the Letter of Credit fails to make payment pursuant to the terms of the Letter of Credit or the Terms and Conditions Document."

CCC received comments from five respondents on paragraph (c) of this section regarding the impact of a default on other existing payment guarantees. One commenter noted several issues with this provision: (1) the guarantee may have been the basis for the exporter to enter the sale with the importer; (2) the exporter may not have a line of credit with another approved foreign financial institution; and (3) if the letter of credit has already been issued and confirmed, under UCP 600 rules it cannot be cancelled without the consent of all parties. The respondent also noted that when CCC issues a guarantee, it does so based on its assessment that the foreign financial institution is creditworthy throughout the 120-day maximum shipping period. If a default occurs, CCC should notify the exporter and continue to honor guarantees, provided the letter of credit is issued not later than 30 days following the final shipment date. The respondent noted that all parties would likely make a good faith effort not to ship additional product, but this may not be possible if the letter of credit has been issued and documents have been presented to the U.S. financial institution.

Three respondents noted that this change will make CCC's guarantee conditional. In contrast, the required payment mechanism (the letter of credit) would remain irrevocable. This situation would create significant additional risk to the U.S. financial institution and would require it to carry more capital and charge higher lending margins, thereby making financing under the program more costly. This cost would in turn be passed on to the exporters, making the program less attractive to all participants. Respondents requested this provision be revised or removed. One respondent requested that CCC allow the foreign financial institution time to resolve

technical payment issues without affecting existing payment guarantees.

In response to these comments, CCC revised paragraph (c) to reflect that CCC will only withdraw guarantee coverage of the defaulting foreign financial institution where the letter of credit has not yet been issued for the export sale. CCC agrees that once the letter of credit is issued and documents presented, the U.S. financial institution is obligated to make payment and the letter of credit cannot be canceled without consent of all parties. It is not appropriate for CCC to revoke its guarantee at this time. If a default occurs, CCC will provide written notice (likely via email) to all exporters and assignees with payment guarantees involving the defaulting foreign financial institution. CCC will not provide coverage for any letters of credit that are issued by the defaulting foreign financial institution on or after the date the exporter and assignee receive this notice from CCC. If CCC withdraws coverage of that foreign financial institution, the exporter will have the option of finding an alternate foreign financial institution within 30 calendar days or cancelling the guarantee (with a refund of the fee corresponding to any cancelled guarantee amount). CCC will also consider other requests for amendments from the exporter if needed to facilitate completion of the export sale. If the holder of the payment guarantee subsequently files a claim, CCC will confirm during the claim review process that the letter of credit was issued prior to CCC's notification. Although CCC recognizes that this policy creates risk for the exporter, which may have conditioned the sale upon the guarantee, CCC has a responsibility to protect against additional losses. If a default is technical in nature, this fact will be indicated on the notice of default and CCC will work with all parties to try to resolve the default without affecting existing payment guarantees.

#### *Section 1493.170 Claims for Default*

Three respondents commented on the requirement to submit proof of entry documentation at the time of claim under § 1493.170(a)(5)(iii) of the initial proposed rule. Two respondents noted that the U.S. financial institution does not typically receive this document because it is the exporter's responsibility. The U.S. financial institution has no assurance the exporter would provide it at time of claim or that it would be satisfactory to CCC. One respondent commented that with this requirement, the exporter would be paid when the goods arrived at destination rather than at export. This

change would have a significant negative effect on the exporter's cash flow, especially for smaller exporters. In addition, the exporter must rely on the importer for this document and letters of credit would have to be issued for longer periods to accommodate the time needed to obtain the document, all of which would increase risk and costs to the exporter. There are no rules for determining the acceptability of these documents, which would increase review time and operational risks to U.S. financial institutions.

CCC agrees with these comments and eliminated the requirement to provide proof of entry at time of claim. CCC clarified in § 1493.150 that the exporter must provide this documentation to CCC at the request of the Director.

One respondent asked what CCC will accept as evidence of the repayment schedule required in paragraph (a)(3)(i). Although there is no specific document CCC requires to meet this provision, U.S. financial institutions typically submit a copy of the loan notification to the foreign financial institution, which contains the information required by paragraph (a)(3)(i). If the loan notification is not available, the U.S. financial institution may contact CCC with any questions regarding an alternate document.

One commenter suggested CCC move paragraph (d), *Alternative satisfaction of Payment Guarantees*, to § 1493.190. CCC does not agree because paragraph (d) is often invoked in response to a claim for default. Therefore, this paragraph remains in § 1493.170.

CCC made additional changes to this section in the new proposed rule. Paragraph (a), which describes the documents and information required in a claim for default, has been reorganized to group like requirements together, such as certifications, to make this section easier to follow. In paragraph (a)(1)(iii), a new certification was added requiring the holder of the payment guarantee to certify that conforming documents required by the letter of credit have been submitted to the negotiating bank or directly to the foreign financial institution (if the payment guarantee has not been assigned). This was added as part of CCC's effort to avoid claims for default due to document discrepancies. Paragraph (a)(3)(v) was modified to reflect that the evidence of export (EOE) report provided with the claim must be in conformity with the regulatory requirements for EOE's. A requirement was also added for the holder of the payment guarantee to provide written evidence of a repurchase if the defaulted amount was part of a transaction

executed under a repurchase agreement. Receipt of this documentation will allow CCC to confirm that the repurchase occurred as required by § 1493.120(f)(1)(ii). CCC also updated this section with the new terms "Holder of the Payment Guarantee" and "Terms and Conditions Document" as relevant, and added additional detail to some of the requirements to clarify the information that must be provided.

#### *Section 1493.180 Payment for Default*

CCC received two comments on this section. One respondent requested that, with respect to the provision for accelerated payments in paragraph (d), CCC pay claims for accelerated amounts if payments under the letter of credit are required to be accelerated.

It is CCC's intent to pay claims for defaults on an accelerated basis if CCC requires the holder of the payment guarantee to invoke the acceleration provision in § 1493.90(b)(3). The purpose of paragraph (d) is to make clear that CCC will not make accelerated payments if the holder of the payment guarantee determined unilaterally to invoke the acceleration clause.

One respondent commented that under paragraph (e)(1), the assignee may not know if the exporter has complied with the reporting requirements under § 1493.130 and § 1493.140, and therefore requested this requirement be excluded from the limitation on the assignee's liability. CCC does not agree with this suggestion. The evidence of export report (EOE) is a required claim document under § 1493.170(a)(3)(v); therefore, the assignee should ensure that it receives this document from the exporter. Further, the assignee can review the program regulation to determine whether the EOE conforms with the requirements of § 1493.130 and § 1493.140. CCC acknowledges that the assignee may not know if the exporter includes inaccurate or false data or certifications in the EOE, but in such circumstances CCC would hold the assignee harmless provided the requirements of paragraph (e) are met. CCC has modified this provision to more broadly require that in order to be held harmless, the assignee must submit all required claims documents such that they "appear on their face" to conform with all requirements of § 1493.170. With this change CCC believes subparagraphs (1) and (2) of this provision are no longer needed.

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

CCC received no comments on this section. In the new proposed rule, CCC updated this section with the term

“Holder of the Payment Guarantee” as discussed in § 1493.20. Paragraph (e) from the initial proposed rule has been moved to the new section 1493.191 (see discussion below). In paragraph (c), *Allocation of recoveries*, CCC clarified that the “respective interest of each party” in a recovery is based on the date the claim is paid by CCC. In the paragraph *Cooperation in recoveries* (now paragraph (e)), CCC added that the exporter, whether or not the holder of the payment guarantee, is also required to cooperate with CCC to effect recoveries. In some instances, the exporter may have information or be able to take some action that would increase the likelihood of recoveries following a default.

#### *Section 1493.191 Additional Obligations and Requirements*

This section was added to the new proposed rule but is a compilation of existing provisions previously found in other sections, including § 1493.195, *Miscellaneous provisions*. CCC believes these provisions represent important obligations on participants and risked being overlooked; they have therefore been consolidated in this new section.

One respondent commented on paragraph (a) of this new section, previously found in § 1493.195, *Miscellaneous provisions*, noting that pursuant to privacy laws, USDA may be required to obtain a subpoena to review GSM-102 related documents unless the customer has provided prior written consent. CCC does not agree with this comment. Section 402(a)(1) of the Agricultural Trade Act of 1978, as amended, requires “each exporter or other participant under the program to maintain all records concerning a program transaction for a period of not to exceed 5 years after completion of the program transaction, and to permit the Secretary to have full and complete access, for such 5-year period, to such records.” This statutory provision does not require USDA to obtain a subpoena for access to documents covered by this regulatory provision.

In the revised proposed rule, CCC modified paragraph (a) to clarify that the requirement for records maintenance and access to premises applies both to the exporter and the assignee. CCC also made changes to remind participants that they are expected to respond fully to any inquiries from CCC related to their program participation and any GSM-102 transactions. CCC felt it was necessary to clarify that participants must respond to verbal and written inquiries that do not specifically involve submission of documents. The title of this paragraph has been changed to

reflect this addition. Paragraph (d), previously titled “Good faith,” has been renamed “Misstatements or noncompliance by Exporter may lead to rescission of Payment Guarantee.”

#### *Section 1493.192 Dispute Resolution and Appeals*

No comments were received on this section and no changes were made in the proposed rule.

#### *Section 1493.195 Miscellaneous Provisions*

Several of the provisions previously found in this section have been moved to the new § 1493.191, *Additional obligations and requirements*. No comments were received on paragraphs (a) and (b) of this section and CCC made no changes in the new proposed rule.

#### **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 part 1493.192 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 part 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 proposed changes 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 revision reflects an expected increase in program participation due to the new proposed rule, and also incorporates the additional estimated burden to program participants as a result of certain new requirements in this proposed rule for exporters, U.S. and foreign financial institution qualification; applications for payment guarantees; notices of assignment; repurchase agreements; evidence of export reports; submission of claims for default; and appeals. 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 0.51 hours per response.

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

*Estimated Number of Respondents:* 96 per year.

*Estimated Number of Responses per Respondent:* 66 per year.

*Estimated Total Annual Burden on Respondents:* 3,224 hours.

Comments on this information collection must be received by February 25, 2014 to be assured consideration. Comments may be submitted to CCC in accordance with any of the methods specified 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, 5662, 5663, 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 is authorized to issue Payment Guarantees:

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

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

(c) To establish or improve facilities and infrastructure in emerging markets to expand exports of U.S. Agricultural Commodities; or

(d) 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 U.S. Agricultural Commodities to any country that the Secretary determines cannot adequately service the debt associated with such sale.

(3) CCC shall not make Payment Guarantees available in connection with sales of U.S. Agricultural Commodities financed by any Foreign Financial Institution that CCC determines cannot adequately service the debt associated with such sale.

(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 these programs.

##### **§ 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 of obligation to adequately service CCC guaranteed debt (“country of obligation” is the country whose Foreign Financial Institution obligation is guaranteed by CCC);

(c) Financial status of participating Foreign 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 Payment Guarantees.

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

The criteria considered by CCC in determining U.S. Agricultural 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; and

(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 Special requirements of the Foreign Financial Institution Letter of Credit and the Terms and Conditions Document, if applicable.
  - 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.
  - 1493.191 Additional obligations and requirements
  - 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.* The Export Credit Guarantee (GSM–102) Program of the Commodity Credit Corporation (CCC) was developed to expand U.S. Agricultural Commodity 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 the GSM–102 program, maximum repayment terms vary based on risk of default, as determined by CCC. 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 is administered under the direction of the General Sales Manager and Vice President of CCC, pursuant to this subpart, subpart A, and any Program Announcements issued by CCC. From time to time, CCC may issue a notice to participants on the USDA Web site to remind participants of the requirements of the GSM–102 program or to clarify the program requirements contained in these regulations in a manner not inconsistent with this subpart and subpart A.

(c) *Country and regional program announcements.* From time to time, CCC will issue a Program Announcement on the USDA 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 U.S. Agricultural 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 subpart, on the USDA 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:

*Affiliate.* Entities 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; or common use of employees.

*Assignee.* A U.S. Financial Institution that has obtained the legal right to make a claim and receive the payment of proceeds under the Payment Guarantee.

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

*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.*).

*CCC Late Interest.* Interest payable by CCC pursuant to § 1493.180(c).

*Cost and Freight (CFR).* A customary trade term for sea and inland waterway transport only, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

*Cost Insurance and Freight (CIF).* A customary trade term for sea and inland waterway transport only, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

*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.

*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.

*Director.* The Director, Credit Programs Division, Office of Trade Programs, Foreign Agricultural Service, or the Director's designee.

*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 an Eligible Export Sale, above and beyond the commodity's value, stated on the appropriate FOB, FAS, FCA, CFR or CIF basis (or other basis specified in Incoterms 2010, or as superseded), which includes, but is 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 Eligible 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.

**Eligible Export Sale.** An export sale of U.S. Agricultural Commodities in which the obligation of payment for the portion registered under the GSM-102 program arises solely and exclusively from a Foreign Financial Institution Letter of Credit or Terms and Conditions Document issued in connection with a Payment Guarantee.

**Eligible Interest.** The amount of interest that CCC agrees to pay the Holder of the Payment Guarantee in the event that CCC pays a claim for default of Ordinary Interest. Eligible Interest shall be the lesser of:

(1) The amount calculated using the interest rate specified between the Holder of the Payment Guarantee 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.

**Exported Value.** (1) Where CCC announces Payment Guarantee coverage on a FAS, FCA, or FOB basis and:

(i) Where the U.S. Agricultural Commodity is sold on a FAS, FCA, or FOB basis, the value, FAS, FCA, or FOB basis, port of shipment, of the export sale, reduced by the value of any Discounts and Allowances granted to the Importer in connection with such sale; or

(ii) Where the U.S. Agricultural Commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS, FCA or FOB, port of shipment, is measured by the CFR or CIF value of the U.S. 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 and 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 U.S. Agricultural Commodity is sold on a CFR or CIF basis, port of destination, the total value of the export sale, CFR or CIF basis, port of destination, reduced by the value of any Discounts and Allowances granted to the Importer

in connection with the sale of the commodity; or

(3) When a CFR or CIF U.S. Agricultural 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.

**Exporter.** A seller of U.S. Agricultural Commodities that is both qualified in accordance with the provisions of § 1493.30 and the applicant for the Payment Guarantee.

**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 an Eligible Export Sale of the eligible U.S. Agricultural Commodity from the Exporter to the Importer (or, if applicable, the sale of the eligible U.S. Agricultural Commodity from the Exporter to the Intervening Purchaser and from the Intervening Purchaser to 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 U.S. Agricultural Commodity, quantity, quality specifications, delivery terms (FOB, C&F, FCA, 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 Firm Export 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 application for a Payment Guarantee.

**Foreign Financial Institution.** A financial institution (including foreign branches of U.S. financial institutions):

(1) Organized and licensed 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 (except for multilateral and sovereign institutions).

**Foreign Financial Institution Letter of Credit or 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.

**Free Alongside Ship (FAS).** A customary trade term for sea and inland waterway transport only, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

**Free Carrier (FCA).** A customary trade term for all modes of transportation, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

**Free on Board (FOB).** A customary trade term for sea and inland waterway transport only, as defined by the International Chamber of Commerce, Incoterms 2010 (or as superseded).

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

**Guaranteed Value.** The maximum amount indicated on the face of the Payment Guarantee, exclusive of interest, that CCC agrees to pay the Holder of the Payment Guarantee.

**Holder of the Payment Guarantee.** The Exporter or the Assignee of the Payment Guarantee with the legal right to make a claim and receive the payment of proceeds from CCC under the Payment Guarantee in case of default by the Foreign Financial Institution.

**Importer.** A foreign buyer that enters into a Firm Export Sales Contract with an Exporter or with an Intervening Purchaser for the sale of U.S. Agricultural Commodities to be shipped from the United States to the foreign buyer.

**Importer's Representative.** An entity having a physical office and registered to do business in the destination country or region specified in the Payment Guarantee and that is authorized to act on the Importer's behalf with respect to the sale described in the Firm Export Sales Contract.

**Incoterms.** Trade terms developed by the International Chamber of Commerce in Incoterms 2010 (or latest revision) which define the respective obligations of the buyer and seller in a sales contract.

**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 U.S. Agricultural Commodities to an Importer.

*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.

*Ordinary Interest.* Interest (other than Post Default Interest) charged on the principal amount identified in the Foreign Financial Institution Letter of Credit or, if applicable, the Terms and Conditions Document.

*Payment Guarantee.* An agreement under the GSM-102 program by 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 Holder of the Payment Guarantee in the event of a default by a Foreign Financial Institution on its Repayment Obligation under the Foreign Financial Institution Letter of Credit issued in connection with a guaranteed sale or, if applicable, under the Terms and Conditions Document.

*Port Value.* (1) Where CCC announces coverage on a FAS, FCA, or FOB basis and:

(i) Where the U.S. Agricultural Commodity is sold on a FAS, FCA, or FOB basis, port of shipment, the value, FAS, FCA, or FOB basis, port of shipment, of the export sale, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, reduced by the value of any Discounts and Allowances granted to the Importer in connection with such sale; or

(ii) Where the U.S. Agricultural Commodity was sold on a CFR or CIF basis, port of destination, the value of the export sale, FAS, FCA, or FOB, port of shipment, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, is measured by the CFR or CIF value of the U.S. 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 and Allowances granted to the Importer in connection with the sale of the commodity.

(2) Where CCC announces coverage on a CFR or CIF basis and where the U.S. Agricultural Commodity was sold on CFR or CIF basis, port of destination,

the total value of the export sale, CFR or CIF basis, port of destination, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity.

(3) When a CFR or CIF U.S. Agricultural 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.

*Post Default Interest.* Interest charged on amounts in default that begins to accrue upon default of payment, as specified in the Foreign Financial Institution Letter of Credit or, if applicable, in the Terms and Conditions Document.

*Principal.* A principal of a corporation or other legal entity is an individual serving as an officer, director, owner, partner, or other individual with management or supervisory responsibilities for such corporation or legal entity.

*Program Announcement.* An announcement issued by CCC on the USDA Web site that provides information on specific country and regional programs and may identify eligible U.S. Agricultural Commodities and countries, length of credit periods which may be covered, and other information.

*Repayment Obligation.* A contractual commitment by the Foreign Financial Institution issuing the Letter of Credit in connection with an Eligible Export Sale to make payment(s) on principal amount(s), plus any Ordinary Interest 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 Repayment Obligation must be documented using one of the methods specified in § 1493.90.

*Repurchase Agreement.* A written agreement under which the Holder of the Payment Guarantee may from time to time enter into transactions in which the Holder of the Payment Guarantee agrees to sell to another party Foreign Financial Institution Letter(s) of Credit and, if applicable, Terms and Conditions Document(s), secured by the Payment Guarantee, and repurchase the same Foreign Financial Institution Letter(s) of Credit and Terms and

Conditions Documents secured by the Payment Guarantee, on demand or date certain at an agreed upon price.

*SAM* (System for Award Management). A Federal Government owned and operated free Web site that contains information on parties excluded from receiving Federal contracts or certain subcontracts and excluded from certain types of Federal financial and nonfinancial assistance and benefits.

*Terms and Conditions Document.* A document specifically identified and referred to in the Foreign Financial Institution Letter of Credit which may contain the Repayment Obligation and other special requirements specified in § 1493.90.

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

*U.S. Agricultural Commodity or U.S. Agricultural Commodities.* (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.

*USDA.* United States Department of Agriculture.

*U.S. Financial Institution.* A financial institution (including U.S. branches of Foreign Financial Institutions):

(1) Organized and licensed 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.

*Weighted Average Export Date.* The mean Date of Export for all exports within a 30 calendar day period, weighted by the guaranteed portion of the Exported Value of each export.

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

Exporters must apply and be approved by CCC to be eligible to participate in the GSM-102 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 USDA Web site:

(1) For 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) Email 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 form of business entity of the applicant (e.g., sole proprietorship, partnership, corporation, etc.) and the U.S. jurisdiction under which such entity is organized and authorized to conduct business. Such jurisdictions are a U.S. State, the District of Columbia, Puerto Rico, and the territories and possessions of the United States. Upon request by CCC, the applicant must provide written evidence that such entity has been organized in a U.S. State, the District of Columbia, Puerto Rico, or a territory or possession of the United States.

(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; and

(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) Email 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 (e.g., agricultural producer, commodity trader, consulting firm, etc.);

(ii) Explanation of the applicant's experience/history with U.S.

Agricultural Commodities for the preceding three years, including a description of such 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; and

(iv) Whether or not the applicant is a "small or medium enterprise" (SME) as defined on the USDA 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 certifications set forth in 7 CFR 1493.60(a) are hereby 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 to CCC for a Payment Guarantee for two consecutive U.S. Government fiscal years must resubmit a qualification application containing the information specified in § 1493.30(a) to CCC to participate in the GSM-102 program. 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 pursuant to paragraph (a) has not changed.

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

#### § 1493.40 Information required for U.S. Financial Institution participation.

U.S. Financial Institutions must apply and be approved by CCC to be eligible to participate in the GSM-102 Program.

(a) *Qualification requirements.* 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 USDA 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;

(5) Breakdown of the 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.

(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 certifications set forth in 7 CFR § 1493.60 are hereby 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 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 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 U.S. Government fiscal years must resubmit a qualification application containing the information specified in § 1493.40(a) to CCC to participate in the GSM-102 program. If at any time the information required by paragraph (a) of this section changes, the U.S. Financial Institution must promptly contact CCC to update this information and certify that the remainder of the information previously provided pursuant to paragraph (a) has not changed.

(d) *Ineligibility for program participation.* A U.S. Financial Institution may be deemed ineligible to participate in the GSM-102 Program if such applicant cannot provide all of the information and certifications required by § 1493.40(a).

**§ 1493.50 Information required for Foreign Financial Institution participation.**

Foreign Financial Institutions must apply and be approved by CCC to be eligible to participate in the GSM-102 Program.

(a) *Qualification requirements.* 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 USDA Web site:

- (1) Legal name and address of the applicant;
- (2) Year end, audited financial statements in accordance with the accounting standards established by the applicant's regulators, in English, for the applicant's three most recent fiscal years. If the applicant is not subject to a banking or other financial regulatory authority, year-end, audited financial statements in accordance with prevailing accounting standards, in English, 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 certifications set forth in 7 CFR 1493.60 are hereby 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 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 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 in accordance with the accounting standards established by the applicant's regulators, in English, so that CCC may determine the continued ability of the Foreign Financial Institution to adequately service CCC guaranteed debt. If the Foreign Financial Institution is not subject to a banking or other financial regulatory authority, it should submit year-end, audited financial statements in accordance with prevailing accounting standards, in English, for the applicant's most recent fiscal year. Failure to submit this information annually may cause CCC to decrease or cancel the Foreign Financial Institution's dollar participation limit. Any Foreign Financial Institution not participating in the GSM-102 program for two consecutive U.S. Government fiscal years may have its dollar participation limit cancelled. If this participation limit is cancelled, the Foreign Financial Institution must resubmit the information and certifications requested in paragraph (a) of this section to CCC when reapplying for participation. 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 deemed ineligible to participate in the GSM-102 program 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 (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) are not presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from covered transactions by any U.S. Federal department or agency;
- (2) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this section;
- (4) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) 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 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 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, and the Foreign Corrupt Practices Act of 1977.

#### **§ 1493.70 Application for Payment Guarantee.**

(a) A Firm Export Sales Contract for an Eligible Export Sale 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 USDA 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. If the destination is a region, indicate the country or countries within the region to which the U.S. Agricultural Commodity will be exported.

(2) Name and address of the Importer. If the Importer is not physically located in the country or region of destination, it must have an Importer's Representative in the country or region of destination taking receipt of the U.S.

Agricultural Commodities exported under the Payment Guarantee. If applicable, provide the name and address of the Importer's Representative.

(3) A statement that the U.S. Agricultural Commodity will be shipped directly to the Importer (or to the Importer's Representative, if applicable) in the destination country or region.

(4) Name and address of the party on whose request the Letter of Credit is issued, if other than the Importer.

(5) Name and address of the Intervening Purchaser, if any.

(6) Date of Sale.

(7) Exporter's sale number.

(8) Delivery period as agreed between the Exporter and the Importer.

(9) A full description of the U.S. Agricultural Commodity (including packaging, if any). The commodity grade and quality specified in the Exporter's application for the Payment Guarantee must be consistent with the commodity grade and quality specified in the Firm Export Sales Contract and the Foreign Financial Institution Letter of Credit.

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

(11) Unit sales price of the U.S. Agricultural 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.

(12) Description and value of Discounts and Allowances, if any.

(13) Port Value (includes upward loading tolerance, if any).

(14) Guaranteed Value.

(15) 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.

(16) 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.

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

(18) 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.

(19) The Exporter's statement, "All certifications set forth in 7 CFR 1493.80 are hereby being made by the Exporter 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)(19), 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 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 commence legal action and/or administrative proceedings against the Exporter. The Exporter, in submitting an application for a Payment Guarantee and providing the statement set forth in § 1493.70(a)(19), certifies that:

(a) The 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 the transaction complies with applicable United States law, including the Foreign

Corrupt Practices Act of 1977 and other anti-bribery measures;

(c) If the U.S. 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, neither the Importer nor the Intervening Purchaser, if applicable, is present on either the SAM or the OFAC Specially Designated Nationals (SDN) lists;

(e) The Exporter is fully in compliance with the requirements of § 1493.130(b) for all existing Payment Guarantees issued to the Exporter or has requested and been granted an extension per § 1493.130(b)(3); and

(f) 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 Special requirements of the Foreign Financial Institution Letter of Credit and the Terms and Conditions Document, if applicable.**

(a) *Permitted mechanisms to document special requirements.* (1) A Foreign Financial Institution Letter of Credit is required in connection with the export sale to which CCC's Payment Guarantee pertains. The Letter of Credit must stipulate presentation of at least one original clean on board bill of lading as a required document.

(2) The use of a Terms and Conditions Document is optional. The Terms and Conditions Document, if any, must be specifically identified and referred to in the Foreign Financial Institution Letter of Credit.

(3) The special requirements in paragraph (b) of this section must be documented in one of the two following ways:

(i) The special requirements may be set forth in the Foreign Financial Institution Letter of Credit as a special instruction from the Foreign Financial Institution; or

(ii) The special requirements may be set forth in a separate Terms and Conditions Document.

(b) *Special requirements.* The following provisions are required and must be documented in accordance with paragraph (a) of this section:

(1) The terms of the Repayment Obligation, including a specific promise by the Foreign Financial Institution issuing the Letter of Credit to pay the Repayment Obligation;

(2) The following language: "In the event that the Commodity Credit Corporation ("CCC") is subrogated to the position of the obligee hereunder, this instrument shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflict of laws principles. In such case, any legal action or proceeding arising under this instrument will be brought exclusively in the U.S. District Court for the Southern District of New York or the U.S. District Court for the District of Columbia, as determined by CCC, and such parties hereby irrevocably consent to the personal jurisdiction and venue therein.";

(3) A provision permitting the Holder of the Payment Guarantee to declare all or any part of the Repayment Obligation, including accrued interest, immediately due and payable, in the event a payment default occurs under the Letter of Credit or, if applicable, the Terms and Conditions Document; and

(4) Post Default Interest terms.

**§ 1493.100 Terms and requirements of the Payment Guarantee.**

(a) *CCC's obligation.* The Payment Guarantee will provide that CCC agrees to pay the Holder of the Payment Guarantee 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 and, if applicable, the Terms and Conditions Document. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* (1) The Holder of the Payment Guarantee may, with respect to a series of shipments made within a 30 calendar day period, elect to have the Payment Guarantee coverage being on the Weighted Average Export Date for such shipments. The first allowable 30 calendar day period for bundling of shipments to compute the Weighted Average Export Date for such shipments begins on the first Date of Export for transactions covered by the Payment Guarantee. Shipments within each subsequent 30 calendar day period may be bundled with other shipments made within the same 30 calendar period to determine the Weighted Average Export Date for such shipments.

(2)(i) The period of coverage under the Payment Guarantee begins on the earlier of the following dates and will continue during the credit term specified on the Payment Guarantee or any amendments thereto:

(A) the Date(s) of Export or the Weighted Average Export Date(s), as selected by the Holder of the Payment

Guarantee consistent with paragraph (b)(1) of this section; or

(B) the date when Ordinary Interest begins to accrue, or the weighted average date when interest begins to accrue.

(ii) However, the Payment Guarantee becomes effective on the Date(s) of Export of the U.S. Agricultural Commodities specified in the Exporter's application for the Payment Guarantee.

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

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

(e) *Reserve coverage for loading tolerances.* The Exporter may apply for a Payment Guarantee and, if coverage is available, pay the guarantee fee, based on the mean of the lower and upper loading tolerances of the Firm 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 Firm Export Sales Contract. The amount of coverage that can be reserved to accommodate the upward loading tolerance is limited to ten (10) 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., the mean of the upper and lower loading tolerances), 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 and the additional fee not received by CCC within 21 calendar days after the date of the last export against the Payment Guarantee, CCC will cancel the reserve coverage originally set aside for the Exporter.

(f) *Certain export sales are ineligible for GSM-102 Payment Guarantees.* (1) An export sale (or any portion thereof) is ineligible for Payment Guarantee

coverage if at any time CCC determines that:

(1) The commodity is not a U.S. Agricultural Commodity;

(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 export sale;

(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;

(4) If the U.S. 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;

(5) Either the Importer or the Intervening Purchaser, if any, is excluded or disqualified from participation in U.S. government programs;

(6) The export sale has been guaranteed by CCC under another Payment Guarantee; or

(7) The sale is not an Eligible Export Sale.

(g) *Certain exports of U.S. Agricultural Commodities are ineligible for Payment Guarantee coverage.* The following exports are ineligible for coverage under a GSM-102 Payment Guarantee except where it is determined by the Director to be in the best interest of CCC to provide guarantee coverage on such exports:

(1) Exports of U.S. Agricultural 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) Exports of U.S. Agricultural Commodities with a Date of Export later than the final date to export shown on the Payment Guarantee or any amendments thereof; or

(3) Exports of U.S. Agricultural Commodities where the date of issuance of a Foreign Financial Institution Letter of Credit is later than 30 calendar days after:

(i) The Date of Export, or

(ii) The Weighted Average Export Date, if the Holder of the Payment Guarantee has elected to have the Payment Guarantee coverage begin on the Weighted Average Export Date.

(h) *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 and the Assignee.

(i) *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 amendments. Such fees will be announced and available on the USDA Web site. Any request to amend the Foreign Financial Institution on the Payment Guarantee will require that the Holder of the Payment Guarantee resubmit to CCC the certifications in § 1493.120(c)(1)(i) or § 1493.140(d).

#### § 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 USDA Web site and are based upon the length of the payment terms provided for in the Firm Export Sales 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 USDA 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 USDA 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.

(b) *CCC to receive notice of assignment of payment guarantee.* A notice of assignment signed by the parties thereto must be filed with CCC by the Assignee in the manner specified on the USDA Web site. The name and address of the Assignee must be included on the written notice of assignment. The notice of assignment should be received by CCC within 30 calendar days of the date of assignment.

(c) *Required certifications.* (1) The U.S. Financial Institution must include the following certification on the notice of assignment: "I certify that:

(i) [Name of Assignee] has verified that the Foreign Financial Institution, at the time of submission of the notice of assignment, is not present on either the SAM or OFAC Specially Designated Nationals (SDN) lists; and

(ii) To the best of my knowledge and belief, 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 a false certification with respect to a Payment Guarantee, CCC may, in its sole discretion, in addition to any other action available as a matter of law, rescind and cancel the Payment Guarantee, reject the assignment of the Payment Guarantee, and/or commence legal action and/or administrative proceedings 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 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 Foreign Financial Institution 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 U.S. Agricultural Commodities to Importers located in such foreign country.

(f) *Repurchase agreements.* (1) The Holder of the Payment Guarantee may enter into a Repurchase Agreement, to which the following requirements apply:

(i) Any repurchase under a Repurchase Agreement by the Holder of the Payment Guarantee must be for the entirety of the outstanding balance under the associated Repayment Obligation;

(ii) In the event of a default with respect to the Repayment Obligation subject to a Repurchase Agreement, the Holder of the Payment Guarantee must immediately effect such repurchase; and

(iii) The Holder of the Payment Guarantee must file all documentation required by §§ 1493.160 and 1493.170 in case of a default by the Foreign Financial Institution under the Payment Guarantee.

(2) The Holder of the Payment Guarantee shall, within five Business Days of execution of a transaction under the Repurchase Agreement, notify CCC of the transaction in writing in the manner specified on the USDA Web site. Such notification must include the following information:

(i) Name and address of the other party to the Repurchase Agreement;

(ii) A statement indicating whether the transaction executed under the

Repurchase Agreement is for a fixed term or if it is terminable upon demand by either party. If fixed, provide the purchase date and the agreed upon date for repurchase. If terminable on demand, provide the purchase date only; and

(iii) The following written certification: “[Name of Holder of the Payment Guarantee] 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 present on either the SAM or OFAC Specially Designated Nationals (SDN) lists.”

(3) Failure of the Holder of the Payment Guarantee 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 Terms and Conditions Document, if applicable, 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 or region. If the sale was registered under a regional program, the Exporter must indicate the specific country or countries 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 Incoterms 2010 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 certifications set forth in 7 CFR 1493.140 are hereby being made by the

Exporter 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 USDA Web site within 21 calendar days of 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 the Exporter or has requested and been granted an extension per § 1493.130(b)(3).

(d) *Export sales reporting.* Exporters have a mandatory reporting responsibility under Section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), for exports of certain 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 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 commence legal action and/or administrative proceedings 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) The U.S. Agricultural Commodity was shipped to the Importer (or to the Importer's Representative, if applicable) in the country or region specified on the Payment Guarantee;

(c) 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 export sale, and that the export sale complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(d) 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 present on either the SAM or OFAC Specially Designated Nationals (SDN) lists;

(e) The transaction is an Eligible Export Sale; and

(f) 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 U.S. Agricultural Commodities covered by a Payment Guarantee to a country or region other than that shown on the Payment Guarantee is prohibited, unless expressly authorized in writing 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 U.S. 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. At the Director's request, the Exporter must submit to CCC records demonstrating proof of entry. 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 U.S. 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 U.S. Agricultural Commodity entered the importing country or region;

(ii) The identification of the export carrier;

(iii) The quantity of the U.S. Agricultural Commodity;

(iv) The kind, type, grade and/or class of the U.S. Agricultural Commodity; and

(v) The date(s) and place(s) of unloading of the U.S. Agricultural Commodity in the importing country or region.

(2) Where shipping documents (e.g., bills of lading) clearly demonstrate that the U.S. 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 Letter of Credit or the Terms and Conditions Document, the Holder of the Payment Guarantee 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 USDA 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 the Foreign Financial Institution's refusal to pay, if applicable;

(7) Reason for the 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 Holder of the Payment Guarantee 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) In the event that a Foreign Financial Institution defaults under a Repayment Obligation, CCC may declare that such Foreign Financial Institution is no longer eligible to provide additional Letters of Credit under the GSM-102 Program. If CCC determines that such defaulting Foreign Financial Institution is no longer eligible for the GSM-102 Program, CCC shall provide written notice of such ineligibility to all Exporters and Assignees, if any, having Payment Guarantees covering transactions with respect to which the defaulting Foreign Financial Institution is expected to issue a Letter of Credit. Receipt of written notice from CCC that a defaulting Foreign Financial Institution is no longer eligible to provide additional Letters of Credit under the GSM-102 Program shall constitute withdrawal of coverage of that Foreign Financial Institution under all Payment Guarantees with respect to any Letter of Credit issued on or after the date of receipt of such written notice. CCC will not withdraw coverage of the defaulting Foreign Financial Institution under any Payment Guarantee with respect to any Letter of Credit issued before the date of receipt of such written notice.

(2) If CCC withdraws coverage of the defaulting Foreign Financial Institution, CCC will permit the Exporter (with concurrence of the Assignee, if any) to utilize another approved Foreign Financial Institution, and will consider other requested amendments to the Payment Guarantee, for the balance of the export sale covered by the Payment Guarantee. If no alternate Foreign Financial Institution is identified to issue the Letter of Credit within 30 calendar days, CCC will cancel the Payment Guarantee and refund the Exporter's guarantee fees corresponding to any unutilized portion of the Payment Guarantee.

#### § 1493.170 Claims for default.

(a) *Filing a claim.* A claim by the Holder of the Payment Guarantee 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 USDA Web site. The claim must include the following documents and information:

(1) An original cover document signed by the Holder of the Payment Guarantee and containing the following information:

(i) Payment Guarantee number;

(ii) A description of:

(A) 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 Assignee prior to submission of the claim; and

(B) 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.

(iii) The following certifications:

(A) A certification that the scheduled payment has not been received, listing separately scheduled principal and Ordinary Interest;

(B) A certification of the amount of the defaulted payment, indicating separately the amounts for defaulted principal and Ordinary Interest;

(C) A certification that all documents submitted under paragraph (3) of this section are true and correct copies; and

(D) A certification that all documents conforming with the requirements for payment under the Foreign Financial Institution Letter of Credit have been submitted to the negotiating bank or directly to the Foreign Financial Institution under such Letter of Credit.

(2) An original instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the Holder of the Payment Guarantee 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, if applicable, the Terms and Conditions Document; and

(3) A copy of each of the following documents:

(i) The repayment schedule with due dates, principal amounts and Ordinary Interest rates for each installment (if the Ordinary Interest rates for future payments are unknown at the time the claim for default is submitted, provide estimates of such rates);

(ii)(A) The Foreign Financial Institution Letter of Credit securing the export sale; and

(B) If applicable, the Terms and Conditions Document;

(iii) 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;

(iv)(A) The Exporter's invoice showing, as applicable, the FAS, FCA, 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) The evidence of export report(s) previously submitted by the Exporter to CCC in conformity with the requirements of § 1493.130(a); and

(vi) If the defaulted payment was part of a transaction executed under a Repurchase Agreement, written evidence that the repurchase occurred as required under § 1493.120(f)(1)(ii).

(b) *Additional documents.* If a claim is denied by CCC, the Holder of the Payment Guarantee 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 Holder of the Payment Guarantee 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 Holder of the Payment Guarantee need only submit to CCC a notice of such failure containing the information stated in paragraph (a)(1)(i) and (ii) and (a)(1)(iii)(A) and (B) of this section; an instrument of subrogation as per paragraph (a)(2) of this section; and 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, if applicable, the Terms and Conditions Document. If CCC determines that it is liable to the Holder of the Payment Guarantee, CCC will pay the Holder of the Payment Guarantee 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 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 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 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 Assignee).

(c) *CCC Late Interest.* If CCC does not pay a claim within 15 Business Days of receiving the claim in good order, CCC Late Interest will accrue in favor of the Holder of the Payment Guarantee 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 USDA 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 Firm Export Sales Contract, the Foreign Financial Institution Letter of Credit, the Terms and Conditions Document (if applicable), or any obligation owed by the Foreign Financial Institution to the Holder of the Payment Guarantee that is related to the 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 Holder of the Payment Guarantee to invoke the acceleration provision in the Foreign Financial Institution Letter of Credit or, if applicable, in the Terms and Conditions Document, require submission of all claims documents specified in § 1493.170, and make payment to the Holder of the Payment Guarantee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the Assignee.* If an Assignee submits a claim for default pursuant to Section 1493.170 and all documents submitted appear on their face to conform with the requirements of such section, 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.

**§ 1493.190 Recovery of defaulted payments.**

(a) *Notification.* Upon claim payment to the Holder of the Payment Guarantee, 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 Assignee from or on behalf of the defaulting party, the Importer, or any source whatsoever (excluding payments among CCC, the Exporter, and the 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 Assignee, such party 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 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, CCC will apply an alternative rate in a manner to be described on the USDA 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, if any, provided that the required information necessary for determining pro rata distribution has been furnished. If a required 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 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 received by CCC from any source whatsoever that are related to the obligation in default will be allocated by CCC to the Holder of the Payment Guarantee 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 on the date the claim is paid by CCC. Once CCC has paid a particular claim under a Payment Guarantee, CCC pro-rates any collections it receives and shares these collections proportionately with the Holder of the Payment Guarantee until both CCC and the Holder of the Payment 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 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 the GSM-102 program; and

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

(e) *Cooperation in recoveries.* Upon payment by CCC of a claim to the Holder of the Payment Guarantee, the Holder of the Payment Guarantee and the Exporter will cooperate with CCC to effect 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 Holder of the Payment Guarantee or the Exporter under the Payment Guarantee.

**§ 1493.191 Additional obligations and requirements.**

(a) *Maintenance of records, access to premises, and responding to CCC inquiries.* For a period of five years after the date of expiration of the coverage of a Payment Guarantee, the Exporter and the Assignee, if applicable, must maintain and make available all records and respond completely to all inquiries pertaining to sales and deliveries of and extension of credit for U.S. Agricultural Commodities exported in connection with a Payment Guarantee, including those records generated and maintained by agents, Intervening Purchasers, and related companies involved in special arrangements with the Exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the Exporter and the 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, 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 and the 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 and 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 and U.S. and Foreign Financial Institutions participating in the GSM-102 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 Principals.* All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments) by Exporters or Assignees under this subpart must be signed by a Principal of the Exporter or 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 Assignee must ensure that all information and reports required under these regulations are timely submitted.

(d) *Misstatements or noncompliance by Exporter may lead to rescission of Payment Guarantee.* CCC may cancel a Payment Guarantee in the event that an Exporter makes a willful misstatement in the certifications in §§ 1493.80(b) and 1493.140(c) or if the Exporter fails to comply with the provisions of § 1493.150 or § 1493.191(a). However, notwithstanding the foregoing, CCC will not cancel its Payment Guarantee, if it determines, in its sole discretion, that an Assignee had no knowledge of the Exporter's misstatement or noncompliance at the time of assignment of the Payment Guarantee.

#### § 1493.192 Dispute resolution and appeals.

(a) *Dispute resolution.* (1) The Director and the Exporter or the 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 Assignee may seek reconsideration of a determination made 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 Assignee of the determination. The Exporter or the 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 Assignee is received by the Director, whichever is later, unless the Director extends the time permitted for response. If the Exporter or the Assignee fails to request reconsideration of a determination by the Director, then the determination of the Director will be deemed final.

(3) If the Exporter or the Assignee requests reconsideration of a determination by the Director pursuant to subparagraph (a)(2) of this section, and the Director upholds the original determination, then the Exporter or the 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 Assignee fails to appeal the Director's final determination within 30 calendar days as provided in section 1493.192(b)(1), then the Director's decision becomes the final determination of CCC.

(b) *Appeal procedures.* (1) An Exporter or Assignee that has exhausted the procedures set forth in paragraph (a) of this section may appeal to the GSM for a determination of the Director. An appeal to the GSM must be made 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 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 Assignee does not request an administrative hearing, the Exporter or 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 issue his or her written decision within 60 calendar days of the latter of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the Exporter or Assignee to the GSM.

(3) If the Exporter or the 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 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 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 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 issue his or her written decision within 60 calendar days of the latter of the date of the hearing or the date of receipt of the transcript, if one is to be prepared.

(4) The decision of the GSM will be the final determination of CCC. The Exporter or Assignee will be entitled to no further administrative appellate rights.

(c) *Failure to comply with determination.* If the Exporter or 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 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) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the Payment Guarantee or to any benefit that may arise therefrom, but this provision shall not

be construed to extend to the Payment Guarantee if made with a corporation for its general benefit.

(b) *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: October 22, 2013.

**Philip C. Karsting,**

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

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