

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

RIN 0551-AA73

**Facility Guarantee Program**

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

**ACTION:** Final rule with request for comments.

**SUMMARY:** This final rule amends the regulations used to administer the Facility Guarantee Program (FGP). Under the FGP, the Commodity Credit Corporation (CCC) may issue payment guarantees in connection with sales of goods or U.S. services to establish or improve agricultural-related facilities in emerging markets to expand exports of U.S. agricultural commodities or products. This final rule incorporates statutory changes from the Food, Conservation, and Energy Act of 2008 and modifications intended to reduce the burden on participants and improve program efficiency and effectiveness. Certain revisions will ensure the FGP is operated in compliance with the Organisation for Economic Co-operation and Development (OECD) Arrangement on Officially Supported Export Credits. Additionally, this final rule incorporates significant changes previously made to the regulations for the Export Credit Guarantee Program (GSM-102) that are also applicable to the FGP.

**DATES:** This rule is effective September 22, 2016. In order to solicit views based on program experience, the Foreign Agricultural Service (FAS) is providing the public with an additional 180-day comment period. FAS will consider comments received and may issue a revised final rule based on the comments. To facilitate additional comment, FAS has included a list of questions for participants to consider and respond to (see “Questions for Consideration” section below). Comments concerning this final rule must be received by March 21, 2017 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: “FGP Final 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 final rule is available through the Foreign Agricultural Service (FAS) homepage at: <http://www.fas.usda.gov/topics/export-finance>.

**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) Facility Guarantee Program (FGP) 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; through the issuance of program announcements and notices to participants that are consistent with this regulation; and in compliance with the requirements of the Organisation for Economic Co-operation and Development (OECD) Arrangement on Officially Supported Export Credits, where applicable. Under the FGP, CCC provides payment guarantees to facilitate the financing of manufactured goods and U.S. services to improve or establish agriculture-related facilities in emerging markets. By supporting such facilities, the FGP is designed to enhance sales of U.S. agricultural commodities and products to emerging markets where the demand for such commodities and products may be limited due to inadequate storage, processing, handling, or distribution capabilities.

**Regulatory History**

The previous FGP rule became effective on August 8, 1997. The Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) (2008 Act) modified the program by including a “construction waiver” that allows the Secretary of Agriculture to waive requirements related to the use of U.S. goods in the construction of a proposed facility if the Secretary determines that “(A) goods from the United States are not available; or (B) the use of goods from the United States is not practicable.”

On August 6, 2009, FAS published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (74 FR 39240). This document was intended to solicit comments on improvements to be made in the implementation and operation of the FGP program, with the intent of improving the FGP’s effectiveness and efficiency and lowering costs. FAS received comments to the ANPR from five entities. One of the key comments was that program requirements, particularly the application process, were too burdensome on participants and effectively precluded use of the program. Further, program fees were consistent with those charged by the U.S. Export-Import Bank for similar products but coverage was inferior.

FAS issued a proposed rule soliciting public comment on June 15, 2015 (80 FR 34080). The comments received, as well as FAS’s responses, are described below. No changes were made to the rule in response to these comments.

**Summary of Comments Received on Proposed Rule**

*Comment:* An executive summary describing the program as a “product” and listing its uses would generate more interest.

*Response:* FAS included a summary of key program aspects in the preamble to this final rule.

*Comment:* I assume agricultural equipment exports would be eligible for coverage. If so, USDA should highlight this fact.

*Response:* In accordance with Section 1542(b)(1) of the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act), as amended by the 2008 Act (7 U.S.C. 5622 note), the Secretary of Agriculture must determine that the FGP payment guarantee will “primarily promote the export of United States agricultural commodities. . . .” This requirement is also found in this regulation at § 1493.290(g)(4). CCC will only consider covering exports of agricultural equipment if the transaction would primarily benefit exports of U.S. agricultural commodities.

*Comment:* CCC should be given the flexibility to waive domestic content rules if the project is otherwise qualified.

*Response:* Pursuant to section 1542(b)(3) of the FACT Act, as amended (7 U.S.C. 5622 note), in certain circumstances “The Secretary may waive any applicable requirements relating to the use of United States goods in the construction of a proposed facility . . . .” This rule sets forth the requirements for requesting such a waiver in § 1493.290(f).

*Comment:* The required 15 percent down payment should include the land value and other sufficient security.

*Response:* Prior to CCC's issuance of a payment guarantee, the buyer is required to make a 15 percent initial payment (down payment) to the seller. The initial payment, at minimum, must equal 15 percent of the net contract value. The initial payment must be a cash payment from the buyer to the seller; it may not simply constitute the value of a portion of the project or a revocable security or pledge. The payment may be financed separately (outside of the FGP payment guarantee). CCC will provide guidance to sellers as needed regarding the initial payment.

*Comment:* There are several projects in Africa that are excellent candidates for this type of program, as the United States is a high-quality, least-cost producer.

*Comment:* I support this program because it will assist U.S. dairy exporters in exporting our products.

*Comment:* As a U.S. exporter of hardwood logs, lumber, and veneer, a line of credit, insurance or grant to open a warehouse in an importing country and fill it with our goods could potentially help grow our sales into that country.

*Comment:* I support the continued use of the Federal Guarantee Program as it helps U.S. producers in their efforts to develop export business.

*Response:* CCC will consider all transactions that meet program requirements, including that the proposed transaction will benefit the export of U.S. agricultural commodities and is destined for an eligible emerging market. FAS will make available on the USDA Web site a list of eligible emerging markets under the FGP.

#### *Questions for Consideration*

CCC is providing program participants the opportunity to comment on this final rule. In particular, participants are encouraged to utilize the FGP and, based on that experience, provide input to CCC on potential program improvements and additional modifications to the rule. The questions below are designed to facilitate feedback; however, participants may comment on any aspect of the regulation or program operations.

Question 1: Does the requirement for a letter of credit hinder the FGP program's effectiveness? If so, what other types of financing mechanism(s) would be appropriate for this program?

Question 2: Have you submitted a transaction to CCC for FGP coverage (or do you intend to submit a transaction)

in which you faced difficulties in obtaining alternative financing? If so, in what ways is the FGP program different—and potentially more useful—for your particular transaction?

Question 3: Describe any risks you have faced—either under an FGP-supported transaction or other past transactions—that prevented completion of the project. How can CCC assist with reducing or eliminating these risks?

Question 4: If you have used or are familiar with other types of facility loan, guarantee or insurance programs, such as programs offered by the U.S. Export-Import Bank, the International Finance Corporation of the World Bank Group, or others, what are the benefits of using the FGP program over these other programs?

Question 5: How do the FGP program terms (tenor, fees, coverage level, etc.) compare to other official government support programs you have used (including both U.S. and non-U.S. programs)?

Question 6: Are the tenor (repayment term) restrictions dictated by the OECD Arrangement indicative of the needs in the market for project financing?

Question 7: Would the FGP program be attractive if CCC offered coverage of less than 100 percent (or 85 percent after deduction of the initial payment)?

Question 8: Is the required minimum initial payment of 15% an appropriate amount to demonstrate genuine interest in moving forward with an FGP program transaction—or a deterrent to participating?

Question 9: Will the 50 percent U.S. content requirement hinder your participation in the FGP—even though you can request and receive a waiver of the requirement from CCC?

Question 10: Are the potential participants in the FGP (sellers, U.S. financial institutions, and foreign financial institutions) the same as under CCC's GSM-102 program? If not, what avenues should CCC use to introduce the FGP to a broader or different set of potential program users?

Question 11: Describe any difficulties you had in obtaining interest for an FGP transaction from one of CCC's approved U.S. or foreign financial institutions.

Question 12: Has the FGP assisted you in finding new overseas buyers, or enhanced your sales with existing buyers? If yes, please explain.

Question 13: How could CCC improve the letter of interest stage of the application process? Is there additional information CCC should collect from the seller during this stage? If you submitted a letter of interest for a transaction, was

the feedback you received from CCC beneficial?

Question 14: What suggestions do you have to streamline and simplify the payment guarantee application process?

Question 15: In making the determination of whether a transaction will likely primarily benefit U.S. agricultural commodity exports, CCC relies on its own internal analysis and consultation with relevant external stakeholders. Should CCC request more information from the seller in making this determination?

Question 16: Has your firm been required in the past to conduct an environmental and social risk assessment or impact analysis related to a project? If so, how did those requirements compare to the guidelines and requirements of the OECD and FGP Program?

Question 17: Please describe any difficulties you faced in adhering to the FGP's environmental and social impact requirements—for example, in providing required information for the screening document; providing the environmental and social impact assessment; or monitoring and reporting. What modifications could CCC make to the program to alleviate these difficulties?

Question 18: What suggestions do you have regarding how CCC could improve FGP program guidance—in ways that would make the program easier to understand and/or would attract additional participants?

#### **Changes to the Final Rule**

CCC made a number of changes in the final rule (from the proposed rule), particularly related to environmental and social screening and review of projects. Primarily, the final rule includes a more detailed explanation of the requirements for submitting information on potential environmental and social impacts of a transaction, the timing for submitting this information, and related reporting requirements. Key aspects of the program and associated requirements in the final rule are discussed below. In some instances, the numbering system of this final rule differs from that in the proposed rule. For purposes of this discussion, the numbering of the final rule is used.

#### **General Program Structure and Operation**

Following the effective date of this final rule, FAS will announce on the USDA Web site program allocations for FGP payment guarantees; a list of eligible emerging markets; approved U.S. and foreign financial institutions; and other relevant program information,

including (but not limited to) maximum guarantee coverage, maximum repayment terms, and guarantee fees. Initially, FAS may announce a limited allocation of payment guarantees to a limited number of emerging markets, and expand allocations and markets after assessing the effectiveness of the program in light of program use and comments from participants.

Similar to the GSM-102 Export Credit Guarantee Program, the payment mechanism underlying the FGP transaction is a letter of credit issued by a CCC-approved foreign financial institution. The payment guarantee is an agreement by CCC to pay the seller, 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 in favor of the seller for the sale covered by the payment guarantee.

#### **Credit Terms and Risk Coverage**

The United States is a participant in the OECD Arrangement on Officially Supported Export Credits (“the Arrangement”). The Arrangement seeks to foster a level playing field for official export credits and applies “to all official support provided by or on behalf of a government for export of goods and/or services, including financial leases, which have a repayment term of two years or more.” The Arrangement is updated periodically by OECD Participants. The most recent version can be found at <http://www.oecd.org/tad/xcred/arrangement.htm>.

#### **Repayment Terms (Tenor)**

The Arrangement prescribes maximum tenor (repayment terms) based on the destination country of the transaction: OECD Category I (high-income) countries are eligible for a maximum tenor of five years (with the possibility of 8.5 years in certain circumstances); Category II countries (all others) are eligible for a maximum tenor of 10 years. Because the FGP covers transactions in emerging markets, most program destination countries will fall into OECD Category II; however, CCC may prescribe shorter tenors for certain countries and obligors based on risk considerations.

#### **Initial Payment**

The Arrangement requires a minimum down payment be made by the buyer to the seller prior to the start of the credit. The minimum amount of the required initial payment (as a percentage of the net contract value) will be specified on the USDA Web site. The current

requirement under the Arrangement is 15 percent. The initial payment must be made, and documentation of such initial payment provided to CCC, before CCC will approve the seller’s final application for a payment guarantee.

#### **Coverage Level**

The Arrangement limits coverage to a maximum of 85 percent of the net contract value; therefore, CCC may offer coverage of up to 100 percent of the balance of the transaction after the initial payment is deducted. This equates to 100 percent coverage of the sum of the net contract value and approved local costs, less the initial payment and any discounts and allowances. CCC may elect to offer a lower percentage of coverage. Maximum coverage will be specified on the USDA Web site.

#### **Guarantee Fees**

The Arrangement prescribes minimum fees to be charged based on country risk, obligor risk, tenor, percentage of cover, and other factors. FGP guarantee fees will be available on the USDA Web site, will be consistent with the rules of the Arrangement, and will also reflect CCC’s assessment of repayment risk. CCC will not issue a payment guarantee until the seller remits the full guarantee fee.

#### **Participant Eligibility**

##### **U.S. Sellers**

All sellers must provide the information and meet the qualification requirements in § 1493.220 before CCC will consider any FGP transactions. To reduce the burden on program participants, CCC eliminated FGP qualification requirements for sellers already qualified to participate in the GSM-102 Program. In accordance with § 1493.220(c), sellers who are qualified exporters under the GSM-102 program are only required to submit additional information specific to the FGP.

##### **U.S. and Foreign Financial Institutions**

All U.S. and foreign financial institutions must provide the information and meet the qualification requirements of §§ 1493.230 and 1493.240, respectively, before participating in FGP transactions. U.S. financial institutions qualified under the GSM-102 program are automatically qualified to participate in the FGP. Due to the longer tenors and corresponding higher risk under the FGP, CCC will determine on a case-by-case basis whether foreign financial institutions already qualified under the GSM-102 Program are eligible for the FGP. There is no separate FGP qualification process

for foreign financial institutions. CCC will advise interested foreign financial institutions of their dollar participation limit under the GSM-102 and FGP Programs.

#### **Transaction Eligibility**

##### **Expanding U.S. Agricultural Commodity Exports**

The FACT Act, as amended, allows for the provision of export credit guarantees for “(A) the establishment or improvement of facilities, or (B) the provision of services or United States products goods [sic], in emerging markets by United States persons to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities and products thereof *if the Secretary of Agriculture determines that such guarantees will primarily promote the export of United States agricultural commodities . . .*” (emphasis added). To meet this requirement, the seller must provide in the initial application for a payment guarantee (§ 1493.260(b)(7)) a list of agricultural commodities or products to be handled, marketed, stored or distributed following completion of the proposed transaction and a description of how the transaction will specifically benefit exporters of U.S. agricultural commodities.

Rather than require the seller to provide an in-depth analysis and projection of future U.S. agricultural commodity exports, CCC will now conduct this analysis. CCC will seek input from other parts of USDA, commodity organizations, state and regional trade groups, commodity exporters, and other relevant governmental and private sector organizations to assist in collecting data, conducting this analysis, and determining a transaction’s impact. CCC will not approve an application for a payment guarantee if CCC determines that the transaction is unlikely to primarily benefit U.S. agricultural commodity exports.

##### **Environmental and Social Impacts**

The OECD “Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence” provides guidelines for addressing environmental and social impacts related to exports of capital goods and/or services. These guidelines assist OECD members in preventing and mitigating adverse environmental and social impacts of projects receiving official support.

Consistent with the OECD guidelines, CCC will screen all FGP payment

guarantee applications for any negative environmental and social impact. In accordance with § 1493.260(b), sellers must submit a completed preliminary environmental and social screening document with each initial application for a payment guarantee (unless the screening document was previously submitted with a letter of interest and is unchanged). The screening document, which contains basic questions about the nature of the transaction/project and its location and proximity to environmentally or socially sensitive areas, is available on the USDA Web site. CCC will review the screening document to determine whether the transaction is likely to have significant adverse environmental and/or social impacts.

If CCC determines that a transaction will have potential adverse impacts, the seller must submit an environmental and social impact assessment (ESIA), an in-depth report that identifies these risks and proposes measures to offset them. Sellers are encouraged to consider potentially adverse impacts early on in the project, as an ESIA can take several months to complete. The cost of the ESIA can be financed under the payment guarantee if the ESIA meets the definition of a "U.S. Service." If an ESIA is required, the seller must submit it with the final application for a payment guarantee. CCC will publish certain non-business confidential details of any transactions requiring an ESIA and provide the public with opportunity to comment. Additionally, certain transactions, including all transactions requiring an ESIA, will be subject to regular reporting throughout the life of the payment guarantee in accordance with § 1493.260(f).

CCC may reject an application for a payment guarantee if the transaction entails significant adverse environmental and/or social impacts that cannot be satisfactorily mitigated.

#### *CCC Coverage and Guidelines for U.S. Content*

Sellers may request coverage of any of the following under the FGP:

1. *U.S. goods.* U.S. goods are defined in § 1493.210. U.S. goods may include imported components that are assembled, processed or manufactured into the goods. Imported raw materials and basic manufactured items (for example, steel, iron, nuts and bolts) that are processed, assembled or manufactured into U.S. goods are automatically included in CCC's coverage and are not counted as imported components. CCC will rely on commercial practice and communication with participants to

resolve issues that arise regarding imported raw materials and basic manufactured items.

2. *U.S. services.* Services are defined in § 1493.210. Non-U.S. services are not eligible for coverage.

3. *Non-U.S. goods.* Non-U.S. goods may be eligible for CCC coverage. The seller may request (in the initial application for a payment guarantee) a coverage waiver to allow for coverage for non-U.S. goods. CCC will only consider a coverage waiver to allow non-U.S. goods based on one of the justifications found at § 1493.290(f)(2).

4. *Local costs.* Local costs are defined in § 1493.210 as "expenditures for goods in the destination country that are necessary for executing the firm sales contract and that are within scope of the firm sales contract." The OECD Arrangement prescribes a limit (currently 30 percent) on the maximum amount of official support for local costs. CCC will consider providing coverage for local costs within the limits of the Arrangement, but because local costs are non-U.S. goods, the seller must request and receive from CCC a coverage waiver for these costs.

The net contract value of the transaction is the basis for calculating the maximum amount of coverage (guaranteed value) that CCC will approve. The net contract value consists of the value of U.S. goods, cost of U.S. services, and value of non-U.S. goods (excluding local costs) that CCC has agreed to cover. Adding to the net contract value the value of approved local costs, then deducting the amount of the initial payment and any discount and allowances, and multiplying the result by the guaranteed percentage (100 percent, for example), generates the guaranteed value. The "Sample Transaction" below illustrates how to calculate net contract value, guaranteed value, and other required information.

#### *U.S. Content Test and Coverage Waiver*

CCC will apply a U.S. content test to all transactions to determine the level of U.S. versus non-U.S. content. Specifically, CCC will calculate the sum of the value of imported components and value of eligible non-U.S. goods (including approved local costs) as a percentage of the total value of goods and cost of services CCC agrees to cover (*i.e.*, the net contract value plus approved local costs). If the non-U.S. content accounts for less than 50 percent of the sum of the net contract value and approved local costs, or the seller is requesting coverage on only the U.S. content portion of the transaction, the transaction "passes" the U.S. content test. The "Sample Transaction"

below illustrates the calculation of U.S. content.

If non-U.S. content accounts for 50 percent or more of the sum of the net contract value and approved local costs, the seller may request a coverage waiver. When requesting a coverage waiver, the seller must use one of the justifications found in § 1493.290(f)(2).

In making a determination regarding whether to grant a coverage waiver for non-U.S. goods or the U.S. content test, CCC will seek to validate the information that the seller provided to justify the inclusion of non-U.S. goods and/or imported components in U.S. goods. CCC will reach out to relevant companies, industry groups and government agencies to research the necessity of granting the waiver. Additionally, CCC will consider whether or not the non-U.S. goods and/or imported components in U.S. goods are essential to the completion of the FGP transaction. By allowing the seller multiple bases upon which it may request a coverage waiver, CCC intends to provide maximum flexibility in approving goods, services and projects that will meet the requirement to primarily benefit the export of U.S. agricultural commodities.

#### **Application Process**

There is one optional step (letter of interest) and two required steps (initial and final applications) in the FGP payment guarantee application process.

##### *Letter of Interest*

In accordance with § 1493.260(a), the seller may opt to submit a letter of interest to CCC describing a proposed transaction. The USDA Web site describes the information needed in the letter of interest. CCC will review the letter of interest and provide preliminary feedback on whether the proposed transaction may be eligible for FGP coverage. In doing so, CCC hopes to reduce the burden on participants by ruling out ineligible projects prior to the more in-depth application process. The letter of interest must be accompanied by a non-refundable fee (specified on the USDA Web site) that will be deducted from the final guarantee fee if the letter of interest ultimately results in issuance of a payment guarantee. If the seller opts to submit a letter of interest, it must be accompanied by a preliminary environmental and social screening document.

##### *Initial Application*

CCC divided the payment guarantee application process into two steps, as the seller will be unable to provide all required information without receiving

certain feedback from CCC. The first step is the submission of an initial application. The initial application must include the details of the proposed export, project or facility as specified in § 1493.260(b), including a description of all goods and services for which coverage is sought. If not previously submitted with a letter of interest, or if the information has changed, the seller must submit a preliminary environmental and social screening document with the initial application. The seller must submit a non-refundable initial application fee, which will be deducted from the final guarantee fee if CCC issues a payment guarantee for the transaction.

CCC will review the initial application to determine if the proposal meets program requirements and whether to approve any coverage waiver requests. At this time, CCC will also determine if the transaction entails potential negative environmental and/or social impacts, and, if so, will require the seller to submit an environmental and social impact assessment. If CCC approves the initial application, the seller must submit a final application for payment guarantee.

#### *Final Application*

The seller will have at least 30 calendar days to submit the final application (§ 1493.260(d)). This timeframe will be based in part on whether the seller must provide an ESIA with the final application; if so, CCC will allow a longer timeframe. The seller must submit the full guarantee fee (less any letter of interest and initial application fees) with the final application. Upon CCC's review and approval of the final application, review and approval of the ESIA (if required), and receipt of the full guarantee fee, CCC will issue a payment guarantee in favor of the seller.

#### **Performance Under the Payment Guarantee**

The seller may choose to assign the payment guarantee to an approved U.S. financial institution in accordance with § 1493.310 and be paid as performance occurs. A list of approved U.S. financial institutions is available on the USDA Web site.

The seller is required to submit to CCC an evidence of performance report meeting the requirements of § 1493.320 for all contractual events occurring under the payment guarantee. The seller must submit the evidence of performance within 30 calendar days of each date of performance unless CCC grants an extension to this timeframe.

If the foreign financial institution fails to make payment under the letter of credit, the holder of the payment guarantee (either the seller or the U.S. financial institution) must submit a notice of default to CCC no later than 5 business days after the date the payment was due from the foreign financial institution. A claim for default must be submitted to CCC no later than 180 calendar days from the date of the defaulted payment.

#### **Sample Transaction**

Assume a seller submits an initial application for a payment guarantee. The total value of the firm sales contract with the buyer is \$2,200,000. The elements of the firm sales contract are as follows:

- (a) U.S. goods = \$1,500,000 (of which, \$300,000 constitutes imported components used in the manufacture of the U.S. goods)
- (b) Non-U.S. goods = \$600,000 (of which, \$100,000 constitutes local costs, which may be approved by CCC)
- (c) U.S. services = \$100,000

The seller requests CCC coverage based on the full \$2.2 million firm sales contract value, and requests a coverage waiver for the \$600,000 in non-U.S. goods, which is granted. There are no discounts and allowances reported. The net contract value of the transaction is \$2,100,000 (the total of all costs except local costs).

CCC applies the U.S. content test to determine the percentage of U.S. content:

- (d) Eligible non-U.S. goods = \$600,000
- (e) Imported components = \$300,000
- (f) Sum of (d) and (e) = \$900,000
- (g) Net contract value + approved local costs = \$2,200,000
- (h) Total non-U.S. content = \$900,000 / \$2,200,000 = 41 percent

Because total non-U.S. content is only 41 percent of the total transaction, the transaction passes the U.S. content test. If the total non-U.S. content had been 50 percent or more, the seller would need to request a coverage waiver from CCC on the U.S. content test.

CCC's coverage is calculated as follows. Note that local costs in this example are approximately 5 percent of the net contract value (less than the maximum allowable 30 percent) and are approved by CCC.

- (i) Net contract value = \$2,100,000
- (j) Approved local costs = \$100,000
- (k) Amount of initial payment = \$315,000 (15 percent of the net contract value)
- (l) Guaranteed value = (net contract value + approved local costs – initial payment) (100 percent coverage), or

$$\begin{aligned} \text{Guaranteed value} &= (\$2,100,000 + \\ &\quad \$100,000 - \$315,000) \times 1.0 = \\ &\quad \$1,885,000 \end{aligned}$$

#### **Executive Order 12866**

This final 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 final rule has been reviewed in accordance with Executive Order 12988. This final rule would not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this final rule. Before any judicial action may be brought concerning the provisions of this final rule, the appeal provisions of 7 CFR part 1493.200 would need to be exhausted. This rulemaking 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 final rule has been reviewed under Executive Order 13132, "Federalism." The policies contained in this final 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 final 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 rule has been reviewed for compliance with E.O. 13175. The policies contained in this 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 final rule does not constitute a major State or Federal action that would significantly affect the human or natural environment. Consistent with the National Environmental Policy Act (NEPA), 40 CFR 1502.4, "Major Federal Actions Requiring the Preparation of Environmental Impact Statements" and the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, no environmental assessment or environmental impact statement will be prepared.

### Unfunded Mandates

This final 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

The information collection and record keeping requirements contained in this regulation have been submitted to OMB for approval in accordance with the Paperwork Reduction Act of 1995 under OMB Control Number 0551–0032.

### 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>.

### List of Subjects in 7 CFR Part 1493

Agricultural commodities, Exports.

For the reasons stated in the preamble, CCC amends 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, 5622 note, 5661–5664, 5676; 15 U.S.C. 714b(d), 714c(f).

■ 2. Subpart C is revised to read as follows:

#### Subpart C—CCC Facility Guarantee Program (FGP) Operations

Sec.

- 1493.200 General statement.
- 1493.210 Definition of terms.
- 1493.220 Information required for seller participation.
- 1493.230 Information required for U.S. financial institution participation.
- 1493.240 Information required for foreign financial institution participation.
- 1493.250 Certification requirements for program participation.
- 1493.260 Application for payment guarantee.
- 1493.270 Certifications required for obtaining payment guarantee.
- 1493.280 Special requirements of the foreign financial institution letter of credit and terms and conditions document, if applicable.
- 1493.290 Terms and requirements of the payment guarantee.
- 1493.300 Fees.
- 1493.310 Assignment of the payment guarantee.
- 1493.320 Evidence of performance.
- 1493.330 Certification requirements for the evidence of performance.
- 1493.340 Proof of entry.
- 1493.350 Notice of default.
- 1493.360 Claims for default.
- 1493.370 Payment for default.
- 1493.380 Recovery of defaulted payments.
- 1493.385 Additional obligations and requirements.
- 1493.390 Dispute resolution and appeals.
- 1493.395 Miscellaneous provisions.

#### Subpart C—CCC Facility Guarantee Program (FGP) Operations

##### § 1493.200 General statement.

(a) *Overview.* The FGP 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 to establish or improve facilities or provide services or goods in emerging markets to improve handling, marketing, processing, storage, or distribution of imported agricultural commodities and products. Such guarantees will primarily promote the export of U.S. agricultural commodities. CCC will give priority to transactions that encourage privatization of the agricultural sector or that benefit private farms and cooperatives in emerging markets, and for which nongovernmental persons agree to assume a relatively larger share of costs. The payment guarantee issued under FGP is an agreement by CCC to pay the seller, 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 sale covered by the payment guarantee. The program 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 producers and assist long-term market development for U.S. agricultural commodities.

(b) *Program administration.* The FGP is administered under the direction of the General Sales Manager and Vice President, CCC, pursuant to this subpart, subpart A of this part, any program announcements issued by CCC, and, as applicable, the Organisation for Economic Co-operation and Development's (OECD) Arrangement on Officially Supported Export Credits. From time to time, CCC may issue a notice to participants on the USDA Web site to remind participants of the requirements of the FGP or to clarify the program requirements contained in these regulations in a manner not inconsistent with this subpart and subpart A of this part. Program information, including available program amounts, eligible countries, and approved U.S. and foreign financial institutions, is available on the USDA Web site.

##### § 1493.210 Definition of terms.

Terms set forth in this part, on the USDA Web site (including in program announcements and notices to participants), and in any CCC-originated documents pertaining to the FGP 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.

*Buyer.* A foreign purchaser that enters into a firm sales contract with a seller

for the sale of goods to be shipped to the destination country and/or U.S. services to be provided in the destination country.

**Buyer's representative.** An entity having a physical office that is either organized under the laws of or registered to do business in the destination country specified in the payment guarantee and that is authorized to act on the buyer's behalf with respect to the sale described in the firm sales contract.

**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 § 1493.370(c).

**Contractual event.** A specific deliverable (activity or milestone) measured by objective or quantifiable methods within the firm sales contract which, when met by the seller, results in an obligation to make payment in accordance with the agreed contractual terms without recourse, and triggers the start of coverage under the payment guarantee. Such events may include, but are not limited to, exports of goods, completion of services, or commissioning date of equipment or a facility.

**Cost of services.** The price for services as stipulated in the firm sales contract.

**Coverage waiver.** A determination by CCC, upon request of the seller, to allow guarantee coverage of non-U.S. goods and/or to waive the U.S. content test in § 1493.290(e).

**Date of performance.** The date that a contractual event occurs in accordance with the firm sales contract. The date of performance may be, but is not limited to, an installation date, the date of completion of the service, the commissioning date of equipment or a facility, or the date of export of goods (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 sales contract exists between the seller and the buyer.

**Destination country.** The emerging market (location) of the agricultural-related facility that will use the goods and/or services covered by the payment guarantee. If the payment guarantee

covers goods not intended for a specific facility, then the country where the goods will be delivered and utilized.

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

**Discounts and allowances.** Any consideration provided directly or indirectly, by or on behalf of the seller, to the buyer in connection with a sale of a good or service, above and beyond its value. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; commissions where the buyer requires the seller to employ and compensate a specified agent as a condition of concluding the sale; the whole or partial release of the buyer from any financial or contractual obligations; or settlements made in favor of the buyer for quality or weight.

**Eligible export sale.** A transaction in which the obligation of payment for the portion registered under the FGP 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 imported components.** Imported components in U.S. goods that are eligible for coverage because either:

- (1) The transaction meets the U.S. content test in § 1493.290(e); or
- (2) A coverage waiver of the U.S. content test has been requested by the seller and approved by CCC.

**Eligible non-U.S. goods.** Goods, including local costs, that are not U.S. goods but for which a coverage waiver has been requested by the seller and approved by CCC.

**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 agreed by 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.

**Emerging market.** Any country that CCC determines:

- (1) Is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(2) has the potential to provide a viable and significant market for U.S. agricultural commodities or products.

**Environmental and Social Impact Assessment (ESIA).** A report that identifies the environmental and social risks and impacts of a project/transaction and proposed measures to avoid, minimize, mitigate and/or offset adverse environmental and social impacts. The report must address the items set out in the most recent Organisation for Economic Co-operation and Development's "Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence."

**Firm sales contract.** The written sales contract entered into between the seller and the buyer which sets forth the terms and conditions of an eligible export sale from the seller to the buyer. 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 firm sales contract between the seller and the buyer may be conditioned upon CCC's approval of the seller's application for a payment guarantee. The written evidence of sale for the purposes of the FGP must, at a minimum, document the following information:

- (1) Date of sale;
- (2) A complete description of all goods associated with the transaction. For goods to be covered by the payment guarantee, include the brand name and model number, country where the good was manufactured and country from which the good will be exported (if applicable), quantity, value, and Incoterms (if applicable);
- (3) A complete description of all services associated with the transaction. For services to be covered by the payment guarantee, include the supplier and cost;
- (4) The date of performance of each contractual event; and
- (5) Evidence of agreement between buyer and seller.

**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 (UCP) for Documentary Credits (International Chamber of Commerce Publication No. 600, or latest revision), and if electronic documents are to be utilized, the current revision of the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP), providing for payment in U.S. dollars against stipulated documents and issued in favor of the seller by a CCC-approved foreign financial institution.

**GSM.** The General Sales Manager, Foreign Agricultural Service (FAS), 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. The guaranteed value is calculated by deducting the initial payment and any discounts and allowances from the net contract value and adding to that result the value of local costs that CCC has approved for coverage. The resulting figure is then multiplied by the guaranteed percentage (up to the maximum percentage allowable for that country).

**Holder of the payment guarantee.** The seller 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.

**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 the seller in a sales contract.

**Initial payment.** The minimum amount that the buyer is required to pay the seller prior to CCC's approval of the payment guarantee, expressed as a percentage (specified on the USDA Web site) of the net contract value.

**Letter of interest.** Information that the seller may provide to CCC prior to applying for a payment guarantee to obtain feedback on the potential eligibility of a transaction. Information to be submitted in a letter of interest is set out on the USDA Web site.

**Local costs.** Expenditures for goods in the destination country that are included in the firm sales contract.

**Net contract value.** The aggregate value of goods and cost of services (exclusive of local costs) that are eligible for guarantee coverage and for which coverage is requested.

**North American Industry Classification System (NAICS).** Standard

used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

**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 which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the seller, 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.

**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.

**Preliminary environmental and social screening document or Screening document.** A document in which the seller provides basic information about a transaction to allow CCC to determine whether the transaction may entail potentially adverse environmental and/or social impacts. The screening document is available on the USDA Web site.

**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 policies, procedures, specific country programs and other information relevant to the operation of the FGP.

**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 a seller 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 § 1493.280.

**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.

**Seller.** A supplier of goods and/or services that is both qualified in accordance with the provisions of § 1493.220 and the applicant for the payment guarantee.

**Service.** Any business activity classified in any of the 13 NAICS services sectors (NAICS chapters 22 and 48–49 through 81). For the shipment of goods, freight and insurance costs to the port of entry that are included in the price of the goods (in accordance with the specified Incoterms) are not considered services under this subpart.

**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 the special requirements specified in § 1493.280.

**Total FGP transaction value.** The aggregate value of goods and cost of services (including local costs) to be covered by the payment guarantee. It is the net contract value plus eligible local costs, less the initial payment and less any discounts and allowances.

**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.

**U.S. content test.** A determination of the total value of eligible non-U.S. goods and value of imported components as a percentage of the sum of the net contract value and the value of approved local costs as specified in § 1493.290(e).

**USDA.** United States Department of Agriculture.

**U.S. financial institution.** A financial institution (including 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.

**U.S. goods.** Goods that are assembled, processed or manufactured in, and exported from, the United States, including goods which contain imported raw materials or imported components. Minor or cosmetic procedures (e.g., affixing labels, cleaning, painting, polishing) do not qualify as assembling, processing or manufacturing.

**U.S. person.** One of the following:

(1) An individual who is a citizen or legal resident of the United States; or

(2) An entity constituted or organized in the United States, including any corporation, trust partnership, sole proprietorship, joint venture, or other association with business activities in the United States.

**U.S. services.** Services performed by U.S. persons, including those temporarily residing outside the United States. Costs for hotels, meals, transportation, and other similar services incurred in the destination country are not U.S. services.

**Value of components (also value of U.S. components, value of imported components).** The price derived for components in goods, determined by:

(1) The price stipulated in the firm sales contract or, if such price is not available;

(2) The declared customs value or, if the customs value is not available; then

(3) The fair market wholesale value in the United States.

**Value of goods (also value of U.S. goods, value of non-U.S. goods, or value**

**of Eligible non-U.S. goods).** The price derived for goods, determined by:

(1) The price stipulated in the firm sales contract or, if such price is not available;

(2) The declared customs value or, if the customs value is not available; then

(3) The fair market wholesale value in the United States.

#### **§ 1493.220 Information required for seller participation.**

(a) **Qualification requirements.** Sellers must apply and be approved by CCC to be eligible to participate in the FGP. To qualify for participation in the FGP, 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 FGP 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 or 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 (i.e., producer, service provider, trader, consulting firm, etc.);

(ii) Explanation of the applicant's experience/history selling the goods or services to be sold under the FGP, including number of years involved in selling, types of goods or services sold, and destination of sales for the preceding three years;

(iii) 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 1493.250(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 § 1493.250(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 seller that is currently qualified under subpart B of this part, § 1493.30, need only provide the information requested in § 1493.220(a)(4). Once CCC receives that information, CCC will notify the seller that the seller is qualified under this section to submit applications for an FGP payment guarantee, and the other information provided by the seller pursuant to § 1493.30 will be deemed to also have been provided under this section. Any seller not submitting an application for a GSM-102 or FGP payment guarantee for two consecutive U.S. Government fiscal years must

resubmit a qualification application containing the information specified in § 1493.220(a) to CCC to participate in the FGP. If at any time the information required by paragraph (a) of this section changes, the seller must promptly contact CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) of this section has not changed.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the FGP if such applicant cannot provide all of the information and certifications required in § 1493.220(a).

**§ 1493.230 Information required for U.S. financial institution participation.**

(a) *Qualification requirements.* U.S. financial institutions must apply and be approved by CCC to be eligible to participate in the FGP. To qualify for participation in the FGP, 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 1493.250 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 § 1493.250. 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 that is qualified under subpart B, § 1493.40 is qualified under this section, and the information provided by the U.S. financial institution pursuant to § 1493.40 will be deemed to also have been provided under this section. Any U.S. financial institution participating in neither the GSM-102 nor FGP programs for two consecutive U.S. Government fiscal years must resubmit the information and certifications specified in paragraph (a) of this section to CCC to participate in the FGP. If at any time the information required by paragraph (a) of this section changes, the U.S. financial institution must promptly notify CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) of this section has not changed.

(d) *Ineligibility for program participation.* A U.S. financial institution may be ineligible to participate in the FGP if such applicant cannot provide all of the information and certifications required in § 1493.230(a).

**§ 1493.240 Information required for foreign financial institution participation.**

(a) *Qualification requirements.* Foreign financial institutions must apply and be approved by CCC to be eligible to participate in the FGP. To qualify for participation in the FGP, 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 1493.250 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 § 1493.250. 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 in the FGP, 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 the certifications in § 1493.250 and 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 must 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 participating in neither the FGP nor 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) of this section has not changed.

(e) *Ineligibility for program participation.* A foreign financial institution:

(1) May be deemed ineligible to participate in the FGP if such applicant cannot provide all of the information and certifications required in § 1493.240(a); and

(2) Will be deemed ineligible to participate in the FGP if, 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.

#### **§ 1493.250 Certifications required for program participation.**

(a) When making the statement required by §§ 1493.220(a)(7), 1493.230(a)(9), or 1493.240(a)(6), each seller, 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 such 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 such a debt).

(b) *Additional certifications for U.S. and foreign financial institution applicants.* When making the statement required by § 1493.230(a)(9) or § 1493.240(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.

#### **§ 1493.260 Application for payment guarantee.**

(a) *Letter of interest.* Prior to submitting an initial application for a payment guarantee in accordance with paragraph (b) of this section, the seller may, solely at the seller's option, submit a letter of interest to CCC describing a transaction for which FGP coverage may be sought. The letter of interest must contain all of the information specified on the USDA Web site and must be accompanied by a completed preliminary environmental and social screening document. A letter of interest fee, which will be specified on the USDA Web site, must accompany the letter of interest. CCC will review the letter of interest and provide preliminary feedback to the seller on whether the transaction may be eligible for coverage under the FGP. However, CCC's determination whether to issue a payment guarantee will be based on the seller's applications submitted pursuant to paragraphs (b) and (d) of this section.

(b) *Initial application for payment guarantee.* A firm sales contract must exist before a seller may submit an initial application for a payment guarantee. An initial application for a payment guarantee must be submitted in writing to CCC in the manner specified on the USDA Web site, and be accompanied by the application fee in accordance with § 1493.300(b). Each initial application for a payment guarantee must also include a completed Preliminary Environmental and Social Screening Document. If the seller previously submitted the screening document with a letter of interest, the seller is required to re-submit it with the initial application only if revisions are needed to the screening document. An initial application must identify the name and address of the seller and include the following information:

(1) Destination country.

(2) The name and address of the buyer. If the buyer is not physically located in the destination country, it must have a buyer's representative in the destination country taking receipt of the goods and services covered by the payment guarantee. If applicable, provide the name and address of the buyer's representative.

(3) The name and address of the party on whose request the letter of credit is issued, if other than the buyer.

(4) The name and address of the end-user of the goods or services, if other than the buyer.

(5) The seller's sales number pertinent to the application and a copy of the firm sales contract.

(6) A description (including location, *i.e.*, address, city, port, and/or GPS coordinates, if available) of the agriculture-related facility that will use the goods and/or services to be covered by the payment guarantee and an explanation of how the goods and/or services will be used to improve handling, marketing, processing, storage, or distribution of U.S. agricultural commodities. If the payment guarantee covers goods not intended for a specific facility, describe where the goods will be delivered in the destination country.

(7) List of all agricultural commodities or products (inputs) to be handled, marketed, processed, stored, or distributed by the proposed transaction after completion, and an explanation of why and how the facility or goods and/or services will specifically benefit exporters of U.S. agricultural commodities.

(8) Total value of the firm sales contract.

(9) A full description of each good to be covered by the payment guarantee. The goods specified in the seller's application for the payment guarantee must correspond with the description of the goods specified in the firm sales contract and the foreign financial institution letter of credit. The description must include each of the following:

- (i) Brand name and model number;
- (ii) Applicable 10-digit Harmonized System classification code;
- (iii) Description of the good;
- (iv) Country where the good was manufactured and from which the good will be exported;
- (v) For U.S. goods, the value of imported components used in the U.S. good's manufacture. If requesting guarantee coverage of only the U.S. components in U.S. goods, provide the value of U.S. components;
- (vi) For goods that are local costs, the name of the local supplier;
- (vii) Quantity;
- (viii) Value of the good; and
- (ix) Incoterms (if the sale of the goods is based on Incoterms delivery).

(10) A full description of each U.S. service to be covered by the payment guarantee. The U.S. services specified in the seller's application for the payment guarantee must correspond with the description of the U.S. services specified in the firm sales contract and the foreign financial institution letter of credit. The description must include each of the following:

- (i) Description of the U.S. service;

(ii) Supplier of the U.S. service;

(iii) Cost of the U.S. service; and

(iv) NAICS classification number.

(11) A description and date of performance (or timeframe of performance if the exact date is unknown) of each contractual event, as specified in the firm sales contract.

(12) Indication of whether a coverage waiver is requested in accordance with § 1493.290(f). If a coverage waiver is requested, the applicant must indicate the nature of the waiver requested per § 1493.290(f)(1) and provide the justification and explanation required by § 1493.290(f)(2).

(13) 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.

(14) The term length of the credit being extended and the intervals between principal payments for each contractual event under the payment guarantee.

(15) If applicable, a description of any arrangements or understandings with other U.S. or foreign government agencies, or with financial institutions or entities, private or public, providing guarantees or financing to the seller or other competing sellers in connection with this sale, whether or not the goods or services are of U.S. origin or would otherwise qualify for a payment guarantee under this subpart. Copies of any documents relating to such arrangements must be provided.

(16) A statement of how this transaction may encourage privatization of the agricultural sector, or benefit private farms or cooperatives, in the destination country. Include in the statement the share of any private sector ownership in the transaction.

(17) An estimate of how many U.S. persons will be or have been hired because of the firm sales contract and/or how many U.S. persons are required to fulfill the firm sales contract.

(18) FGP tracking number assigned to previously submitted letter of interest, if applicable.

(c) *Review of initial application.* (1) An initial application may receive conditional approval from CCC as submitted, be conditionally approved with modifications agreed to by the seller, or be rejected by CCC. CCC's review will include, but not be limited to, the following criteria:

(i) CCC will only consider an initial application in connection with a transaction that CCC determines will benefit primarily exports of U.S. agricultural commodities.

(ii) If, based upon a price review the unit sales price of any good and/or service(s) does not fall within the prevailing commercial market level ranges, as determined by CCC, the initial application will not be approved as submitted.

(iii) CCC will review the preliminary environmental and social screening document submitted by the seller and, if necessary, request additional information from the seller to determine whether the transaction could have potentially significant adverse environmental and/or social impacts. If CCC determines that a transaction may have such significant adverse impacts, the seller must submit an Environmental and Social Impact Assessment (ESIA) with the final application for the payment guarantee. Alternatively, CCC may reject an initial application for payment guarantee based on the screening document and any additional information provided by the seller.

(2) Once CCC indicates its approval of the initial application to the seller, the seller must submit a final application as specified in paragraph (d) of this section before CCC will make a final determination of whether to issue a payment guarantee.

(d) *Final application for payment guarantee.* Once CCC approves an initial application, CCC must receive the seller's final application for a payment guarantee within the timeframe specified by CCC. This timeframe will be a minimum of 30 calendar days. The final application for payment guarantee must be submitted in writing to CCC in the manner specified on the USDA Web site and be accompanied by the full guarantee fee (less any previous letter of interest or initial application fees paid toward the payment guarantee) and the environmental and social impact assessment, if required by CCC. The final application must identify the name and address of the seller and include the following information:

(1) FGP tracking number assigned by CCC.

(2) Destination country.

(3) The name and address of the buyer.

(4) A description of each good and U.S. service, along with the value of the Good and Cost of the service, for which guarantee coverage is requested, based on CCC's feedback on the seller's initial application. If the seller is seeking guarantee coverage on only the U.S. components used in the assembly of U.S. goods, provide the value of the U.S. Components.

(5) Net contract value.

(6) Amount of the initial payment and evidence that the initial payment has been paid by the buyer to the seller.

(7) Description and value of any discounts and allowances.

(8) Value of approved local costs.

(9) Total FGP transaction value.

(10) Guaranteed value.

(11) Guarantee fee.

(12) The seller's statement, "All certifications set forth in § 1493.270 are hereby being made by the seller in this application" which, when included in the application by the seller, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.270 with respect to both the initial and final applications.

(e) *Public comment.* To provide the public opportunity to review and comment on the potential environmental and social impacts of a transaction, CCC will make available on its Web site a list of pending transactions for which an ESIA is required. Interested parties will have a minimum of 30 business days to request and provide input on an ESIA prior to CCC's final decision. CCC will not disclose any confidential business information associated with a transaction unless such disclosure is authorized by law.

(f) *Reporting.* The seller may be required to submit reports to CCC on a quarterly, biannual, or annual basis to allow CCC to monitor transactions in which there is a potential for negative environmental and/or social impact. Reporting frequency will be based on the extent of the transaction's impact and any mitigation required. CCC and the seller will agree upon any reporting requirements, including the elements of reporting and the frequency, prior to issuance of a payment guarantee.

(g) *Approval of final application.* A final application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the seller, or rejected by CCC. CCC shall have the right to request the seller to furnish any other information and documentation it deems pertinent to the evaluation of the seller's application. In the event that the final application is approved, the Director will cause a payment guarantee to be issued in favor of the seller. Such payment guarantee will become effective at the time specified in § 1493.290(b).

#### **§ 1493.270 Certification requirements for obtaining payment guarantee.**

By providing the statement in § 1493.260(d)(12), the seller is certifying that the information provided in the initial and final applications is true and

correct and, further, that all requirements set forth in this section have been met. The seller will be required to provide further explanation or documentation with regard to final applications that do not include this statement. If the seller 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 goods not yet exported and services not yet performed and/or to commence legal action and/or administrative proceedings against the seller. The seller, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.260(d)(12), certifies that:

(a) 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;

(b) At the time of submission of the final application for payment guarantee, the buyer does not appear as an excluded party on the SAM list;

(c) The seller is fully in compliance with the requirements of § 1493.320(b) for all existing payment guarantees issued to the seller or has requested and been granted an extension per § 1493.320(b)(3); and

(d) The information provided pursuant to § 1493.220 has not changed and the seller still meets all of the qualification requirements of § 1493.220.

#### **§ 1493.280 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 sale to which CCC's payment guarantee pertains.

(i) If the obligation to pay by the foreign financial institution is conditioned on shipment documentation, the letter of credit must stipulate presentation of at least one original clean on board bill of lading as a required document, unless:

(A) The seller, or a related company previously reported to CCC by the seller pursuant to 1493.220(a)(5), is named as the shipper on the clean, on-board bill of lading. If the seller or a related company is named the shipper on the bill of lading, the letter of credit may

stipulate a copy or photocopy of an original, clean, on-board bill of lading; or

(B) The letter of credit stipulates presentation of electronic documents per paragraph (a)(1)(ii) of this section.

(ii) If the letter of credit will allow for presentation of electronic documents, the letter of credit must so stipulate.

(iii) If the obligation to pay by the foreign financial institution is conditioned on a contractual event requiring other than shipment documentation, the contractual event must be clearly stipulated in either the letter of credit or the terms and conditions 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.

**§ 1493.290 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.* The payment guarantee becomes effective on the Date(s) of Performance. For goods, the period of coverage will apply from the date on which interest begins to accrue, if earlier than the date of performance. The payment guarantee will apply to the period beginning with the Date(s) of Performance and will continue during the credit term specified in the payment guarantee or amendments thereto.

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

(d) *Final date of performance.* The final allowable date of performance will be specified on the payment guarantee.

(e) *U.S. content test.* (1) Except as allowed under § 1493.290(f), CCC will issue a payment guarantee only if the following items collectively represent less than 50 percent of the sum of the net contract value and the value of approved local costs:

(i) The value of eligible non-U.S. goods; and

(ii) The value of imported components.

(2) Imported raw materials and basic manufactured items (such as iron, steel, nuts, bolts, etc.) which are processed, assembled or manufactured in the United States are automatically included in CCC's coverage and are not counted as imported components for the purpose of determining U.S. content.

(f) *Coverage waiver.* (1) The seller may request a coverage waiver for any of the following:

(i) To allow for guarantee coverage of non-U.S. goods; and/or

(ii) The U.S. content test, allowing for guarantee coverage of non-U.S. goods and imported components in U.S. goods in excess of the value permitted under the U.S. content test.

(2) To request a coverage waiver on one of the bases specified in paragraph (f)(1) of this section, the seller must submit with the initial application for a payment guarantee a justification of why the non-U.S. goods and/or imported components in U.S. goods are essential to the completion of the FGP transaction. This justification must be based on one of the following:

(i) The goods and/or components are no longer manufactured in or provided by the United States;

(ii) The use of U.S. goods and/or components is not cost effective; or

(iii) U.S. goods and/or components are not compatible with the existing infrastructure in the destination country.

(3) In determining whether to grant a coverage waiver, CCC will consider the following factors:

(i) Whether information obtained by CCC from industry sources, government agencies, or any other sources supports the justification provided by the seller;

(ii) Whether the non-U.S. goods (and/or imported components in U.S. goods) are essential to the completion of the transaction; and

(iii) Any other information CCC determines is relevant.

(g) *Certain transactions are ineligible for payment guarantees.* A transaction (or any portion thereof) is ineligible for payment guarantee coverage if at any time CCC determines that:

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

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

(3) The buyer is excluded or disqualified from participation in U.S. government programs;

(4) The goods, services, and/or facility being financed will not primarily benefit U.S. agricultural commodity exports;

(5) The sale is not an eligible export sale.

(h) *Certain contractual events are ineligible for payment guarantee coverage.* The following contractual events are ineligible for coverage under an FGP payment guarantee, except where it is determined by the Director to be in the best interest of CCC to provide guarantee coverage on such contractual events:

(1) Contractual events with a date of performance prior to the date of receipt by CCC of the seller's written initial application for a payment guarantee;

(2) Contractual events with a date of performance later than the final date of performance shown on the payment guarantee or any amendments thereof;

(3) Contractual events where the date of issuance of a foreign financial institution letter of credit is later than the date of performance; or

(4) Contractual events that have been guaranteed by CCC under another payment guarantee. If CCC determines that the contractual event has been guaranteed under multiple payment guarantees (or coverage has been requested under multiple payment guarantees), CCC will determine which payment guarantee (or application for payment guarantee), if any, corresponds to an eligible export sale.

(i) *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 seller and the assignee.

(j) *Amendments to the firm sales contract.* Any amendments to the firm sales contract that impact contractual event(s) covered by the payment guarantee must be submitted to CCC for approval for coverage prior to the date of performance of the contractual event.

(k) *Amendments to the payment guarantee.* A request for an amendment of a payment guarantee may be submitted only by the seller, with the written concurrence of the assignee, if any, and must be accompanied by the revised firm sales contract, if applicable. 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 seller 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 certification in § 1493.310(c)(1)(i) or § 1493.330(d).

**§ 1493.300 Fees.**

(a) *Letter of interest fee.* A letter of interest fee, as specified on the USDA Web site, must be received by CCC

before CCC will consider the seller's letter of interest.

(b) *Initial application fee.* An initial application fee, as specified on the USDA Web site, must be received by CCC before CCC will consider the seller's initial application for a payment guarantee.

(c) *Guarantee fee rates.* Guarantee fee rates will be based upon the length of the payment terms provided for in the firm sales contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors that CCC determines appropriate for consideration.

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

(e) *Payment of guarantee fee.* The seller shall remit, with his final application, the full amount of the guarantee fee, less the previously paid letter of interest fee, if applicable, and the initial application fee. CCC will not issue a payment guarantee until the full amount of the guarantee fee has been received by CCC. The seller'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.

(f) *Refunds of fees.* Letter of interest fees, initial application fees, and guarantee fees will ordinarily not be refundable unless the Director determines that such refund will be in the best interest of CCC.

#### **§ 1493.310 Assignment of the payment guarantee.**

(a) *Requirements for assignment.* The seller 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, unless approved in advance by CCC, may not 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 certifications 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, does not appear as an excluded party on the SAM list; and

(ii) To the best of my knowledge and belief, the information provided pursuant to § 1493.230 has not changed and [name of Assignee] still meets all of the qualification requirements of § 1493.230."

(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 ineligibility 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 seller 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 § 1493.230(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 sales of goods or services to buyers 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 outstanding balance under the associated repayment obligation;

(ii) In the event of 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 §§ 1493.350 and 1493.360 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 1493.310(f)(1) and, prior to entering into this agreement, verified that [name of other party to the repurchase agreement] does not appear as an excluded party on the SAM list."

(3) Failure of the holder of the payment guarantee to comply with any of the provisions of § 1493.310(f) may result in CCC annulling coverage on the foreign financial institution letter of credit and Terms and Condition Document, if applicable, covered by the payment guarantee.

#### **§ 1493.320 Evidence of performance.**

(a) *Report of performance.* The seller is required to provide CCC an evidence of performance report for each contractual event occurring under the payment guarantee. This report must include the following information:

(1) Payment guarantee number;

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

(3) Date of performance;

(4) Seller's firm sales contract number;

(5) Detailed description of the contractual event. For goods, include the applicable 10-digit Harmonized System classification code and the quantity;



(6) Net contract value of the contractual event covered by the payment guarantee;

(7) Amount of initial payment corresponding to the contractual event;

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

(9) Value of approved local costs corresponding to the contractual event, if any;

(10) Total FGP transaction value;

(11) Guaranteed value of contractual event;

(12) The seller's statement, "All certifications set forth in § 1493.330 are hereby made by the seller in this evidence of performance" which, when included in the evidence of performance by the seller, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.330; and

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

(i) The statement "All contractual events under the payment guarantee have been completed."

(ii) A statement summarizing the total value of all contractual events covered under the payment guarantee (*i.e.*, the cumulative totals on all numbered reports).

(b) *Time limit for submission of evidence of performance.* (1) The seller must provide a written report to CCC in the manner specified on the USDA Web site within 30 calendar days from the date of performance.

(2) If at any time the seller determines that no contractual events are to occur under a payment guarantee, the seller is required to notify CCC in writing no later than the final date of performance specified on the payment guarantee by furnishing the payment guarantee number and stating "No contractual events will occur under the payment guarantee."

(3) Requests for an extension of the time limit for submitting an evidence of performance report must be submitted in writing by the seller to the Director and must include an explanation of why the extension is needed. An extension of the time limit may be granted 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 a seller under § 1493.260 until the seller is fully in compliance with the requirements of § 1493.320(b) for all existing payment guarantees issued to that seller or has

requested and been granted an extension in accordance with § 1493.320(b)(3).

#### **§ 1493.330 Certification requirements for the evidence of performance.**

By providing the statement contained in § 1493.320(a)(12), the seller is certifying that the information provided in the evidence of performance report is true and correct and, further, that all requirements set forth in this section have been met. The seller will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the seller 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 contractual events that have not yet occurred and/or to commence legal action and/or administrative proceedings against the seller. The seller, in submitting the evidence of performance and providing the statement set forth in § 1493.320(a)(12), certifies that:

(a) The specifications and/or quantity of the contractual event conform with the information contained in the seller's application for payment guarantee and firm sales contract, or if different, CCC has approved such changes;

(b) A foreign financial institution letter of credit has been opened in favor of the seller by the foreign financial institution shown on the payment guarantee to cover the dollar amount of the contractual event covered by the payment guarantee, less the initial payment and less discounts and allowances;

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

(d) If the seller has not assigned the payment guarantee to a U.S. financial institution, the seller has verified that the foreign financial institution, at the time of submission of the evidence of performance report, does not appear as an excluded party on the SAM list; and

(e) The information provided pursuant to §§ 1493.220 and 1493.260 has not changed (except as agreed to and amended by CCC) and the seller still meets all of the qualification requirements of § 1493.220.

#### **§ 1493.340 Proof of entry.**

(a) *Diversion.* The diversion of goods covered by an FGP payment guarantee to a destination country 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) Sellers must obtain and maintain records of an official or customary commercial nature that demonstrate the arrival of the goods sold in connection with the FGP in the destination country. At the Director's request, the seller 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 destination country, by an agent or representative of the vessel or shipline that delivered the goods to the destination country, or by a private surveyor in the destination country, or other documentation deemed acceptable by the Director showing:

(i) That the good(s) entered the destination country;

(ii) The identification of the export carrier;

(iii) The quantity of the good(s);

(iv) A description of the good(s); and

(v) The date(s) and place(s) of unloading of the good(s) in the destination country.

(2) Where shipping documents (*e.g.*, bills of lading) clearly demonstrate that the goods were shipped to the destination country, proof of entry verification may be provided by the buyer.

#### **§ 1493.350 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 destination country as shown on the payment guarantee;

(3) Name of the defaulting foreign financial institution;

(4) Payment due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and ordinary interest, and including a copy of the repayment schedule with due dates, principal amounts and ordinary interest rates for each installment;

(6) Date of foreign financial institution's refusal to pay, if applicable;

(7) Reason for foreign financial institution's refusal to pay, if known, and copies of any correspondence with the foreign financial institution regarding the default.

(b) *Failure to comply with time limit for submission.* If the 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 under this subpart or under 7 CFR 1493, subpart B, CCC may declare that such foreign financial institution is no longer eligible to provide additional Letters of Credit under the FGP. If CCC determines that such defaulting foreign financial institution is no longer eligible for the FGP, CCC shall provide written notice of such ineligibility to all sellers 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 FGP 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 seller (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 transaction 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 seller's guarantee fees corresponding to any unutilized portion of the payment guarantee.

#### **§ 1493.360 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 letter 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 seller 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 defaulted payment has not been received (or, alternatively, specifying the portion of the scheduled payment that 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 (a)(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 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 of

the claim for default is submitted, provide estimates of such rates);

(ii) (A) The foreign financial institution letter of credit securing the sale; and

(B) If applicable, the terms and conditions document;

(iii) For goods, depending upon the method of shipment, the 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 destination country. If the transaction utilizes electronic bill(s) of lading (e-BL), a print-out of the e-BL from electronic system with an electronic signature is acceptable;

(iv) The seller's invoice. For shipment of goods, the invoice must show the applicable Incoterms;

(v) The evidence of performance report(s) previously submitted by the seller to CCC in conformity with the requirements of § 1493.320(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 § 1493.310(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 contractual event, 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), (a)(1)(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.

**§ 1493.370 Payment for default.**

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.360, 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 seller 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 seller or the assignee); or

(2) The guaranteed percentage (as indicated in the payment guarantee) of the value of the contractual event indicated in the evidence of performance, plus eligible interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the seller 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 seller 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 paragraph (b) 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 as a result of the claimant invoking an accelerated payment clause in the firm 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 seller, 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 § 1493.360, 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 § 1493.360 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 seller of which the assignee has no knowledge.

**§ 1493.380 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 seller or the assignee from or on behalf of the defaulting party, the buyer, or any source whatsoever (excluding payments between CCC, the seller 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 by the seller and/or assignee to CCC. If such monies are not received by CCC

within 15 business days from the date of recovery by the seller or the assignee, such party will also owe to CCC interest from the date of recovery of such funds to the date of CCC's receipt of such funds. 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 seller 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 out a particular claim under a payment guarantee, CCC prorates 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 seller or the assignee will be liable to CCC for any amounts

paid by CCC under the payment guarantee:

(1) The seller will be liable to CCC when and if it is determined by CCC that the seller has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the seller for the purpose of obtaining the payment guarantee or for fulfilling obligations under the FGP; 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 seller will cooperate with CCC to affect recoveries from the foreign financial institution and/or the buyer. 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 § 1493.370(d); and other actions that do not increase the obligation of the holder of the payment guarantee or the seller under the payment guarantee.

#### **§ 1493.385 Additional obligations and requirements.**

(a) *Maintenance of records and 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 seller 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 goods and services sold in connection with a payment guarantee, including those records generated and maintained by agents and related companies involved in special arrangements with the seller. 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 seller 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 seller's, assignee's, agent'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 seller 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 seller in connection with the payment guarantee.

(b) *Responsibility of program participants.* It is the responsibility of all sellers 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 FGP, as applicable. All sellers and U.S. and foreign financial institutions participating in the FGP 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 sellers, assignees, or foreign financial institutions under this subpart must be signed by a principal of the seller, assignee, or foreign financial institution 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 seller, assignee, or foreign financial institution must ensure that all information and reports required under these regulations are timely submitted.

(d) *Misstatements or noncompliance by seller may lead to rescission of payment guarantee.* CCC may cancel a payment guarantee in the event that a seller makes a willful misstatement in the certifications in §§ 1493.270(a) and 1493.330(c) or if the seller fails to comply with the provisions of § 1493.340 or § 1493.385(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 seller's misstatement or noncompliance at the time of assignment of the payment guarantee.

#### **§ 1493.390 Dispute resolution and appeals.**

(a) *Dispute resolution.* (1) The Director and the seller or the assignee will attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the FGP, this subpart, the applicable program announcements and notices to participants, or the payment guarantee.

(2) The seller 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 seller or the assignee of the determination. The seller 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 seller or the assignee is received by the Director, whichever is later, unless the Director extends the time permitted for response. If the seller or the assignee fails to request reconsideration of a determination by the Director within 30 calendar days of the date of the determination, then the determination of the Director will be deemed final.

(3) If the seller 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 seller 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 seller or the assignee fails to appeal the Director's final determination within 30 calendar days, as provided in § 1493.390(b)(1), then the Director's decision becomes the final determination of CCC.

(b) *Appeal procedures.* (1) A seller or assignee that has exhausted the procedures set forth in paragraph (a) of this section may appeal a final determination of the Director to the GSM. 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 seller or the 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 seller or the assignee does not request an administrative hearing, the seller or the 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 seller or the assignee to the GSM.

(3) If the seller 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 seller or the 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 seller or the 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 seller or the 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 seller or the assignee will be entitled to no further administrative appellate rights.

(c) *Failure to comply with determination.* If the seller or the 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 seller or the assignee has exhausted its rights under this section or has failed to exercise such rights, then CCC will have the right to exercise any remedies available to CCC under applicable law.

(d) *Seller's obligation to perform.* The seller 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.

#### **§ 1493.395 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 0551-0032.

Dated: April 4, 2016.

**Philip C. Karsting,**

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

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