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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1493

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

RIN 0551-AA74

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that administer the Export Credit Guarantee (GSM-102) Program and eliminates provisions for the Intermediate Export Credit Guarantee (GSM-103) Program, consistent with the repeal of authority to operate this program in the Food, Conservation, and Energy Act of 2008 (2008 Act). This final rule incorporates program operational changes and information from press releases and notices to participants that have been implemented since the publication of the current rule, and include other administrative revisions to enhance clarity and program integrity. It also incorporates certain comments received in response to proposed rules issued on July 27, 2011, and December 27, 2013. These changes should increase program availability to all program participants and enhance access and encourage sales for smaller U.S. exporters. Changes are also intended to improve CCC's financial management of the program.

DATES: Effective Date: This final rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

Applicability Date: The provisions of this final rule will be applied by CCC as follows:

- (1) For any payment guarantee associated with an application for payment guarantee received by CCC on or after [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], the provisions of this final rule shall immediately apply in their entirety.
- (2) For any payment guarantee associated with an application for payment guarantee received by CCC prior to [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], the provisions of the previous rule governing the Export Credit Guarantee (GSM-102) Program shall apply.
- (3) Notwithstanding (2) above, the provisions of §§ 1493.30, 1493.40, 1493.50, 1493.60, and 1493.192 shall apply to all program participants as of [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: 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; telephone (202) 720-6211.

SUPPLEMENTARY INFORMATION:

Background

The Commodity Credit Corporation's (CCC) Export Credit Guarantee (GSM-102) Program is administered by the Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture (USDA) on behalf of CCC, pursuant to program regulations codified at 7 CFR Part 1493, and through the issuance of "Program Announcements" and "Notices to Participants" that are consistent with this regulation. The previous regulation became effective on November 18, 1994. Since that time, CCC has implemented numerous operational changes to improve the

efficiency of the program, including an automated, Internet-based system for participants and revised program controls to improve program quality, reduce costs, and protect against waste and fraud. Also since that time, agricultural trade and finance practices have evolved. This final rule is intended to reflect these changes and to enhance the overall clarity and integrity of the program. In addition, the 2008 Act repealed the authority to operate the GSM-103 Program, and this change is reflected in the final rule.

On July 27, 2011, CCC published a Proposed Rule in the Federal Register (Vol. 76, No. 144, pages 44836-44855). In response to comments received, CCC made several significant changes and issued a second proposed rule on December 27, 2013 (Federal Register Vol. 78, No. 249, pages 79254-79282). The deadline for comments on the second proposed rule was January 27, 2014. CCC received comments on the second proposed rule from seven parties, including U.S. exporters and U.S. banks. Comments received on the December 27, 2013, proposed rule and changes made by CCC are discussed below in the **Section-by-Section Analysis**.

Section-by-Section Analysis

The section-by-section analysis below includes a summary of comments received on the December 27, 2013, proposed rule (hereafter “proposed rule”), CCC’s responses to those comments, and a discussion of any additional changes made by CCC. In some instances, the numbering systems differ between the proposed and final rules. For purposes of this discussion, the numbering system of the final rule will be used, except where otherwise indicated. Defined terms found in the final rule are capitalized.

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

Section 1493.20 Definition of terms

Eligible Export Sale

One commenter expressed concern that the proposed rule preamble added requirements to the definition of Eligible Export Sale. Because the Exporter is required to certify that a GSM-102 transaction is an Eligible Export Sale, the commenter requested clarification regarding whether the preamble language constitutes additional conditions not contained in the body of the regulation.

The language in the preamble to the proposed rule was intended to explain the reasons for the new requirement that a GSM-102 transaction be an Eligible Export Sale. The preamble itself does not impose additional conditions on participants. An Exporter certifying that a sale is an Eligible Export Sale is specifically certifying that the export sale meets the definition in the rule (i.e., that it is "an export sale of U.S. Agricultural Commodities in which the obligation of payment for the portion registered under the GSM-102 program arises solely and exclusively from a Foreign Financial Institution Letter of Credit or Terms and Conditions Document issued in connection with a Payment Guarantee."). The Exporter is not required to certify that a sale constitutes an expansion of U.S. exports or would not have occurred without the GSM-102 program, nor is this definition intended to preclude brokerage arrangements. CCC will provide clarification on a case-by-case basis to any Exporter as needed to determine whether a particular transaction meets this requirement.

Firm Export Sales Contract

CCC received two comments on the definition of Firm Export Sales Contract. One commenter understood CCC to be requiring the Importer to be the party taking physical possession of and nationalizing the U.S. Agricultural Commodities for customs clearance in the destination country or region. This understanding was based on language in the proposed rule

and its preamble referencing the Importer (or Importer's Representative) as "taking receipt" of the U.S. Agricultural Commodities shipped under the Payment Guarantee. The commenter noted that this requirement could dramatically reduce Exporters' ability to utilize the program, as often the Exporter sells to a related entity (currently the Importer under the Payment Guarantee), who sells on to the final buyer taking physical possession of the goods. This structure enables the Exporter to pass on greater program benefits to the final buyer and enables multiple commodity shipments to be registered under a single Payment Guarantee, reducing administrative costs. The commenter suggested adding a definition of an "exporter's representative" – an entity related to the Exporter that sells the commodities to the final buyer in the destination country or region. This new term would meet CCC's objective of requiring the Importer to be the party taking physical possession of the goods while retaining the Exporter's ability to utilize the program. With this new term, the definition of Firm Export Sales Contract would be redefined as a contract between the Exporter and either the "exporter's representative" or the Importer.

CCC does not intend to require that the Importer in a GSM-102 transaction be the final buyer taking physical possession of the commodities in the destination country or region. However, CCC agrees that certain language in the proposed rule and preamble, in particular reference to the Importer "taking receipt of the goods," could lead to a misunderstanding regarding CCC's intent. To address this misunderstanding, CCC revised the definition of Importer and modified the provisions of § 1493.70(a)(2) and (3). Those changes are discussed in the relevant sections of this preamble. No changes are necessary to the definition of Firm Export Sales Contract in response to this comment.

A second commenter expressed concern that a Firm Export Sales Contract must be physically signed by both the Exporter and Importer when the Exporter submits an application for a Payment Guarantee. A requirement for a physically signed document at time of application in accordance with § 1493.70(a) could be problematic, as it can take several weeks to obtain final signatures. The commenter clarified that a firm sale always exists at the time of application for the Payment Guarantee as evidenced by acknowledgements or other documentation, but may not include signatures of both the Exporter and Importer at that point.

CCC acknowledges this concern but notes that the definition of Firm Export Sales Contract does not require a physically signed document. The definition states that "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." Provided the documentation demonstrates evidence of the sale and contains the minimum required information stated in the definition, such documentation need not be physically signed by both parties. No changes are needed to the rule in response to this comment.

Foreign Financial Institution Letter of Credit or Letter of Credit

CCC received one comment on the increasing use of electronic bills of lading (e-BLs) through providers such as Electronic Shipping Solutions (ESS) and Bolero, with a request that the GSM-102 rule specifically allow for e-BLs. CCC agrees and made a number of modifications to the final rule to accommodate e-BLs. The definition of Foreign Financial Institution Letter of Credit requires the Letter of Credit to be subject to the current revision of the Uniform Customs and Practices for Documentary Credits (UCP). The current revision, UCP 600, includes a Supplement to the Uniform Customs and Practice for Documentary Credits for

Electronic Presentation (eUCP) to accommodate presentation of electronic records alone or in combination with paper documents. CCC modified the Letter of Credit definition in the final rule to include that, if applicable (i.e., if electronic records are to be used under the Letter of Credit), the provisions of the current revision of eUCP shall apply.

Importer

One commenter suggested modifying this definition to allow the Importer to enter a Firm Export Sales Contract with an "exporter's representative for onward sale to the Importer...." This suggestion was made in conjunction with proposed modifications to the definition of Firm Export Sales Contract and addition of an "exporter's representative." As noted in the analysis of the definition of Firm Export Sales Contract, CCC determined that it is not necessary to add "exporter's representative" to the rule, and this change is not needed to the Importer definition. However, CCC modified the definition of Importer in response to participant concerns that CCC is now requiring the Importer to be the final buyer in the destination country or region. The revised definition allows for the U.S. Agricultural Commodities "to be shipped from the United States to the destination country or region under the Payment Guarantee." CCC believes this change will allow a final buyer other than the Importer to physically receive the goods in the destination country or region.

Importer's Representative

One commenter noted that some countries do not require registration of an Importer's Representative and requested the definition be modified to allow this entity to "be organized

under the laws of" the destination country or region. CCC agrees and has modified this definition accordingly.

Intervening Purchaser

One commenter suggested modifying this definition to allow the Intervening Purchaser to enter a Firm Export Sales Contract with an Exporter and sell the same commodities to either an Importer or an "exporter's representative." This suggestion was made in conjunction with proposed modifications to the definition of Firm Export Sales Contract and addition of an "exporter's representative." As noted in the analysis of the definition of Firm Export Sales Contract, CCC determined that it is not necessary to add "exporter's representative" to the rule, and this change is not needed to the Intervening Purchaser definition.

OFAC (Office of Foreign Assets Control)

The proposed rule required participants to make certifications in certain submissions that neither the Importer, the Intervening Purchaser, nor the Foreign Financial Institution is present on the OFAC or the U.S. Government's System for Awards Management (SAM) website. SAM is the primary database of vendors doing business with the Federal Government, including entities that are excluded from doing business with the government. Since publication of the proposed rule, CCC determined that SAM fully incorporates all excluded entities from the OFAC list; therefore, it is not necessary for participants to check separately for entities on the OFAC list and certify that they have done so. Checking the SAM list is sufficient. CCC removed all references to OFAC in the final rule.

SAM (System for Award Management)

CCC clarified the certifications in §§ 1493.80(d), 1493.120(c)(1)(i) and (f)(2)(iii), and 1493.140(d) requiring confirmation that certain entities are not present on the SAM list. SAM not only includes entities that are excluded from doing business with the Federal Government, but also entities that are registered and eligible to do business with the Federal Government. An excluded entity is denoted in SAM as “Exclusion.” The certifications were modified to state that the GSM-102 participant has verified that the relevant entity “is not present as an excluded party on the SAM list.”

One commenter asked for clarification regarding when Exporters are required to check SAM and what proof the Exporter should maintain to document this check.

The Exporter must certify on the application for Payment Guarantee that neither the Importer nor the Intervening Purchaser is present on the SAM list (§ 1493.80(d)). To make this certification, the Exporter must perform this check immediately prior to submitting the application for Payment Guarantee. Similarly, the Exporter should perform this check, if required, just prior to submitting an Evidence of Export report, consistent with § 1493.140(d). The Exporter need not maintain specific documentation that the SAM list has been checked. In accordance with government-wide suspension and debarment regulations found at 2 CFR Part 180, CCC will check SAM for all parties after receiving an application for Payment Guarantee, a notice of assignment, and an Evidence of Export report (if applicable). Sufficient information is available in SAM or through contact with other U.S. Government agencies to determine when an entity was excluded through SAM, and thus to determine whether the Exporter likely checked these lists as required. An Exporter wishing to maintain such documentation, however, might consider keeping printouts of SAM searches.

Section 1493.50 Information required for Foreign Financial Institution participation

In paragraph (d) of this section, CCC added that when a Foreign Financial Institution (FFI) submits annual year-end financial statements for CCC to determine continued eligibility, the FFI must also re-submit the certifications in § 1493.60. This change is consistent with requirements on Exporters and U.S. Financial Institutions throughout the rule, who must re-certify the information provided at qualification when certain documents are submitted to CCC. CCC also added Foreign Financial Institutions to the provision in § 1493.191(c) (*Submission of documents by Principals*), as CCC requires these certifications to be made by a Principal (or designee) of the Foreign Financial Institution.

Section 1493.60 Certifications required for program participation

One commenter asked whether adherence (and documentation of adherence) to the Foreign Corrupt Practices Act is a requirement of Foreign Financial Institutions in addition to U.S. Financial Institutions and Exporters.

The certification for program participation found in § 1493.60(b)(2), which must be made by all U.S. and Foreign Financial Institutions, states that "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." Therefore, to the extent that a Foreign Financial Institution has U.S. operations and U.S. Principals, these operations and Principals are required to adhere to the Foreign Corrupt Practices Act and otherwise be in compliance with U.S. law as specified in this

certification. There is no particular documentation required by the U.S. or Foreign Financial Institution to demonstrate such compliance.

Section 1493.70 Application for Payment Guarantee

One commenter suggested modifying paragraph (a)(2) of this section to require either the name of the Importer or the "exporter's representative," consistent with suggested changes to the Firm Export Sales Contract definition. As noted in the analysis of the Firm Export Sales Contract definition, CCC believes it is unnecessary to add "exporter's representative" to the rule and this change is not needed. However, CCC modified this provision in response to concerns that CCC is now requiring the Importer to be the final buyer in the destination country or region. Consistent with the change to the Importer definition, CCC removed the reference to the Importer or Importer's Representative "taking receipt" of goods in the destination country or region. Instead, the Importer (or Importer's Representative, if applicable) must be physically located in the country or region of destination.

CCC received one comment on paragraph (a)(3) expressing concern that this statement lacks clarity, specifically with respect to regional programs. The commenter is concerned that if the Importer (or Importer's Representative) under a regional program is located in a country other than where goods are discharged, the Importer (or Importer's Representative) cannot take receipt of the goods. CCC agrees and modified this statement to reflect that the goods must be "shipped directly to the destination country or region." This change eliminates the requirement that either the Importer or Importer's Representative take physical receipt of the goods, and allows for these entities to be located anywhere in the destination country or region. This modification also

accounts for cases where the final buyer of the goods - who may not be the Importer - may take physical receipt of the goods at destination.

One commenter requested that because paragraph (a)(4) allows the Letter of Credit to be opened by a party other than the Importer, CCC consider modifying the current language on the GSM-102 Payment Guarantee, which states "The contractual obligation of the foreign importer to the exporter for the portion of the port value of the export sale(s) for which credit is extended to the foreign bank must be secured by an irrevocable letter of credit." CCC agrees and will review the GSM-102 Payment Guarantee to determine whether other changes are needed as a result of new regulatory language.

One commenter suggested modifying paragraph (a)(8) of this section to require either the name of the Importer or the "exporter's representative," consistent with suggested changes to the Firm Export Sales Contract definition. As noted in the analysis of the Firm Export Sales Contract definition, CCC believes it is unnecessary to add "exporter's representative" to the rule and this change is not needed.

CCC received one comment requesting elimination of the requirement in paragraph (a)(9) for the Exporter to ensure the commodity grade and quality specified in the Exporter's application for Payment Guarantee is consistent with the Firm Export Sales Contract and Letter of Credit. The commenter contended that this provision is inconsistent with standard banking practice and the UCP 600, and emphasized that the Exporter or Holder of the Payment Guarantee must be assured CCC will honor the payment guarantee if documents are accepted for payment under the Letter of Credit.

CCC opted to maintain paragraph (a)(9) in the final rule. In response to comments received to the first proposed rule, CCC moved this provision from § 1493.90 (*Special*

requirements of the Foreign Financial Institution Letter of Credit and the Terms and Conditions Document, if applicable). In doing so, CCC acknowledged that the sales contract is a separate transaction from the Letter of Credit, and therefore the U.S. Financial Institution should not be responsible for ensuring consistency of the Letter of Credit with the underlying sales contract. However, CCC believes this requirement is important to avoid defaults based on failure to comply with the underlying terms of the sale and will maintain the requirement in § 1493.70(a)(9). CCC notes that § 1493.191(b) requires all Exporters and U.S. and Foreign Financial Institutions to review and be fully acquainted with all GSM-102 program regulations. As the Exporter should be working with the Importer, U.S. and Foreign Financial Institutions, and other parties (such as the Letter of Credit applicant) prior to application for the Payment Guarantee, all parties to the transaction should be familiar with this requirement.

CCC did modify paragraph (a)(9) in the final rule, changing "consistent with" to "correspond with." Article 18 of the UCP 600 uses this language, requiring that the "Description of the goods, services or performance in a commercial invoice must correspond with that appearing in the credit." It is not CCC's intent that the Letter of Credit contain every detail of a commodity description, as CCC acknowledges that certain commodities have very detailed and lengthy specifications. However, CCC expects commodity descriptions across the Firm Export Sales Contract, application for Payment Guarantee, and Letter of Credit to contain the commodity's primary price determining characteristics and to correspond closely enough that they are reasonably considered the same grade and type of commodity. CCC also added a requirement that the commodity description include the six-digit Harmonized System commodity classification code utilized by the Exporter. This addition will assist CCC with better tracking of commodities under the program.

The Agricultural Act of 2014 eliminated authority for the Dairy Export Incentive Program. As a result, paragraph (a)(18) of this section was deleted and the final rule renumbered.

Section 1493.80 Certification requirements for obtaining Payment Guarantee

CCC received one comment on the certification in paragraph (b) of this section. The commenter is concerned that this certification might preclude transactions where the Exporter is obligated to pay a commission or other compensation to an agent of the Importer or final buyer. The commenter requested that CCC clarify that arms-length payments to agents are not "items extraneous to the transaction."

CCC previously issued clarification in a notice to participants that when an Importer requires an Exporter to employ and compensate a specified agent as a condition of concluding an export sale, such commissions/compensation are treated by CCC as Discounts and Allowances that must be reported in accordance with § 1493.70(a)(12) and deducted from both the Exported Value and Port Value in accordance with § 1493.10. Such commissions/compensation are therefore not considered by CCC to be "items extraneous to the transaction." Although CCC understands the need for clarity, it is not possible to include in the rule all items that might constitute "items extraneous to the transaction." CCC is not making any changes to this certification but will examine specific items on a case-by-case basis.

Section 1493.90 Special requirements of the Foreign Financial Institution Letter of Credit and the Terms and Conditions Document, if applicable

CCC received three comments on the requirement that the Letter of Credit stipulate presentation of at least one original clean on board bill of lading as a required document (paragraph (a)(1) in the proposed rule). Two commenters noted that this requirement would jeopardize program utilization. Export sales to destinations with short transit times typically utilize copies of shipping documents for the Letter of Credit. Original documents are provided directly to the destination for safe keeping, to be released to the appropriate party once payment is received under the Letter of Credit. This process helps to avoid demurrage charges that could accrue if parties are waiting for the arrival of original documents. Requiring that an original bill of lading be presented under the Letter of Credit would slow import procedures and negate the potential value offered by the GSM-102 program. One commenter requested this provision be deleted. A third commenter agreed with CCC that requiring presentation of an original bill of lading in the Letter of Credit will help to prevent non-Eligible Export Sales, but noted there are legitimate cases when original clean on board bills of lading are not available due to time, technical or administrative constraints. This commenter suggested CCC make an exception to this requirement when the Exporter is indicated as the shipper on the clean onboard bill of lading. In this instance, the Letter of Credit could allow for copies of the bill of lading.

CCC's intent in requiring the Letter of Credit to stipulate presentation of an original bill of lading is to prevent non-Eligible Export Sales. Although the final rule includes a provision specifically prohibiting non-Eligible Export Sales, CCC believes additional provisions are necessary. However, CCC agrees that where the Exporter is the shipper on the bill of lading, this would indicate that the GSM-102 transaction is an Eligible Export Sale and therefore an original bill of lading need not be required under the Letter of Credit. CCC has modified § 1493.90(a) to

allow for this exception, including when a company related to the Exporter (as reported in § 1493.30(a)(5)) is indicated as the shipper on the bill of lading.

CCC also modified paragraph (a) of this section to account for the use of electronic bills of lading (eBLs). CCC acknowledges that when utilizing eBLs, the only "original" bill of lading is the electronic version - which is only accessible to parties with access to the eBL vendor. Therefore, in cases where the Letter of Credit allows for presentation of electronic documents, the Letter of Credit may stipulate that a copy of the bill of lading is acceptable.

CCC received one comment on paragraph (a)(3)(ii) of this section in the proposed rule, requesting that CCC modify this provision to clarify that the Terms and Conditions Document is between the Foreign and U.S. Financial Institutions, as the Exporter will not be a party to this document. No changes were made in response to this comment. There is no requirement that the Exporter assign a Payment Guarantee to a U.S. Financial Institution. If there is no assignment, the Exporter would remain the Holder of the Payment Guarantee and be a party to any Terms and Conditions Document.

One commenter noted concern with § 1493.90(b)(2) in the proposed rule, which requires a clause in the Letter of Credit regarding specific jurisdiction in any legal action or proceeding under the Letter of Credit. The commenter stated that the Exporter will not know when applying for the Payment Guarantee whether the Foreign Financial Institution is willing to include this language in the Letter of Credit, which could in turn cause delays in issuing the Letter of Credit. The commenter further asked that CCC refund the guarantee fees to the Exporter if the Foreign Financial Institution refuses to issue the Letter of Credit because of this language, or if the Letter of Credit cannot be issued within 30 days of the Date of Export due to this language.

CCC believes that the Foreign Financial Institution should know in advance whether it is willing to include this language in the Letter of Credit, and, therefore, whether it is willing to participate in the transaction. Section 1493.191(b) requires all Exporters and U.S. and Foreign Financial Institutions to review and be fully acquainted with all regulations related to the GSM-102 program. All participating Foreign Financial Institutions should be aware of this requirement, and should not agree to participate in the transaction if unwilling to include this language in the Letter of Credit. CCC will not agree in advance to refund guarantee fees to an Exporter in cases where the Foreign Financial Institution cannot include the required language in the Letter of Credit or issue the Letter of Credit within the required timeframe. As specified in § 1493.110(d), fees will only be refunded if the Director determines that a refund is in the best interest of CCC. All determinations on fee refunds will be made on a case-by-case basis.

Section 1493.100 Terms and requirements of the Payment Guarantee

CCC received one comment on paragraph (e) of this section, requesting that the latest date to release reserves be amended to the latter of 45 days from the final date to export or 30 days from the date of issuance of the Letter of Credit. When bulk products are sold in one shipment for delivery to multiple buyers, the individual bills of lading are often not available until near the time the vessel reaches its destination, which could be 30-40 days from the time the vessel leaves the load port. Until all bills of lading are issued, the Exporter is unable to determine what reserve coverage is needed for a particular guarantee and cannot file the necessary amendment to the Payment Guarantee. Furthermore, the 21 calendar day requirement for filing for reserves is inconsistent with the 30 calendar days permitted for Letter of Credit issuance.

CCC does not agree with the suggestion to allow 45 days from the final date to export (or 30 days from the date of issuance of the Letter of Credit) to file amendments for reserve coverage. As noted in the preamble to the proposed rule, reserve coverage permits an Exporter to hold program allocation that may not be utilized and could be made available to other Exporters. Given that CCC allows reserve coverage of up to ten percent of the Port Value of the sale, this reserve may be a substantial amount. However, CCC acknowledges that an Exporter may need more than 21 calendar days from the final date to export to compile documents and determine reserves needed, and also that there is logic in having similar timeframes related to reserve coverage, evidence of export report, and Letter of Credit issuance timeframes. Therefore, CCC increased the timeframe for filing an amendment for reserve coverage to 30 calendar days from the date of final export. CCC also changed the language in this paragraph to state that if the amendment to the guarantee and additional fee for reserves is not received within this 30 calendar days, CCC may (instead of "will") cancel the reserve coverage. This change will provide more flexibility in cases where unusual circumstances exist.

CCC received one comment requesting that the timeframe for issuance of the Letter of Credit be extended to 60 days from the Date of Export under paragraph (g)(3) of this section. The commenter noted that the time needed to obtain bills of lading, the internal and external financial institution processes related to issuance and approval of the Letter of Credit, and new language required by CCC in the Letter of Credit or Terms and Conditions Document may result in delays in Letter of Credit issuance. The Exporter will be unable to predict these delays at the time of application for a Payment Guarantee. The commenter also questioned how a delay in issuance of the Letter of Credit increases CCC's risk and expressed concern about forfeiture of guarantee fees when this timeframe cannot be met.

CCC addressed these concerns in the preamble to the proposed rule in response to similar comments. This provision is intended to eliminate cases where Exporters clearly have not worked with the parties in the transaction before submitting an application for Payment Guarantee and where the Letter of Credit ultimately may not be issued. The "cost" of such cancellations is that other Exporters who may have utilized the allocation are unable to do so. This provision is not related to CCC's risk profile, nor is it intended to reduce CCC's risk. The final rule permits the Director to waive this requirement and/or to permit a refund of the guarantee fee if determined to be in CCC's best interest. Furthermore, as previously noted, § 1493.191(b) requires all Exporters and U.S. and Foreign Financial Institutions to review and be fully acquainted with all regulations and other documents related to the GSM-102 program. As the Exporter should be working with the Importer and U.S. and Foreign Financial Institutions prior to application for the Payment Guarantee, all parties to the transaction should be familiar with this requirement in advance of negotiation of the Letter of Credit. CCC made no changes to the final rule in response to this comment.

CCC received one comment regarding § 1493.100(f)(6) in the proposed rule, noting a perceived discrepancy between the language in the proposed rule (which prohibits coverage of an export sale that has been guaranteed by CCC under another Payment Guarantee) and language in the preamble to the proposed rule, which indicates CCC does not believe an exporter could certify that a particular transaction has not been registered by another entity. The commenter did not understand why CCC maintained a certification related to duplicate registrations when the preamble indicates an Exporter could not make such a certification.

CCC believes there is confusion regarding § 1493.100(f)(6). This is not a certification required of the Exporter, but rather a statement that a particular type of transaction is prohibited

under the program. CCC agrees that an Exporter registering a particular sale has no way to know if another Exporter has done the same. The introduction to paragraph (f) of this section states that "An export sale (or portion thereof) is ineligible for Payment Guarantee coverage if at any time CCC determines that:...." CCC would make a determination of duplicate registrations based on information that only CCC may have. For this reason, CCC is not asking the Exporter to make a certification to this effect.

In reviewing this section, however, CCC determined that this provision is better suited to paragraph (g) of this section. Paragraph (g) defines particular exports that are ineligible under an otherwise valid Payment Guarantee. A single export (shipment) under a Payment Guarantee may be ineligible for coverage under paragraph (g), whereas other exports (shipments) under the same guarantee may remain eligible for coverage. CCC believes that it is possible for a particular export (shipment) to be registered more than once, even if the entire value of the Payment Guarantee is not. Paragraph (f)(6) in the proposed rule has therefore been moved to paragraph (g)(4) in the final rule. CCC has also added clarification that if such duplicate guarantees (or applications for guarantees) are found to exist, CCC will determine which guarantee (or application) constitutes an Eligible Export Sale.

Section 1493.110 Guarantee fees

One commenter requested that CCC assure Exporters that if the requirements of § 1493.100(g)(3) or § 1493.90(b)(2) are not met, CCC will refund the guarantee fees paid by the Exporter. CCC will not make a "blanket" assurance that Exporters will receive a refund of guarantee fees if these requirements are not met. CCC will consider all requests for guarantee

fee refunds on a case-by-case basis, granting them only if the Director determines in a particular case that a refund is in the best interest of CCC, consistent with § 1493.110(d).

Section 1493.130 Evidence of export

The Agricultural Act of 2014 eliminated authority for the Dairy Export Incentive Program. Paragraph (a)(11) of this section was deleted and the final rule renumbered.

Similar to the addition in §1493.70(a)(9), CCC added a requirement that the commodity description reported on the evidence of export report include the six-digit Harmonized System commodity classification code utilized by the Exporter. This addition will assist CCC with better tracking of commodities under the program.

CCC received one comment on paragraph (b)(1) of this section, requesting that CCC extend the timeframe for submitting evidence of export reports (EOEs) from 21 calendar days to the latter of 45 days from the final date to export or 30 days from the date of Letter of Credit issuance. The commenter noted that the issues applying to reserve coverage (discussed under §1493.100) also apply to filing EOE s. As noted in the discussion of §1493.100(e), CCC acknowledges that Exporters may need more than 21 calendar days from the Date of Export to compile documents and submit an EOE, and also that there is logic in having similar timeframes related to reserve coverage, EOE, and Letter of Credit issuance timeframes. Therefore, CCC increased the timeframe for submitting an EOE to 30 calendar days from the Date of Export.

Section 1493.140 Certification requirements for the evidence of export

Similar to the change in §1493.70(a)(3), CCC modified the certification at §1493.140(b) to reflect that the goods were "shipped directly to the country or region specified on the Payment Guarantee." This change is explained in the discussion of §1493.70 (Application for Payment Guarantee).

Section 1493.160 Notice of default

CCC received one comment on paragraph (c) of this section. The commenter expressed concern that an Exporter's sales contract may be jeopardized if the Importer is unable to find a different Foreign Financial Institution (FFI) to issue the letter of credit (following a default by the original FFI on the Payment Guarantee). The commenter noted that CCC should honor any Payment Guarantees already issued, as CCC performs a financial analysis of each FFI, and should not issue a Payment Guarantee if there is doubt as to the FFI's creditworthiness.

As stated in the preamble to the proposed rule, CCC recognizes that this provision creates some risk for the exporter who may have conditioned the export sale upon the guarantee. In response to comments on the first proposed rule, CCC modified this provision to allow continued coverage if the Letter of Credit has already been issued. However, CCC has a responsibility to protect against additional loss of taxpayer resources following the default of an FFI on another CCC-guaranteed transaction. CCC does perform a financial analysis of each FFI and will not issue a payment guarantee if there is doubt as to the FFI's creditworthiness, but the economic and financial situation of countries and financial institutions can change rapidly. CCC believes the need to protect taxpayer resources against a certain default is paramount in this case and made no changes in response to this comment.

Section 1493.170 Claims for default

CCC received one comment requesting that the requirement for a “negotiable” bill of lading as a claims document under paragraph (a)(3)(iii) of this section be eliminated, specifically to accommodate electronic bills of lading (copies of which are non-negotiable). CCC determined that it is not necessary to require a “negotiable” bill of lading under any GSM-102 transaction; therefore, the word “negotiable” was eliminated. CCC maintained the provision that the bill of lading must be signed. As noted in elsewhere in the rule, when e-BLs (or other electronic documents) are utilized in the transaction, the Letter of Credit must so stipulate and is subject to the current version of eUCP. Because the eUCP allows for electronic signatures, CCC will accept e-BLs with electronic signature as “signed” bills of lading. CCC added a sentence specifying that if an e-BL is utilized, a print-out of the e-BL from the electronic system with an electronic signature is acceptable.

CCC received one comment requesting the addition of a provision that the Payment Guarantee is binding in cases where payments received by the Assignee from the Foreign Financial Institution (FFI) are subsequently required to be returned due to a law, provision or decree in the FFI's country. Such a law or provision may particularly result from bankruptcy or insolvency proceedings. The commenter notes that although such "clawback" situations are rare, the absence of such a provision could undermine U.S. Financial Institutions' faith in the CCC guarantee.

The authorizing statute for the GSM-102 program (Section 202(a) of the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5622(a)), provides that "the Commodity Credit Corporation may guarantee the repayment of credit made available to finance commercial export sales of agricultural commodities." Under a "clawback" scenario, the FFI has already repaid the

portion of the credit that an insolvency or bankruptcy proceeding subsequently seeks to recoup through law. It is CCC's view that the authorizing statute does not extend to indemnification for all losses arising as a result of bankruptcy or insolvency law or proceedings; therefore, this provision was not added to the final rule.

Section 1493.180 Payment for Default

One commenter requested clarification on language in the proposed rule preamble related to paragraph (e) of this section. The preamble language stated that "If a prohibited transaction were registered under a payment guarantee, CCC would take action against the exporter, if warranted, but not against the assignee, provided the assignee had no knowledge that the transaction was prohibited." The commenter asked if the Assignee must depend on CCC taking action against the Exporter in order to receive payment on a submitted claim.

Per 1493.180(e), CCC's determination that an Assignee is to be held harmless for any action, omission or statement by the Exporter is based on whether all required claim documents "appear on their face to confirm with the requirements" of § 1493.170 and whether the Assignee had any knowledge of the action, omission or statement by the Exporter. CCC's decision to take action against an Exporter is wholly separate from a decision to hold the Assignee harmless and pay a claim. CCC does not believe any clarification is needed to paragraph (e) of this section.

Section 1493.191 Additional Obligations and Requirements

CCC modified paragraph (c) of this section to include Foreign Financial Institutions. All submissions by a Foreign Financial Institution must be signed by a Principal or authorized designee.

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 rule has been reviewed in accordance with Executive Order 12988. This rule would not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, the appeal provisions of 7 CFR part 1493.192 would need to be exhausted. This rule would not be retroactive.

Executive Order 12372

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

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this 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 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 and CCC worked directly with the Office of Tribal Relations in the rule’s development. 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 rulemaking with respect to the subject matter of this rule.

Environmental Assessment

CCC has determined that this 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 was prepared.

Unfunded Mandates

This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandate 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 approved by OMB in accordance with the Paperwork Reduction Act of 1995 under OMB Control Number 0551-0004.

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, 5661, 5662, 5663, 5664, 5676; 15 U.S.C. 714b(d), 714c(f)

2. Subpart A is revised to read as follows:

Subpart A - Restrictions and Criteria for Export Credit Guarantee Program

Sec.

1493.1 General statement.

1493.2 Purposes of programs.

1493.3 Restrictions on programs and cargo preference statement.

1493.4 Criteria for country and regional allocations.

1493.5 Criteria for agricultural commodity allocations.

Subpart A - Restrictions and Criteria for Export Credit Guarantee Programs

§ 1493.1 General statement.

This subpart sets forth the restrictions that apply to the issuance and use of Payment Guarantees under the Commodity Credit Corporation (CCC) Export Credit Guarantee (GSM-102) Program and Facility Guarantee Program (FGP), the criteria considered by CCC in determining the annual allocations of Payment Guarantees to be made available with respect to each participating country and region, and the criteria considered by CCC in the review and approval of proposed allocation levels for specific U.S. Agricultural Commodities to these countries and regions.

§ 1493.2 Purposes of programs.

CCC is authorized to issue Payment Guarantees:

- (a) To increase exports of U.S. Agricultural Commodities and expand access to trade finance;
- (b) To assist countries, particularly developing countries and emerging markets, in meeting their food and fiber needs;
- (c) To establish or improve facilities and infrastructure in emerging markets to expand exports of U.S. Agricultural Commodities; or
- (d) For such other purposes as the Secretary of Agriculture determines appropriate.

§ 1493.3 Restrictions on programs and cargo preference statement.

- (a) *Restrictions on use of Payment Guarantees.* (1) Payment Guarantees authorized under these regulations shall not be used for foreign aid, foreign policy, or debt rescheduling purposes.
(2) CCC shall not make Payment Guarantees available in connection with sales of U.S. Agricultural Commodities to any country that the Secretary determines cannot adequately service the debt associated with such sale.

- (3) CCC shall not make Payment Guarantees available in connection with sales of U.S. Agricultural Commodities financed by any Foreign Financial Institution that CCC determines cannot adequately service the debt associated with such sale.
- (b) *Cargo preference laws.* The provisions of the cargo preference laws do not apply to export sales with respect to which Payment Guarantees are issued under these programs.

§ 1493.4 Criteria for country and regional allocations.

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

- (a) Potential benefits that the extension of Payment Guarantees would provide for the development, expansion, or maintenance of the market for particular U.S. Agricultural Commodities in the importing country;
- (b) Financial and economic ability and/or willingness of the country of obligation to adequately service CCC guaranteed debt (“country of obligation” is the country whose Foreign Financial Institution obligation is guaranteed by CCC);
- (c) Financial status of participating Foreign Financial Institutions in the country of obligation as it would affect their ability to adequately service CCC guaranteed debt;
- (d) Political stability of the country of obligation as it would affect its ability and/or willingness to adequately service CCC guaranteed debt; and
- (e) Current status of debt either owed by the country of obligation or by the participating Foreign Financial Institutions to CCC or to lenders protected by CCC’s Payment Guarantees.

§ 1493.5 Criteria for agricultural commodity allocations.

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

- (a) Potential benefits that the extension of Payment Guarantees would provide for the development, expansion or maintenance of the market in the importing country for the particular U.S. Agricultural Commodity under consideration;
- (b) The best use to be made of the Payment Guarantees in assisting the importing country in meeting its particular needs for food and fiber, as may be determined through consultations with private buyers and/or representatives of the government of the importing country; and
- (c) Evaluation, in terms of program purposes, of the relative benefits of providing Payment Guarantee coverage for sales of the U.S. Agricultural Commodity under consideration compared to providing coverage for sales of other U.S. Agricultural Commodities.

3. Subpart B is revised to read as follows:

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

Sec.

- 1493.10 General statement.
- 1493.20 Definition of terms.
- 1493.30 Information required for Exporter participation.
- 1493.40 Information required for U.S. Financial Institution participation.
- 1493.50 Information required for Foreign Financial Institution participation.
- 1493.60 Certification requirements for program participation.
- 1493.70 Application for Payment Guarantee.
- 1493.80 Certification requirements for obtaining Payment Guarantee.
- 1493.90 Special requirements of the Foreign Financial Institution Letter of Credit and the Terms and Conditions Document, if applicable.

1493.100 Terms and requirements of the Payment Guarantee.

1493.110 Guarantee fees.

1493.120 Assignment of the Payment Guarantee.

1493.130 Evidence of export.

1493.140 Certification requirements for the evidence of export.

1493.150 Proof of entry.

1493.160 Notice of default.

1493.170 Claims for default.

1493.180 Payment for default.

1493.190 Recovery of defaulted payments.

1493.191 Additional obligations and requirements

1493.192 Dispute resolution and appeals.

1493.195 Miscellaneous provisions.

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

§ 1493.10 General statement.

(a) *Overview.* The Export Credit Guarantee (GSM-102) Program of the Commodity Credit Corporation (CCC) was developed to expand U.S. Agricultural Commodity exports by making available Payment Guarantees to encourage U.S. private sector financing of foreign purchases of U.S. Agricultural Commodities on credit terms. The Payment Guarantee issued under GSM-102 is an agreement by CCC to pay the Exporter, or the U.S. Financial Institution that may take assignment of the Payment Guarantee, specified amounts of principal and interest in case of default by the Foreign Financial Institution that issued the Letter of Credit for the export sale covered by the Payment Guarantee. Under the GSM-102 program, maximum repayment terms

may vary based on risk of default, as determined by CCC. The program operates in a manner intended not to interfere with markets for cash sales and is targeted toward those countries that have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this program, CCC seeks to expand and/or maintain market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. Agricultural Commodities.

(b) *Program administration.* The GSM-102 program is administered under the direction of the General Sales Manager and Vice President of CCC, pursuant to this subpart, subpart A, and any Program Announcements issued by CCC. From time to time, CCC may issue a notice to participants on the USDA website to remind participants of the requirements of the GSM-102 program or to clarify the program requirements contained in these regulations in a manner not inconsistent with this subpart and subpart A. Program information, such as eligible U.S. Agricultural Commodities and approved U.S. and Foreign Financial Institutions, is available on the USDA website.

(c) *Country and regional program announcements.* From time to time, CCC will issue a Program Announcement on the USDA website to announce a GSM-102 program for a specific country or region. The Program Announcement for a country or region will designate specific U.S. Agricultural Commodities or products thereof, or designate that all eligible U.S. Agricultural Commodities are available under the announcement. The Program Announcement will contain any requirements applicable to that country or region as determined by CCC.

§ 1493.20 Definition of terms.

Terms set forth in this subpart, on the USDA website (including in Program Announcements and notices to participants), and in any CCC-originated documents pertaining to the GSM-102 Program will have the following meanings:

Affiliate. Entities are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. Control may include, but is not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; or common use of employees.

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

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

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

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

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

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

Date of Export. One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry

shown on an entry certificate or similar document issued and signed by an official of the government of the importing country.

Date of Sale. The earliest date on which a Firm Export Sales Contract exists between the Exporter, or an Intervening Purchaser, if applicable, and the Importer.

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

Discounts and Allowances. Any consideration provided directly or indirectly, by or on behalf of the Exporter or an Intervening Purchaser, to the Importer in connection with an Eligible Export Sale, above and beyond the commodity's value, stated on the appropriate FOB, FAS, FCA, CFR or CIF basis (or other basis specified in Incoterms 2010, or as superseded), which includes, but is not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; commissions where the Importer requires the Exporter to employ and compensate a specified agent as a condition of concluding the Eligible Export Sale; the whole or partial release of the Importer from any financial or contractual obligations; or settlements made in favor of the Importer for quality or weight.

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

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

- (1) The amount calculated using the interest rate specified between the Holder of the Payment Guarantee and the Foreign Financial Institution; or
- (2) The amount calculated using the specified percentage of the Treasury bill investment rate set forth on the face of the Payment Guarantee.

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

- (i) Where the U.S. Agricultural Commodity is sold on a FAS, FCA, or FOB basis, the value, FAS, FCA, or FOB basis, port of shipment, of the export sale, reduced by the value of any Discounts and Allowances granted to the Importer in connection with such sale; or
 - (ii) Where the U.S. Agricultural Commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS, FCA or FOB, port of shipment, is measured by the CFR or CIF value of the U.S. Agricultural Commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity; or
- (2) Where CCC announces coverage on a CFR or CIF basis, and where the U.S. Agricultural Commodity is sold on a CFR or CIF basis, port of destination, the total value of the export sale, CFR or CIF basis, port of destination, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity; or
 - (3) When a CFR or CIF U.S. Agricultural Commodity export sale involves the performance of non-freight services to be performed outside the United States (e.g., services such as

bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the Exported Value.

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

Firm Export Sales Contract. The written sales contract entered into between the Exporter and the Importer (or, if applicable, the written sales contracts between the Exporter and the Intervening Purchaser and the Intervening Purchaser and the Importer) which sets forth the terms and conditions of an Eligible Export Sale of the eligible U.S. Agricultural Commodity from the Exporter to the Importer (or, if applicable, the sale of the eligible U.S. Agricultural Commodity from the Exporter to the Intervening Purchaser and from the Intervening Purchaser to the Importer). Written evidence of a sale may be in the form of a signed sales contract, a written offer and acceptance between parties, or other documentary evidence of sale. The written evidence of sale for the purposes of the GSM-102 program must, at a minimum, document the following information: the eligible U.S. Agricultural Commodity, quantity, quality specifications, delivery terms (FOB, C&F, FCA, etc.) to the eligible country or region, delivery period, unit price, payment terms, Date of Sale, and evidence of agreement between Importer (and Intervening Purchaser, if applicable) and Exporter. The Firm Export Sales Contract between the Exporter and the Importer (or, if applicable, between the Exporter and the Intervening Purchaser and between the Intervening Purchaser and the Importer) may be conditioned upon CCC's approval of the Exporter's application for a Payment Guarantee.

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

- (1) Organized and licensed under the laws of a jurisdiction outside the United States;
- (2) Not domiciled in the United States; and
- (3) Subject to the banking or other financial regulatory authority of a foreign jurisdiction (except for multilateral and sovereign institutions).

Foreign Financial Institution Letter of Credit or Letter of Credit. An irrevocable documentary letter of credit, subject to the current revision of the Uniform Customs and Practices (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 Exporter by a CCC-approved Foreign Financial Institution.

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

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

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

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

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

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

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

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

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

Intervening Purchaser. A party that is not located in the country or region of destination specified in the Payment Guarantee and that enters into a Firm Export Sales Contract to purchase U.S. Agricultural Commodities from an Exporter and sell the same U.S. Agricultural Commodities to an Importer.

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

Payment Guarantee. An agreement under the GSM-102 program by which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the Exporter, subject to the terms set forth in the written guarantee, this subpart, and any applicable Program

Announcements, agrees to pay the Holder of the Payment Guarantee in the event of a default by a Foreign Financial Institution on its Repayment Obligation under the Foreign Financial Institution Letter of Credit issued in connection with a guaranteed sale or, if applicable, under the Terms and Conditions Document.

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

- (i) Where the U.S. Agricultural Commodity is sold on a FAS, FCA, or FOB basis, port of shipment, the value, FAS, FCA, or FOB basis, port of shipment, of the export sale, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, reduced by the value of any Discounts and Allowances granted to the Importer in connection with such sale; or
- (ii) Where the U.S. Agricultural Commodity was sold on a CFR or CIF basis, port of destination, the value of the export sale, FAS, FCA, or FOB, port of shipment, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, is measured by the CFR or CIF value of the U.S. Agricultural Commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity.

(2) Where CCC announces coverage on a CFR or CIF basis and where the U.S. Agricultural Commodity was sold on CFR or CIF basis, port of destination, the total value of the export sale, CFR or CIF basis, port of destination, including the upward loading tolerance, if any, as provided by the Firm Export Sales Contract, reduced by the value of any Discounts and Allowances granted to the Importer in connection with the sale of the commodity.

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

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

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

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

Repayment Obligation. A contractual commitment by the Foreign Financial Institution issuing the Letter of Credit in connection with an Eligible Export Sale to make payment(s) on principal amount(s), plus any Ordinary Interest and Post Default Interest, in U.S. dollars, to an Exporter or U.S. Financial Institution on deferred payment terms consistent with those permitted under CCC's Payment Guarantee. The Repayment Obligation must be documented using one of the methods specified in § 1493.90.

Repurchase Agreement. A written agreement under which the Holder of the Payment Guarantee may from time to time enter into transactions in which the Holder of the Payment Guarantee agrees to sell to another party Foreign Financial Institution Letter(s) of Credit and, if applicable, Terms and Conditions Document(s), secured by the Payment Guarantee, and repurchase the same Foreign Financial Institution Letter(s) of Credit and Terms and Conditions Documents secured by the Payment Guarantee, on demand or date certain at an agreed upon price.

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

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

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

U.S. Agricultural Commodity or U.S. Agricultural Commodities. (1)(i) An agricultural commodity or product entirely produced in the United States; or

(ii) A product of an agricultural commodity--

- (A) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and
- (B) That the Secretary determines to be a high value agricultural product.

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

USDA. United States Department of Agriculture.

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

- (1) Organized and licensed under the laws of a jurisdiction within the United States;
- (2) Domiciled in the United States; and
- (3) Subject to the banking or other financial regulatory authority jurisdiction within the United States.

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

§ 1493.30 Information required for Exporter participation.

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

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

(1) For the applicant:

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

address included in the information should be that which is pertinent to the GSM-102 export sales contemplated by the applicant;

- (ii) Dun and Bradstreet (DUNS) number;
- (iii) Employer Identification Number (EIN – also known as a Federal Tax Identification Number);
- (iv) Telephone and fax numbers;
- (v) E-mail address (if applicable);
- (vi) Business website (if applicable);
- (vii) Contact name;
- (viii) Statement indicating whether the applicant is a U.S. domestic entity or a foreign entity domiciled in the United States; and
- (ix) The form of business entity of the applicant (e.g., sole proprietorship, partnership, corporation, etc.) and the U.S. jurisdiction under which such entity is organized and authorized to conduct business. Such jurisdictions are a U.S. State, the District of Columbia, Puerto Rico, and the territories and possessions of the United States. Upon request by CCC, the applicant must provide written evidence that such entity has been organized in a U.S. State, the District of Columbia, Puerto Rico, or a territory or possession of the United States.

(2) For the applicant's headquarters office:

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

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

- (i) The name and full U.S. address of the applicant's agent's office, along with an indication of whether the address is a business or private residence;
- (ii) Telephone and fax numbers;
- (iii) E-mail address (if applicable); and
- (iv) Contact name.

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

- (i) Nature of the applicant's business (e.g., agricultural producer, commodity trader, consulting firm, etc.);
- (ii) Explanation of the applicant's experience/history with U.S. Agricultural Commodities for the preceding three years, including a description of such commodities;
- (iii) Explanation of the applicant's experience/history exporting U.S. Agricultural Commodities, including number of years involved in exporting, types of products exported, and destination of exports for the preceding three years; and
- (iv) Whether or not the applicant is a "small or medium enterprise" (SME) as defined on the USDA website;

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

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

- (7) A statement that: “All certifications set forth in 7 CFR 1493.60(a) are hereby made in this application” which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.60(a). The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.
- (b) *Qualification notification.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.
- (c) *Previous qualification.* Any Exporter not submitting an application to CCC for a Payment Guarantee for two consecutive U.S. Government fiscal years must resubmit a qualification application containing the information specified in § 1493.30(a) to CCC to participate in the GSM-102 program. If at any time the information required by paragraph (a) of this section changes, the Exporter must promptly contact CCC to update this information and certify that the remainder of the information previously provided pursuant to paragraph (a) has not changed.
- (d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the GSM-102 program if such applicant cannot provide all of the information and certifications required by paragraph (a) of this section.

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

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

(a) *Qualification requirements.* To qualify for participation in the GSM-102 Program, a U.S. Financial Institution must submit the following information to CCC in the manner specified on the USDA website:

- (1) Legal name and address of the applicant;
- (2) Dun and Bradstreet (DUNS) number;
- (3) Employer Identification Number (EIN – also known as a Federal Tax Identification Number);
- (4) Year-end audited financial statements for the applicant's most recent fiscal year;
- (5) Breakdown of the applicant's ownership as follows:
 - (i) Ten largest individual shareholders and ownership percentages;
 - (ii) Percentage of government ownership, if any; and
 - (iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.
- (6) Organizational structure (independent, or a subsidiary, Affiliate, or branch of another financial institution);
- (7) Documentation from the applicable United States Federal or State agency demonstrating that the applicant is either licensed or chartered to do business in the United States;
- (8) Name of the agency that regulates the applicant and the name and telephone number of the primary contact for such regulator; and
- (9) A statement that: "All certifications set forth in 7 CFR 1493.60 are hereby made in this application" which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.60. The applicant

will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

- (b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.
- (c) *Previous qualification.* Any U.S. Financial Institution not participating in the GSM-102 program for two consecutive U.S. Government fiscal years must resubmit a qualification application containing the information specified in paragraph (a) of this section to CCC to participate in the GSM-102 program. If at any time the information required by paragraph (a) of this section changes, the U.S. Financial Institution must promptly contact CCC to update this information and certify that the remainder of the information previously provided pursuant to paragraph (a) has not changed.

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

§ 1493.50 Information required for Foreign Financial Institution participation.

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

- (a) *Qualification requirements.* To qualify for participation in the GSM-102 program, a Foreign Financial Institution must submit the following information to CCC in the manner specified on the USDA website:

- (1) Legal name and address of the applicant;
 - (2) Year end, audited financial statements in accordance with the accounting standards established by the applicant's regulators, in English, for the applicant's three most recent fiscal years. If the applicant is not subject to a banking or other financial regulatory authority, year-end, audited financial statements in accordance with prevailing accounting standards, in English, for the applicant's three most recent fiscal years;
 - (3) Breakdown of applicant's ownership as follows:
 - (i) Ten largest individual shareholders and ownership percentages;
 - (ii) Percentage of government ownership, if any; and
 - (iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.
 - (4) Organizational structure (independent, or a subsidiary, Affiliate, or branch of another legal entity);
 - (5) Name of foreign government agency that regulates the applicant; and
 - (6) A statement that: "All certifications set forth in 7 CFR 1493.60 are hereby made in this application" which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.60. The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.
- (b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

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

(d) *Previous qualification and submission of annual financial statements.* Each qualified Foreign Financial Institution shall submit annually to CCC the certifications in §1493.60 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 should submit year-end, audited financial statements in accordance with prevailing accounting standards, in English, for the applicant's most recent fiscal year. Failure to submit this information annually may cause CCC to decrease or cancel the Foreign Financial Institution's dollar participation limit. Any Foreign Financial Institution not participating in the GSM-102 program for two consecutive U.S. Government fiscal years may have its dollar participation limit cancelled. If this participation limit is cancelled, the Foreign Financial Institution must resubmit the information and certifications requested in paragraph (a) of this section to CCC when reapplying for participation. Additionally, if at any time the information required by paragraph (a) of this section changes, the Foreign Financial Institution must promptly contact CCC to

update this information and certify that the remainder of the information previously provided under paragraph (a) has not changed.

(e) *Ineligibility for program participation.* A Foreign Financial Institution may be deemed ineligible to participate in the GSM-102 program if:

- (1) Such applicant cannot provide all of the information and certifications required in paragraph (a) of this section; or
- (2) Based upon information submitted by the applicant or other publicly available sources, CCC determines that the applicant cannot adequately service the debt associated with the Payment Guarantees issued by CCC.

§ 1493.60 Certifications required for program participation.

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

- (1) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) are not presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from covered transactions by any U.S. Federal department or agency;
- (2) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of

Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this section;

(4) The applicant and any of its principals (as defined in 2 CFR 180.995) or affiliates (as defined in 2 CFR 180.905) have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default;

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

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

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

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

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

(2) All U.S. operations of the applicant and its U.S. Principals are in compliance with U.S. anti-money laundering and terrorist financing statutes including, but not limited to, the USA Patriot Act of 2001, and the Foreign Corrupt Practices Act of 1977.

§ 1493.70 Application for Payment Guarantee.

(a) A Firm Export Sales Contract for an Eligible Export Sale must exist before an Exporter may submit an application for a Payment Guarantee. Upon request by CCC, the Exporter must provide evidence of a Firm Export Sales Contract. An application for a Payment Guarantee must be submitted in writing to CCC in the manner specified on the USDA website. An application must identify the name and address of the Exporter and include the following information:

- (1) Name of the destination country or region. If the destination is a region, indicate the country or countries within the region to which the U.S. Agricultural Commodity will be exported.
- (2) Name and address of the Importer. If the Importer is not physically located in the country or region of destination, it must have an Importer's Representative in the country or region of destination . If applicable, provide the name and address of the Importer's Representative.
- (3) A statement that the U.S. Agricultural Commodity will be shipped to the destination country or region.
- (4) Name and address of the party on whose request the Letter of Credit is issued, if other than the Importer.
- (5) Name and address of the Intervening Purchaser, if any.
- (6) Date of Sale.
- (7) Exporter's sale number.

- (8) Delivery period as agreed between the Exporter and the Importer.
- (9) A full description of the U.S. Agricultural Commodity (including packaging, if any). The description must include the applicable six-digit Harmonized System commodity classification code. The commodity grade and quality specified in the Exporter's application for the Payment Guarantee must correspond with the commodity grade and quality specified in the Firm Export Sales Contract and the Foreign Financial Institution Letter of Credit.
- (10) Mean quantity, contract loading tolerance and, if necessary, a request for CCC to reserve coverage up to the maximum quantity permitted.
- (11) Unit sales price of the U.S. Agricultural Commodity, or a mechanism to establish the price, as agreed between the Exporter and the Importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified.
- (12) Description and value of Discounts and Allowances, if any.
- (13) Port Value (includes upward loading tolerance, if any).
- (14) Guaranteed Value.
- (15) Guarantee fee, either as announced on the website per §1493.110(a)(1), or the competitive fee bid per §1493.110(a)(2), depending on the type of fee charged by CCC for the country or region.
- (16) Name and location of the Foreign Financial Institution issuing the Letter of Credit and, upon request by CCC, written evidence that the Foreign Financial Institution has agreed to issue the Letter of Credit.

- (17) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale.
- (18) The Exporter's statement, "All certifications set forth in 7 CFR 1493.80 are hereby being made by the Exporter in this application." which, when included in the application by the Exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.80.
- (b) An application for a Payment Guarantee may be approved as submitted, approved with modifications agreed to by the Exporter, or rejected by the Director. In the event that the application is approved, the Director will cause a Payment Guarantee to be issued in favor of the Exporter. Such Payment Guarantee will become effective at the time specified in § 1493.100(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

§ 1493.80 Certification requirements for obtaining Payment Guarantee.

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

application for a Payment Guarantee and providing the statement set forth in § 1493.70(a)(18), certifies that:

- (a) The commodity or product covered by the Payment Guarantee is a U.S. Agricultural Commodity;
- (b) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and the transaction complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;
- (c) If the U.S. Agricultural Commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;
- (d) At the time of submission of the application for Payment Guarantee, neither the Importer nor the Intervening Purchaser, if applicable, is present as an excluded party on the SAM list;
- (e) The Exporter is fully in compliance with the requirements of § 1493.130(b) for all existing Payment Guarantees issued to the Exporter or has requested and been granted an extension per § 1493.130(b)(3); and
- (f) The information provided pursuant to § 1493.30 has not changed and the Exporter still meets all of the qualification requirements of § 1493.30.

§ 1493.90 Special requirements of the Foreign Financial Institution Letter of Credit and the Terms and Conditions Document, if applicable.

(a) *Permitted mechanisms to document special requirements.* (1) A Foreign Financial Institution Letter of Credit is required in connection with the export sale to which CCC's Payment Guarantee pertains.

(i) 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 Exporter, or a related company previously reported to CCC by the Exporter pursuant to § 1493.30(a)(5), is named as the shipper on the clean on board bill of lading. If the Exporter 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.

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

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

- (i) The special requirements may be set forth in the Foreign Financial Institution Letter of Credit as a special instruction from the Foreign Financial Institution; or
- (ii) The special requirements may be set forth in a separate Terms and Conditions Document.

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

- (1) The terms of the Repayment Obligation, including a specific promise by the Foreign Financial Institution issuing the Letter of Credit to pay the Repayment Obligation;
- (2) The following language: “In the event that the Commodity Credit Corporation (“CCC”) is subrogated to the position of the obligee hereunder, this instrument shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflict of laws principles. In such case, any legal action or proceeding arising under this instrument will be brought exclusively in the U.S. District Court for the Southern District of New York or the U.S. District Court for the District of Columbia, as determined by CCC, and such parties hereby irrevocably consent to the personal jurisdiction and venue therein.”;
- (3) A provision permitting the Holder of the Payment Guarantee to declare all or any part of the Repayment Obligation, including accrued interest, immediately due and payable, in the event a payment default occurs under the Letter of Credit or, if applicable, the Terms and Conditions Document; and
- (4) Post Default Interest terms.

§ 1493.100 Terms and requirements of the Payment Guarantee.

- (a) *CCC's obligation.* The Payment Guarantee will provide that CCC agrees to pay the Holder of the Payment Guarantee an amount not to exceed the Guaranteed Value, plus Eligible Interest, in the event that the Foreign Financial Institution fails to pay under the Foreign Financial Institution Letter of Credit and, if applicable, the Terms and Conditions Document. Payment by CCC will be in U.S. dollars.

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

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

(A) The Date(s) of Export or the Weighted Average Export Date(s), as selected by the Holder of the Payment Guarantee consistent with paragraph (b)(1) of this section; or

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

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

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

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

(e) *Reserve coverage for loading tolerances.* The Exporter may apply for a Payment Guarantee and, if coverage is available, pay the guarantee fee, based on the mean of the lower and upper loading tolerances of the Firm Export Sales Contract; however, the Exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the Firm Export Sales Contract. The amount of coverage that can be reserved to accommodate the upward loading tolerance is limited to ten (10) percent of the Port Value of the sale. If such additional guarantee coverage is available at the time of application and the Director determines to make such reservation, CCC will so indicate to the Exporter. In the event that the Exporter ships a quantity greater than the amount on which the guarantee fee was paid (i.e., the mean of the upper and lower loading tolerances), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an application for amendment to the Payment Guarantee, and by paying the additional amount of fee applicable. If such application for an amendment to the Payment Guarantee is not filed with CCC by the Exporter and the additional fee not received by CCC within 30 calendar days after the date of the last export against the Payment Guarantee, CCC may cancel the reserve coverage originally set aside for the Exporter.

(f) *Certain export sales are ineligible for GSM-102 Payment Guarantees.* (1) An export sale (or any portion thereof) is ineligible for Payment Guarantee coverage if at any time CCC determines that:

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

- (2) The export sale includes corrupt payments or extra sales or services or other items extraneous to the transactions provided, financed, or guaranteed in connection with the export sale;
- (3) The export sale does not comply with applicable U.S. law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;
- (4) If the U.S. Agricultural Commodity is vegetable oil or a vegetable oil product, any of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;
- (5) Either the Importer or the Intervening Purchaser, if any, is excluded or disqualified from participation in U.S. government programs; or
- (6) The sale is not an Eligible Export Sale.

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

- (1) Exports of U.S. Agricultural Commodities with a Date of Export prior to the date of receipt by CCC of the Exporter's written application for a Payment Guarantee;
- (2) Exports of U.S. Agricultural Commodities with a Date of Export later than the final date to export shown on the Payment Guarantee or any amendments thereof;
- (3) Exports of U.S. Agricultural Commodities where the date of issuance of a Foreign Financial Institution Letter of Credit is later than 30 calendar days after:
 - (i) The Date of Export, or

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

(4) Exports of U.S. Agricultural Commodities that have been guaranteed by CCC under another Payment Guarantee. If CCC determines that an export of U.S. Agricultural Commodities 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.

(h) *Additional requirements.* The Payment Guarantee may contain such additional terms, conditions, and limitations as deemed necessary or desirable by the Director. Such additional terms, conditions or qualifications as stated in the Payment Guarantee are binding on the Exporter and the Assignee.

(i) *Amendments.* A request for an amendment of a Payment Guarantee may be submitted only by the Exporter, with the written concurrence of the Assignee, if any. The Director will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and sufficient budget authority exists. Any amendment to the Payment Guarantee, particularly those that result in an increase in CCC's liability under the Payment Guarantee, may result in an increase in the guarantee fee. CCC reserves the right to request additional information from the Exporter to justify the request and to charge a fee for amendments. Such fees will be announced and available on the USDA website. Any request to amend the Foreign Financial Institution on the Payment Guarantee will require that the Holder of

the Payment Guarantee resubmit to CCC the certifications in § 1493.120(c)(1)(i) or § 1493.140(d).

§ 1493.110 Guarantee fees.

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

- (1) Those that are announced on the USDA website and are based upon the length of the payment terms provided for in the Firm Export Sales Contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors which CCC determines appropriate for consideration.
- (2) Those where Exporters are invited to submit a competitive bid for coverage. If CCC determines to offer coverage on a competitive fee bid basis, instructions for bidding, and minimum fee rates, if applicable, will be made available on the USDA website.

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

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

(d) *Refunds of fee.* Guarantee fees paid in connection with applications that are accepted by CCC will ordinarily not be refundable. Once CCC notifies an Exporter of acceptance of an application, the fee for that application will not be refunded unless the Director determines that such refund will be in the best interest of CCC, even if the Exporter withdraws the application prior to CCC's issuance of the Payment Guarantee. If CCC does not accept an application for a Payment

Guarantee or accepts only part of the guarantee coverage requested, a full or pro rata refund of the fee will be made.

§ 1493.120 Assignment of the Payment Guarantee.

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

- (1) Made to one party acting for two or more parties, or
- (2) Subject to further assignment.

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

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

- (i) [Name of Assignee] has verified that the Foreign Financial Institution, at the time of submission of the notice of assignment, is not present as an excluded party on the SAM list; and
- (ii) To the best of my knowledge and belief, the information provided pursuant to § 1493.40 has not changed and [name of Assignee] still meets all of the qualification requirements of § 1493.40.”

(2) If the Assignee makes a false certification with respect to a Payment Guarantee, CCC may, in its sole discretion, in addition to any other action available as a matter of law, rescind and cancel the Payment Guarantee, reject the assignment of the Payment Guarantee, and/or commence legal action and/or administrative proceedings against the Assignee.

(d) *Notice of eligibility to receive assignment.* In cases where a U.S. Financial Institution is determined to be ineligible to receive an assignment, in accordance with paragraph (e) of this section, CCC will provide notice thereof to the U.S. Financial Institution and to the Exporter issued the Payment Guarantee.

(e) *Ineligibility of U.S. Financial Institutions to receive an assignment and proceeds.* A U.S. Financial Institution will be ineligible to receive an assignment of a Payment Guarantee or the proceeds payable under a Payment Guarantee if such U.S. Financial Institution:

- (1) At the time of assignment of a Payment Guarantee, is not in compliance with all requirements of 1493.40(a); or
- (2) Is the branch, agency, or subsidiary of the Foreign Financial Institution issuing the Letter of Credit; or
- (3) Is owned or controlled by an entity that owns or controls the Foreign Financial Institution issuing the Letter of Credit; or
- (4) Is the U.S. parent of the Foreign Financial Institution issuing the Foreign Financial Institution Letter of Credit; or
- (5) Is owned or controlled by the government of a foreign country and the Payment Guarantee has been issued in connection with export sales of U.S. Agricultural Commodities to Importers located in such foreign country.

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

- (i) Any repurchase under a Repurchase Agreement by the Holder of the Payment Guarantee must be for the entirety of the outstanding balance under the associated Repayment Obligation;
- (ii) In the event of a default with respect to the Repayment Obligation subject to a Repurchase Agreement, the Holder of the Payment Guarantee must immediately effect such repurchase; and
- (iii) The Holder of the Payment Guarantee must file all documentation required by §§ 1493.160 and 1493.170 in case of a default by the Foreign Financial Institution under the Payment Guarantee.

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

- (i) Name and address of the other party to the Repurchase Agreement;
- (ii) A statement indicating whether the transaction executed under the Repurchase Agreement is for a fixed term or if it is terminable upon demand by either party. If fixed, provide the purchase date and the agreed upon date for repurchase. If terminable on demand, provide the purchase date only; and
- (iii) The following written certification: “[Name of Holder of the Payment Guarantee] has entered into a Repurchase Agreement that meets the provisions of 7 CFR 1493.120(f)(1)

and, prior to entering into this agreement, verified that [name of other party to the Repurchase Agreement] is not present 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 paragraph (f) of this section may result in CCC annulling coverage on the Foreign Financial Institution Letter of Credit and Terms and Conditions Document, if applicable, covered by the Payment Guarantee.

§ 1493.130 Evidence of export.

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

- (1) Payment Guarantee number;
- (2) Evidence of export report number (e.g., Report 1, Report 2) reflecting the report's chronological order of submission under the particular Payment Guarantee;
- (3) Date of Export;
- (4) Destination country or region. If the sale was registered under a regional program, the Exporter must indicate the specific country or countries within the region to which the goods were shipped;
- (5) Exporter's sale number;
- (6) Exported Value;
- (7) Quantity;
- (8) A full description of the commodity exported, including the applicable six-digit Harmonized System commodity classification code;

(9) Unit sales price received for the commodity exported and the Incoterms 2010 basis (e.g., FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the Exporter's application for a Payment Guarantee, the Exporter is also required to submit a statement explaining the reason for the difference;

(10) Description and value of Discounts and Allowances, if any;

(11) The Exporter's statement, "All certifications set forth in 7 CFR 1493.140 are hereby being made by the Exporter in this Evidence of Export." which, when included in the evidence of export by the Exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.140; and

(12) In addition to all of the above information, the final evidence of export report for the Payment Guarantee must include the following:

- (i) The statement "Exports under the Payment Guarantee have been completed."
- (ii) A statement summarizing the total quantity and value of the commodity exported under the Payment Guarantee (i.e., the cumulative totals on all numbered evidence of export reports).

(b) *Time limit for submission of evidence of export.* (1) The Exporter must provide a written report to the CCC in the manner specified on the USDA website within 30 calendar days of the Date of Export.

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

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

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

(d) *Export sales reporting.* Exporters have a mandatory reporting responsibility under Section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), for exports of certain agricultural commodities and products thereof.

§ 1493.140 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.130(a)(11), the Exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been met. The Exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the Exporter makes false certifications with respect to a Payment Guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to annul guarantee coverage for any commodities not yet exported and/or to commence legal action and/or administrative proceedings against the Exporter. The Exporter, in submitting the evidence of export and providing the statement set forth in § 1493.130(a)(11), certifies that:

- (a) The agricultural commodity or product exported under the Payment Guarantee is a U.S. Agricultural Commodity;
- (b) The U.S. Agricultural Commodity was shipped directly to the country or region specified on the Payment Guarantee;
- (c) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the export sale, and that the export sale complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;
- (d) If the Exporter has not assigned the Payment Guarantee to a U.S. Financial Institution, the Exporter has verified that the Foreign Financial Institution, at the time of submission of the evidence of export report, is not present as an excluded party on the SAM list;
- (e) The transaction is an Eligible Export Sale; and
- (f) The information provided pursuant to §§ 1493.30 and 1493.70 has not changed (except as agreed to and amended by CCC) and the Exporter still meets all of the qualification requirements of § 1493.30.

§ 1493.150 Proof of entry.

- (a) *Diversion.* The diversion of U.S. Agricultural Commodities covered by a Payment Guarantee to a country or region other than that shown on the Payment Guarantee is prohibited, unless expressly authorized in writing by the Director.
- (b) *Records of proof of entry.* (1) Exporters must obtain and maintain records of an official or customary commercial nature that demonstrate the arrival of the U.S. Agricultural Commodities exported in connection with the GSM-102 program in the country or region that was the intended country or region of destination of such commodities. At the Director's request, the Exporter

must submit to CCC records demonstrating proof of entry. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC.

Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by an agent or representative of the vessel or shipline that delivered the U.S. Agricultural Commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the Director showing:

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

(2) Where shipping documents (e.g., bills of lading) clearly demonstrate that the U.S. Agricultural Commodities were shipped to the destination country or region, proof of entry verification may be provided by the Importer.

§ 1493.160 Notice of default.

(a) *Notice of default.* If the Foreign Financial Institution issuing the Letter of Credit fails to make payment pursuant to the terms of the Letter of Credit or the Terms and Conditions Document, the Holder of the Payment Guarantee must submit a notice of default to CCC as soon as possible, but not later than 5 Business Days after the date that payment was due from the Foreign Financial Institution (the due date). A notice of default must be submitted in writing to CCC in the manner specified on the USDA website and must include the following information:

- (1) Payment Guarantee number;
 - (2) Name of the country or region as shown on the Payment Guarantee;
 - (3) Name of the defaulting Foreign Financial Institution;
 - (4) Payment due date;
 - (5) Total amount of the defaulted payment due, indicating separately the amounts for principal and Ordinary Interest, and including a copy of the repayment schedule with due dates, principal amounts and Ordinary Interest rates for each installment;
 - (6) Date of the Foreign Financial Institution's refusal to pay, if applicable;
 - (7) Reason for the Foreign Financial Institution's refusal to pay, if known, and copies of any correspondence with the Foreign Financial Institution regarding the default.
- (b) *Failure to comply with time limit for submission.* If the Holder of the Payment Guarantee fails to notify CCC of a default within 5 Business Days, CCC may deny the claim for that default.
- (c) *Impact of a default on other existing Payment Guarantees.* (1) In the event that a Foreign Financial Institution defaults under a Repayment Obligation, CCC may declare that such Foreign Financial Institution is no longer eligible to provide additional Letters of Credit under the GSM-102 Program. If CCC determines that such defaulting Foreign Financial Institution is no longer eligible for the GSM-102 Program, CCC shall provide written notice of such ineligibility to all Exporters and Assignees, if any, having Payment Guarantees covering transactions with respect to which the defaulting Foreign Financial Institution is expected to issue a Letter of Credit. Receipt of written notice from CCC that a defaulting Foreign Financial Institution is no longer eligible to provide additional Letters of Credit under the GSM-102 Program shall constitute withdrawal of coverage of that Foreign Financial Institution under all Payment Guarantees with

respect to any Letter of Credit issued on or after the date of receipt of such written notice. CCC will not withdraw coverage of the defaulting Foreign Financial Institution under any Payment Guarantee with respect to any Letter of Credit issued before the date of receipt of such written notice.

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

§ 1493.170 Claims for default.

(a) *Filing a claim.* A claim by the Holder of the Payment Guarantee for a defaulted payment will not be paid if it is made later than 180 calendar days from the due date of the defaulted payment. A claim must be submitted in writing to CCC in the manner specified on the USDA website. The claim must include the following documents and information:

- (1) An original cover document signed by the Holder of the Payment Guarantee and containing the following information:
 - (i) Payment Guarantee number;
 - (ii) A description of:
 - (A) Any payments from or on behalf of the defaulting party or otherwise related to the defaulted payment that were received by the Exporter or the Assignee prior to submission of the claim; and

(B) Any security, insurance, or collateral arrangements, whether or not any payment has been realized from such security, insurance, or collateral arrangement as of the time of claim, from or on behalf of the defaulting party or otherwise related to the defaulted payment.

(iii) The following certifications:

- (A) A certification that the scheduled payment has not been received, listing separately scheduled principal and Ordinary Interest;
- (B) A certification of the amount of the defaulted payment, indicating separately the amounts for defaulted principal and Ordinary Interest;
- (C) A certification that all documents submitted under paragraph (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 export sale. The instrument must reference the applicable Foreign Financial Institution Letter of Credit and, if applicable, the Terms and Conditions Document; and

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

- (i) The repayment schedule with due dates, principal amounts and Ordinary Interest rates for each installment (if the Ordinary Interest rates for future payments are unknown at the time the claim for default is submitted, provide estimates of such rates);
- (ii)(A) The Foreign Financial Institution Letter of Credit securing the export sale; and
 - (B) If applicable, the Terms and Conditions Document;
- (iii) Depending upon the method of shipment, the ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the bill of lading and the entry certificate or similar document signed by an official of the importing country. 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)(A) The Exporter's invoice showing, as applicable, the FAS, FCA, FOB, CFR or CIF values; or
 - (B) If there was an Intervening Purchaser, both the Exporter's invoice to the Intervening Purchaser and the Intervening Purchaser's invoice to the Importer;
- (v) The evidence of export report(s) previously submitted by the Exporter to CCC in conformity with the requirements of § 1493.130(a); and
- (vi) If the defaulted payment was part of a transaction executed under a Repurchase Agreement, written evidence that the repurchase occurred as required under § 1493.120(f)(1)(ii).

(b) *Additional documents.* If a claim is denied by CCC, the Holder of the Payment Guarantee may provide further documentation to CCC to establish that the claim is in good order.

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the Holder of the Payment Guarantee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the Foreign Financial Institution to make scheduled installments on the same export shipment, the Holder of the Payment Guarantee need only submit to CCC a notice of such failure containing the information stated in paragraph (a)(1)(i) and (ii) and (a)(1)(iii)(A) and (B) of this section; an instrument of subrogation as per paragraph (a)(2) of this section; and the date the original claim was filed with CCC.

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

§ 1493.180 Payment for default.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.170, CCC will determine whether or not a default has occurred for which CCC is liable under the applicable Payment Guarantee. Such determination shall include, but not be limited to, CCC's determination that all documentation conforms to the specific requirements contained in this subpart, and that all documents submitted for payment conform to the requirements of the Letter of Credit and, if applicable, the Terms and Conditions Document. If CCC determines that it is liable to the Holder of the Payment Guarantee, CCC will

pay the Holder of the Payment Guarantee in accordance with paragraphs (b) and (c) of this section.

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

(1) The Guaranteed Value as stated in the Payment Guarantee, plus Eligible Interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the Exporter or the Assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the

Exporter or the Assignee); or

(2) The guaranteed percentage (as indicated in the Payment Guarantee) of the Exported Value indicated in the evidence of export, plus Eligible Interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the Exporter or the Assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the Exporter or the Assignee).

(c) *CCC Late Interest.* If CCC does not pay a claim within 15 Business Days of receiving the claim in good order, CCC Late Interest will accrue in favor of the Holder of the Payment Guarantee beginning with the sixteenth Business Day after the day of receipt of a complete and valid claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. CCC Late Interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated at a rate equal to the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date. If there has been no 91-day auction within 90

calendar days of the date CCC Late Interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the USDA website.

(d) *Accelerated payments.* CCC will pay claims only on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the Firm Export Sales Contract, the Foreign Financial Institution Letter of Credit, the Terms and Conditions Document (if applicable), or any obligation owed by the Foreign Financial Institution to the Holder of the Payment Guarantee that is related to the Letter of Credit issued in favor of the Exporter, unless it is determined to be in the best interests of CCC. Notwithstanding the foregoing, CCC at its option may declare up to the entire amount of the unpaid balance, plus accrued Ordinary Interest, in default, require the Holder of the Payment Guarantee to invoke the acceleration provision in the Foreign Financial Institution Letter of Credit or, if applicable, in the Terms and Conditions Document, require submission of all claims documents specified in §1493.170, and make payment to the Holder of the Payment Guarantee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the Assignee.* If an Assignee submits a claim for default pursuant to Section 1493.170 and all documents submitted appear on their face to conform with the requirements of such section, CCC will not hold the Assignee responsible or take any action or raise any defense against the Assignee for any action, omission, or statement by the Exporter of which the Assignee has no knowledge.

§ 1493.190 Recovery of defaulted payments.

(a) *Notification.* Upon claim payment to the Holder of the Payment Guarantee, CCC will notify the Foreign Financial Institution of CCC's rights under the subrogation agreement to recover all monies in default.

(b) *Receipt of monies.* (1) In the event that monies related to the obligation in default are recovered by the Exporter or the Assignee from or on behalf of the defaulting party, the Importer, or any source whatsoever (excluding payments among CCC, the Exporter, and the Assignee), such monies shall be immediately paid to CCC. Any monies derived from insurance or through the liquidation of any security or collateral after the claim is filed with CCC shall be deemed recoveries that must be paid to CCC. If such monies are not received by CCC within 15 Business Days from the date of recovery by the Exporter or the Assignee, such party will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the Exporter or the Assignee to CCC. Such interest will be charged only on CCC's share of the recovery. If there has been no 91-day auction within 90 calendar days of the date interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the USDA website.

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

interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the Holder of the Payment Guarantee.

(c) *Allocation of recoveries.* Recoveries received by CCC from any source whatsoever that are related to the obligation in default will be allocated by CCC to the Holder of the Payment Guarantee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default on the date the claim is paid by CCC. Once CCC has paid a particular claim under a Payment Guarantee, CCC pro-rates any collections it receives and shares these collections proportionately with the Holder of the Payment Guarantee until both CCC and the Holder of the Payment Guarantee have been reimbursed in full.

(d) *Liabilities to CCC.* Notwithstanding any other terms of the Payment Guarantee, under the following circumstances the Exporter or the Assignee will be liable to CCC for any amounts paid by CCC under the Payment Guarantee:

- (1) The Exporter will be liable to CCC when and if it is determined by CCC that the Exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the Exporter for the purpose of obtaining the Payment Guarantee or for fulfilling obligations under the GSM-102 program; and
- (2) The Assignee will be liable to CCC when and if it is determined by CCC that the Assignee has engaged in fraud or otherwise violated program requirements.

(e) *Cooperation in recoveries.* Upon payment by CCC of a claim to the Holder of the Payment Guarantee, the Holder of the Payment Guarantee and the Exporter will cooperate with CCC to effect recoveries from the Foreign Financial Institution and/or the Importer. Cooperation may

include, but is not limited to, submission of documents to the Foreign Financial Institution (or its representative) to establish a claim; participation in discussions with CCC regarding the appropriate course of action with respect to a default; actions related to accelerated payments as specified in §1493.180(d); and other actions that do not increase the obligation of the Holder of the Payment Guarantee or the Exporter under the Payment Guarantee.

§ 1493.191 Additional obligations and requirements.

(a) *Maintenance of records, access to premises, and responding to CCC inquiries.* For a period of five years after the date of expiration of the coverage of a Payment Guarantee, the Exporter and the Assignee, if applicable, must maintain and make available all records and respond completely to all inquiries pertaining to sales and deliveries of and extension of credit for U.S. Agricultural Commodities exported in connection with a Payment Guarantee, including those records generated and maintained by agents, Intervening Purchasers, and related companies involved in special arrangements with the Exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the Exporter and the Assignee, as applicable, during regular business hours from the effective date of the Payment Guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the Exporter's, Assignee's, agent's, Intervening Purchaser's or related company's books, records and accounts concerning transactions relating to the Payment Guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the Exporter and the Assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted

outside the program, if, in the opinion of the Director, such records would pertain directly to the review of transactions undertaken by the Exporter in connection with the Payment Guarantee.

(b) *Responsibility of program participants.* It is the responsibility of all Exporters and U.S. and Foreign Financial Institutions to review, and fully acquaint themselves with, all regulations, Program Announcements, and notices to participants relating to the GSM-102 program, as applicable. All Exporters and U.S. and Foreign Financial Institutions participating in the GSM-102 program are hereby on notice that they will be bound by this subpart and any terms contained in the Payment Guarantee and in applicable Program Announcements.

(c) *Submission of documents by Principals.* All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments) by Exporters, Assignees, or Foreign Financial Institutions under this subpart must be signed by a Principal of the Exporter, 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 Exporter, Assignee, or Foreign Financial Institution must ensure that all information and reports required under these regulations are timely submitted.

(d) *Misstatements or noncompliance by Exporter may lead to rescission of Payment Guarantee.* CCC may cancel a Payment Guarantee in the event that an Exporter makes a willful misstatement in the certifications in §§ 1493.80(b) and 1493.140(c) or if the Exporter fails to comply with the provisions of § 1493.150 or paragraph (a) of this section. However, notwithstanding the foregoing, CCC will not cancel its Payment Guarantee, if it determines, in

its sole discretion, that an Assignee had no knowledge of the Exporter's misstatement or noncompliance at the time of assignment of the Payment Guarantee.

§ 1493.192 Dispute resolution and appeals.

(a) *Dispute resolution.* (1) The Director and the Exporter or the Assignee will attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the GSM-102 program, this subpart, the applicable Program Announcements and notices to participants, or the Payment Guarantee.

(2) The Exporter or the Assignee may seek reconsideration of a determination made by the Director by submitting a letter requesting reconsideration to the Director within 30 calendar days of the date of the determination. For the purposes of this section, the date of a determination will be the date of the letter or other means of notification to the Exporter or the Assignee of the determination. The Exporter or the Assignee may include with the letter requesting reconsideration any additional information that it wishes the Director to consider in reviewing its request. The Director will respond to the request for reconsideration within 30 calendar days of the date on which the request or the final documentary evidence submitted by the Exporter or the Assignee is received by the Director, whichever is later, unless the Director extends the time permitted for response. If the Exporter or the Assignee fails to request reconsideration of a determination by the Director, then the determination of the Director will be deemed final.

(3) If the Exporter or the Assignee requests reconsideration of a determination by the Director pursuant to paragraph (a)(2) of this section, and the Director upholds the original determination, then the Exporter or the Assignee may appeal the Director's final determination to the GSM in accordance with the procedures set forth in paragraph (b) of this

section. If the Exporter or the Assignee fails to appeal the Director's final determination within 30 calendar days as provided in paragraph (b)(1) of this section, then the Director's decision becomes the final determination of CCC.

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

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

(3) If the Exporter or the Assignee has requested an administrative hearing, the GSM will set a date and time for the hearing that is mutually convenient for the GSM and the Exporter or Assignee. This date will ordinarily be within 60 calendar days of the date on which the GSM receives the request for a hearing. The hearing will be an informal procedure. The Exporter or Assignee and/or its counsel may present any relevant testimony or documentary evidence

to the GSM. A transcript of the hearing will not ordinarily be prepared unless the Exporter or Assignee bears the costs involved in preparing the transcript, although the GSM may decide to have a transcript prepared at the expense of the Government. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will issue his or her written decision within 60 calendar days of the latter of the date of the hearing or the date of receipt of the transcript, if one is to be prepared.

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

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

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

§ 1493.195 Miscellaneous provisions.

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

(b) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information collection requirements contained in this part (7 CFR part 1493) have been approved by the

Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551-0004.

June 4, 2014

Date

Philip C. Karsting
Administrator, Foreign Agricultural Service, and
Vice President, Commodity Credit Corporation.

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